

Addendum to Agenda Paper 3 – Proposed Revised APES 110 Code of Ethics for Professional Accountants

Due to recent conversations with the senior management of the regulator (ASIC) and a subsequent review of APES 110 Amendments to *Code of Ethics for Professional Accountants* (the Code), Technical Staff proposed the following amendments to the initial proposals for the Code in respect of the following two matters:

1. Reporting on breaches under s307C of the *Corporations Act 2001*; and
2. Clarifying the structure of the Code within the Guide to the Code.

1. Amendment in relation to reporting of breaches under s307C of the Corporations Act 2001

As outlined in Agenda Paper 3, during the exposure draft process an issue was raised relating to the reporting of breaches under s307C of the *Corporations Act 2001* (the Act) for other partners in the Audit Firm. To address the issue, Technical Staff proposed to include a new requirements paragraph in APES 110 *Code of Ethics for Professional Accountants* (the Code).

There has been ongoing dialogue with the relevant regulator, ASIC, and with the stakeholders impacted.

However, on consideration of the final proposed wording, ASIC's Senior Management are now of the view that the most appropriate way to address the issue would be for ASIC to develop a solution (i.e., by issuing a class order that provides the necessary relief/exemption for Firms). Therefore, the proposed paragraph AUST R510.4.1 is no longer required to be included in the Code.

Technical Staff have discussed this matter with ASIC's Senior Management and agree that this position would align the relief/exemption more neatly with the requirements in the Act and also preserves the integrity and robustness of the Code, and its alignment with the international *Code of Ethics for Professional Accountants*.

Based on these recent developments, Technical Staff propose the following amendments to the original proposals in Agenda Item 3:

- delete proposed paragraph AUST R510.4.1 from the Code (Agenda Item 3(e)); and
- amend Section 3 in the Basis for Conclusions (Agenda Item 3(d)) to remove reference to the inclusion of the additional paragraph.

The amendments to Section 3 of the Basis for Conclusions are marked-up in the extract below.

Technical Staff propose to record this matter on the Issues Register and will work with ASIC in the development of the final solution to this issue.

Extract of Section 3 of the Basis for Conclusions

3. APESB's consideration of Respondents' comments to the exposure drafts in relation to APES 110

APESB received seven submissions from the professional accounting bodies, Firms and a public sector organization. [There were no substantive changes made to APES 110 as a result of the exposure draft process.](#)

However, there was one significant matter raised relating to the ~~In response to the comments received, APESB has developed a new paragraph to address~~ reporting of breaches under s307C of the Corporations Act 2001, as detailed below, which was considered by APESB.

Reporting of breaches under s307C of the Corporations Act 2001.

An issue was raised regarding the *Corporations Act 2001* (the Act) requirement to report breaches of the requirements in APES 110, in particular breaches of the auditor independence requirements.

Section 307C of the Act requires the auditor to provide a declaration to their audit client that they have complied with the auditor independence provisions of the Act and relevant codes of professional conduct (e.g. APES 110). However, there is an exemption from the need to disclose some breaches if the auditor had in place a quality control system that provided reasonable assurance that the auditor and his or her employees complied with the auditor independence sections of the Act.

The exemption only applies to breaches of the Act's auditor independence requirements. It does not apply to breaches of the professional Code of Conduct (i.e., APES 110) provisions which are not included in the auditor independence provisions of the Act.

Paragraph R510.4 (extant paragraph 290.108) of APES 110 requires other partners in the same office as the Engagement Partner to not hold a direct financial interest or material indirect financial interest in Audit Clients of the Engagement Partner. This requirement is not replicated in the Act.

If paragraph R510.4 was breached, even inadvertently, the auditor would either need to:

- issue a qualified declaration of Independence, or
- apply to ASIC for an exemption order under s340 of the Act to avoid having to issue a qualified declaration of Independence.

~~To address this issue, APESB have included a new requirement paragraph AUST R510.4.1 which provides a quality control defence, as long as the Firm complies with the requirements to eliminate the financial interest or relationship in accordance with paragraph R400.80 and to discuss it with Those Charge with Governance in accordance with R400.82.~~

APESB Technical Staff have raised this issue with the Australian Securities and Investments Commission (ASIC) Senior management who have indicated their willingness to develop a legislative instrument to address the issue. Therefore, no amendments to APES 110 are considered necessary in relation to this issue.

2. Amendment to clarify the structure of the Code

Technical Staff have noted in a subsequent review of the Code that the Guide to the Code could be enhanced to draw attention to the transitional provisions and the conformity with the international pronouncements. The proposed amendment is marked up below:

How the Code is Structured

4. The Code contains the following material:

- *Glossary*, which contains defined terms (together with additional explanations where appropriate) and described terms which have a specific meaning in certain parts of the

Code. For example, as noted in the Glossary, in Part 4A, the term “Audit Engagement” applies equally to both Audit and Review Engagements.

- Part 1 – *Complying with the Code, Fundamental Principles and Conceptual Framework*, which includes the fundamental principles and the conceptual framework and is applicable to all Members.
- Part 2 – *Members in Business (including employment relationships of Members in Public Practice)*, which sets out additional material that applies to Members in Business when performing Professional Activities. Members in Business include Members employed, engaged or contracted in an executive or non-executive capacity in, for example:
 - Commerce, industry or service.
 - The public sector.
 - Education.
 - The not-for-profit sector.
 - Regulatory or professional bodies.

Part 2 is also applicable to individuals who are Members in Public Practice when performing Professional Activities pursuant to their relationship with the Firm, whether as a contractor, employee or owner.

- Part 3 – *Members in Public Practice*, which sets out additional material that applies to Members in Public Practice when providing Professional Services.
- *Independence Standards*, which sets out additional material that applies to Members in Public Practice when providing assurance services, as follows:
 - Part 4A – *Independence for Audit and Review Engagements*, which applies when performing Audit or Review Engagements.
 - Part 4B – *Independence for Assurance Engagements Other than Audit and Review Engagements*, which applies when performing Assurance Engagements that are not Audit or Review Engagements.
- [Transitional provisions, which sets out the transitional provisions that apply to specific provisions in the Code.](#)
- [Conformity with International pronouncements, which sets out how this Code complies with the International Code of Ethics for Professional Accountants \(including International Independence Standards\).](#)

Staff recommendation

Technical Staff recommend the Board consider the outlined amendments to the original proposals in Agenda Paper 3.

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