



Monday, 23 October 2023

Mr Channa Wijesinghe  
Chief Executive Officer  
Accounting Professional and Ethical Standards Board  
Level 11  
99 William Street  
Melbourne VIC 3000

Submission by email: [enquiries@apesb.org.au](mailto:enquiries@apesb.org.au)

Dear Channa

**Proposed Technology-related revisions to APES 110 *Code of Ethics for Professional Accountants (including Independence Standards (APES 110)) (the Code)*.**

Chartered Accountants Australia and New Zealand (**CA ANZ**) appreciates the opportunity to provide comment on Exposure Draft 05/23 Proposed Technology related revisions to APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* (the **ED**) outlining amendments to the Code proposed by the Accounting Professional and Ethical Standards Board (**APESB**).

CA ANZ supports consistency between international and domestic standards, including where possible, between terms and definitions contained in standards issued by the APESB and the International Ethics Standards Board for Accountants (**IESBA**). CA ANZ supports the proposed revisions to the standard which maintains alignment between APESB and IESBA issued pronouncements.

CA ANZ would like to bring two matters to the APESB's attention. First, several changes proposed in the ED<sup>1</sup> may not be seen as technology-related revisions to the Code. We recommend that the APESB highlight these proposed general changes to the Code in the Basis for Conclusions so that users are made aware that the proposed changes are not exclusively related to technology.

Secondly, we are concerned that proposed paragraph R114.2(d) when read with reference to the definition of 'Confidential Information' in the glossary is not clear and may be confusing for members as to the intent of proposed paragraph R114.2(d). We have set out our analysis in **Appendix 1**.

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<sup>1</sup> Paragraph references - 113.1A1, 113.1 A2, R113.3, 114.1 A1, R114.2, R114.3, 114.3 A3, R114.4, 120.5 A6 -120.5 A8, 120.13 A3, 200.5 A3, R220.7, 220.7 A1, 300.5 A2, R320.10, 320.10 A1, 520.3 A2, 520.3 A3, 601.5 A2, 920.3 A2 and 920.3 A3,

**Appendix 2** provides more information about CA ANZ. Should you have any questions about the matters raised in this submission or wish to discuss them further, please contact Josephine Haste CA, [josephine.haste@charteredaccountantsanz.com](mailto:josephine.haste@charteredaccountantsanz.com)

Yours sincerely,

**Vanessa Chapman**

Group Executive, General Counsel and Corporate Assurance

## Appendix 1

## Analysis of proposed paragraphs R114.2(d) and R114.3

**Relevant paragraphs from the ED**

Glossary – Confidential Information - “Any information, data or other material in whatever form or medium (including written, electronic, visual or oral) that is not publicly available.” (new proposed definition)

**R114.2 Subject to paragraph R114.3, a Member shall not:**

- a) **Disclose Confidential Information acquired in the course of professional and business relationships;**
- b) **Use Confidential Information acquired in the course of professional and business relationships for the advantage of the Member, the Firm, the employing organisation or a third party;**
- c) **Use or disclose any Confidential Information, either acquired or received in the course of a professional or business relationship, after that relationship has ended; and**
- d) **Use or disclose information in respect of which the duty of confidentiality applies notwithstanding that that information has become publicly available, whether properly or improperly. (Part d is a new requirement)**

**R114.3 As an exception to paragraph R114.2, a Member may disclose or use Confidential Information where:**

- a) **There is a legal or professional duty or right to do so; or**
- b) **This is authorised by the client or any person with the authority to permit disclosure or use of the Confidential Information and this is not prohibited by law or regulation. (new requirement)**

114.3 A1 Confidentiality serves the public interest because it facilitates the free flow of information from the Member’s client or employing organisation to the Member in the knowledge that the information will not be disclosed to a third party. Nevertheless, the following are circumstances where Members might be required or have the duty or right to disclose Confidential Information:

- (a) Disclosure is required by law or regulation, for example:
  - (i) Production of documents or other provision of evidence in the course of legal proceedings; or
  - (ii) Disclosure to the appropriate public authorities of infringements of the law that come to light; and
- (b) There is a professional duty or right to disclose or use, when not prohibited by law or regulation:
  - (i) To comply with the quality review of a Professional Body;
  - (ii) To respond to an inquiry or investigation by a professional or regulatory body;
  - (iii) To protect the professional interests of a Member in legal proceedings; or
  - (iv) To comply with technical and professional standards, including ethics requirements. (consistent with extant Code)

AUST 114.3 A1.1 The circumstances described in paragraph 114.3 A1 do not take into account Australian legal and regulatory requirements. A Member considering disclosing Confidential Information about a client or employer without their consent is advised to first obtain legal advice. (existing application paragraph)

114.3 A2 In deciding whether to disclose or use Confidential Information, factors to consider, depending on the circumstances, include:

- Whether the interests of any parties, including third parties whose interests might be affected, could be harmed if the client or employing organisation authorises the disclosure or use of information by the Member.
- Whether all the relevant information is known and substantiated, to the extent practicable. Factors affecting the decision to disclose or use, the information, include:
  - Unsubstantiated facts.
  - Incomplete information.
  - Unsubstantiated conclusions.
- The proposed means of communicating, the information.
- Whether the parties to whom the information is to be provided or access is to be granted are appropriate recipients.
- Any applicable law or regulation (including those governing privacy) in a jurisdiction where disclosure might take place and, if different, the jurisdiction where the Confidential Information originates.

## Analysis

Our review of the ED has identified that:

- R114.2(d) does not refer to the defined term Confidential Information as used in points (a) to (c) but refers to “*information in respect of which the duty of confidentiality applies*”.
- The exceptions provided for in R114.3 are only applicable to Confidential Information, therefore R114.3 does not apply to R114.2(d).
- Most users of the Code will not differentiate between Confidential Information and “*information for which the duty of confidentiality applies*”.
- [IESBA’s Basis for Conclusions on Technology-related revisions to the Code \(BoC\)](#) provides the following insights.
  - R114.2(d) refers to “*“information” and not “confidential information,” recognising that once it is publicly available, the information no longer meets the definition of confidential information in the Glossary. Nevertheless, the IESBA reaffirmed that despite such information becoming publicly available, a PA still needs to comply with the principle of confidentiality as the PA has acquired such information in the course of professional and business relationships, unless the conditions for exception set out in new paragraph R114.3 are met.*”<sup>2</sup>

<sup>2</sup> Paragraphs 37 and 38 of the IESBA’s Basis for Conclusions on Technology-related revisions to the Code.

- *“The IESBA reaffirmed that a PA continues to have an obligation to comply with the principle of confidentiality in relation to any information acquired in the course of professional and business relationships.”<sup>3</sup>*

## Conclusion

With due regard given to the BoC, it appears that the IESBA’s intention is for the exemptions in R114.3 to apply to R114.2, however by using the defined term of ‘Confidential Information’ in R114.3 and explaining in the BoC that R114.2(d) does not refer to ‘Confidential Information’, the intent becomes unclear with respect to when information is confidential and the exemptions that can apply. This will likely lead to our members to apply the Code incorrectly or inconsistently.

Our interpretation of R114.2(d) is that if an accountant is in this scenario they should apply the general provisions of the principle of confidentiality, i.e. only disclose information to which the duty of confidentiality applies, if required by law, regulation or professional duty or with the client’s authority. This conclusion is not easily drawn from reading R114.2 and R114.3 of the Code. Should the APESB resolve to retain the drafting as proposed in the ED we strongly recommend that additional application support materials be provided to users of the Code.

We will be raising this matter with technical staff at IESBA as we believe paragraph R114.2(d) and/or R114.3 should be amended to make the IESBA’s intent clear to users.

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<sup>3</sup> Ibid

## Appendix 2

### About Chartered Accountants Australia and New Zealand

Chartered Accountants Australia and New Zealand (CA ANZ) represents 136,000 financial professionals, supporting them to make a difference to the businesses, organisations and communities in which they work and live. Chartered Accountants are known as Difference Makers. The depth and breadth of their expertise helps them to see the big picture and chart the best course of action.

CA ANZ promotes the Chartered Accountant (CA) designation and high ethical standards, delivers world-class services and life-long education to members and advocates for the public good. We protect the reputation of the designation by ensuring members continue to comply with a code of ethics, backed by a robust discipline process. We also monitor Chartered Accountants who offer services directly to the public.

Our flagship CA Program, the pathway to becoming a Chartered Accountant, combines rigorous education with mentored practical experience. Ongoing professional development helps members shape business decisions and remain relevant in a changing world.

We actively engage with governments, regulators and standard-setters on behalf of members and the profession to advocate boldly in the public good. Our thought leadership promotes prosperity in Australia and New Zealand.

Our support of the profession extends to affiliations with international accounting organisations.

We are a member of the International Federation of Accountants and are connected globally through Chartered Accountants Worldwide and the Global Accounting Alliance. Chartered Accountants Worldwide brings together members of 15 chartered accounting institutes to create a community of more than 1.8 million Chartered Accountants and students in more than 190 countries. CA ANZ is a founding member of the Global Accounting Alliance which is made up of 10 leading accounting bodies that together promote quality services, share information and collaborate on important international issues.

We have a strategic alliance with the Association of Chartered Certified Accountants. The alliance represents more than 870,000 current and next generation accounting professionals across 179 countries and is one of the largest accounting alliances in the world providing the full range of accounting qualifications.

We employ more than 500 talented people across Australia, New Zealand, Singapore, Malaysia, Hong Kong and the United Kingdom.