

Constituents' Submissions – Specific Comments Table
Exposure Draft 01/15: APES 350 Participation by Members in Public Practice in Due Diligence Committees in connection with a Public Document

Note: General comments relating to APES 350 are addressed in a separate table. This table excludes minor editorial changes.

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
1	1.1	PwC	<p>Primary objectives of the Standard</p> <p>We believe that the addition of a paragraph describing the primary objectives of the Standard will help Members to appreciate what the Standard is seeking to achieve and the assistance it provides. We suggest the following amendments:</p> <p>Second bullet point: insert the new words “<i>wherever possible</i>” immediately after the word “<i>ensure</i>”. This reflects the requirement in paragraph 4.3(a) of APES 350 that the course of action must be “<i>acceptable to both the Member and the Client</i>”.</p> <p>Third bullet point: substitute the word “<i>reports</i>” at the end of the sentence with the word “<i>items</i>”.</p>
2	1.1	Deloitte	<p>Overall, we are supportive of the objectives of APES 350 however we have some comments for the consideration of the APESB in respect of the proposals in the ED which are set out below.</p> <p>Paragraph 1.1</p> <p>The Due Diligence Planning Memorandum should be consistent with the primary contract, being the Engagement Document, and not the other way around. Therefore we suggest that the second bullet point in paragraph 1.1 be amended as follows:</p> <p>The primary objectives of APES 350 <i>Participation by Members in Public Practice in Due Diligence Committees in connection with a Public Document</i> are:</p> <ul style="list-style-type: none"> • to; • to mandate that a Member in Public Practice shall ensure that the responsibilities of the Member specified in the <u>Due Diligence Planning Memorandum</u> Engagement Document are consistent with those set out in the <u>Engagement Document</u> Due Diligence Planning Memorandum; and ...

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3	1.10 7.1 7.2	EY	<p>However, we would like to highlight the following observations and suggestions for your consideration.</p> <p>Low Doc Offerings</p> <p>Whilst we believe that APES350 has been accepted in the market with respect to prospectuses and DDC member roles, we believe that there is a need for further guidance with respect to low doc offerings where our clients are looking to the accounting firms to provide similar sign offs to those that are provided for a full scope, full disclosure engagement. Further guidance on when it would be appropriate to provide an APES350 sign off in a low doc situation would provide consistency in approach and an increased awareness of some of the issues faced in providing sign offs where financial information disclosures or timeframes are limited.</p>
4	Definition	PwC	<p>'Assurance Client': We suggest definitions of 'subject matter' and 'subject matter information' be included in the Standard to clarify this definition.</p>
5	Definition	Deloitte	<p>Paragraph 2</p> <p>For consistency with the other revisions being made to the Definitions, we suggest that the word "services" in the definition of Contingent Fee be changed to Professional Activities as follows:</p> <p>Contingent Fee means a fee calculated on a predetermined basis relating to the outcome of a transaction or the result of the services <u>Professional Activities</u> performed by the Firm. A fee that is established by a court or other public authority is not a Contingent Fee.</p>
6	Definition	PwC	<p>Definition of "New Circumstances Statement": For clarity, we would request amending the definition so it is less prescriptive about what a "New Circumstances Statement" contains. It would also be helpful for the definition to clarify the timing of the provision of a New Circumstances Statement; ie, immediately prior to the issue of securities under the Public Document.</p> <p>We would suggest the following definition, for example: "New Circumstances Statement means a letter or other document issued by a Member in Public Practice who is a DDC Observer, subsequent to the issue of a Due Diligence Sign Off and immediately prior to the issue of securities under the relevant Public Document, having regard to the scope of work set out in the Member's Terms of Engagement and the Member's obligations under this Standard."</p>
7	Definition	PwC	<p>'Professional Bodies': We suggest the reference to the 'Institute of Chartered Accountants Australia' be changed to 'Chartered Accountants Australia & New Zealand'.</p> <p>Other than as set out above, we have no further comments on the updates and additions to the definitions in Section 2 of the ED.</p>

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8	Definition	CA ANZ	<p>We have two specific comments to make with regards to the ED:</p> <ul style="list-style-type: none"> The definition of New Circumstances Statement should be amended to insert the phrase “which state” (or similar) as follows “<i>New Circumstances Statement means the letter or other document issued by a Member in Public Practice who is a DDC Observer, subsequent to the issue of a Due Diligence Sign-Off, which states whether based on procedures conducted by the DDC Observer, anything has come to the DDC Observer’s attention that causes the DDC Observer to believe that the Due Diligence Sign-Off requires amendment</i>”. The definition of Professional Bodies should be amended to reflect our change of name from Institute of chartered Accountants Australia to Chartered Accountants Australia and New Zealand.
9	5.1 7.9 7.10 7.11 Appendix 3	PwC	<p>Responsibilities as a DDC Observer (paragraphs 7.9, 7.10, 7.11 and Appendix 3 – New Circumstances Statement)</p> <p>(a) When a Member is participating in a DDC as a DDC Observer, there seems to be a degree of uncertainty regarding what is an appropriate statement to make, if any, immediately prior to the issue of securities under the Public Document. That Member will not be in a position to provide a “new circumstances sign-off” of the kind that DDC members typically provide at that time. In our view the mandatory obligations under paragraphs 5.9 and 7.9 of the current (un-amended) APES 350 (Existing Standard) already address what a DDC Observer must do in the course of performing their work and also immediately prior to the issue of securities under the Public Document. However there is increasing market pressure for Members participating as DDC Observers to provide the Committee with some form of statement in respect of “new circumstances”.</p> <p>(b) In these circumstances, we support the objective of achieving consistency in practice, where possible, and satisfying market sentiment that Members, when acting as DDC Observers, should provide an additional statement immediately prior to the issue of securities under the Public Document to reflect their existing obligations that continue subsequent to the issue of the Public Document, for example, under paragraph 7.9 of the Existing Standard.</p> <p>(c) We also support the proposal that providing a New Circumstances Statement in the form of Appendix 3 is not mandatory. There are already mandatory obligations relating to “material new circumstances” (see paragraph 7.9 of the Existing Standard), and what is appropriate practice arising out of this existing obligation will vary depending on the circumstances of the particular engagement. If a specific statement is to be provided, it is likely to vary in form and content as between Members and in light of the particular engagement circumstances (in the same way, for example, that new circumstances sign-offs provided by members of a DDC vary in form and content depending on, among other things, the framework for continuing due diligence set out in the DDPM). Many competing factors will need to be considered to determine exactly what statement (if any) is appropriate in a particular engagement. In our view any statement should be:</p> <ul style="list-style-type: none"> consistent with and reflective of existing obligations under APES 350 and, where applicable, relevant standards and legislation; and based on the particular scope of work agreed in an Engagement Document.

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			<p>(d) For similar reasons, in our view, the nature and scope of any additional procedures to be performed should not be prescribed but rather a matter for the Member in their professional judgement, in the same way that procedures performed in undertaking a review under ASAE 3450 are ultimately a question of professional judgement.</p> <p>(e) In light of the above, we make the following specific comments on the definition of “New Circumstances Statement” and the new paragraphs 7.9 - 7.11 in the ED:</p> <p>Responsibilities as a DDC Observer We support this clarification of the responsibilities a Member who is acting as a DDC Observer subject to our comments above.</p>
10	5.9	PwC	<p>In our view:</p> <p>Clarification of a Member’s professional obligations (paragraph 5.9)</p> <p>(a) Market participants are aware and accept that there are circumstances in which a Member cannot participate as a DDC Member (for example due to SEC restrictions) and therefore cannot sign the collective report of the DDC, which typically includes statements about the content of the Public Document as a whole, given by each DDC member in respect of their specific scope of work and in reliance on other DDC members in respect of matters outside their scope.</p> <p>(b) In these circumstances Clients, members of the DDC and their legal advisers are anxious to know that a Member has fulfilled its obligations under paragraph 5.9 of the ED by informing them of any significant concerns, relating to the matters set out in paragraph 5.7 of the ED, that may come to their attention in the course of performing their work set out in their engagement terms.</p> <p>(c) The additional wording at the end of paragraph 5.9 makes it clear that whilst a Member (participating in and/or reporting to a DDC as a DDC Member, DDC Observer or Reporting Person) is required to bring to the attention of the Client and/or its DDC any significant concerns regarding the matters referred to in paragraph 5.7, it is only as a DDC Member and where that report is a collective report of the DDC, signed concurrently with the other members of the DDC, that a Member may report on those matters. We support this proposed amendment because:</p> <ul style="list-style-type: none"> • it provides greater clarity about a Member’s responsibilities in circumstances where that Member is not participating in the DDC as a DDC Member • it is consistent with the statements already set out in paragraph 5.8, namely that a Member “...will not have the requisite knowledge or expertise to make determinations in relation to, or report on, those matters independently of other DDC members...”

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			<p>We wish to note that, in our view, a Member who confirms it has complied with paragraph 5.9 by stating it has not brought any significant concerns of the kind referred to in paragraph 5.9 to the Client's/DDC's attention because there are none is not necessarily "reporting" on the matters set out in paragraph 5.7. If this were not the case, it is not clear to us how a Member could demonstrate to a Client and/or DDC that it has complied with paragraph 5.9 if there are no such significant concerns. Having said this, we do not think written confirmation is necessary i.e. it should be sufficient for the Member to say it has performed its work in accordance with APES 350 as a whole.</p> <p>We support the clarification of a Member's reporting obligations when participating as a DDC Observer for the reasons outlined above.</p>
11	5.9 Appendix 3	EY	<p>Observer sign offs</p> <p>The inclusion of the DDC observer new circumstances template in the Proposed Standard is a positive step forward in ensuring members in public practice who act as observers have consistent obligations with respect to the reporting of new circumstances as those participating as DDC members.</p> <p>Whilst we appreciate that the changes to paragraph 5.9 of the Proposed Standard clarify the role of an accountant or tax practitioner in a DDC Observer role as it relates to providing a sign off in relation to matters discussed in paragraph 5.7, we believe that this is out of step with market expectations given the accountant's scope of reading and commenting on the entire offer document. Consequently, we believe that a member in public practice acting as an observer to the DDC should in certain situations be able to provide a statement which is based on their specific scope undertaken and with their financial, accounting and taxation expertise in mind, which relates to the material consistency of other sections of the document with the defined financial information on which procedures have been undertaken.</p>
12	5.9	Deloitte	<p>Paragraph 5.9</p> <p>Specifically, we are not supportive of the proposed changes to paragraph 5.9. Paragraph 5.9 currently requires a Member in Public Practice to bring to the attention of the Client and/or the Due Diligence Committee (DDC) any significant concerns relating to the matters set out in paragraph 5.7 which come to the attention of the Member. The APESB proposes adding to paragraph 5.9: <i>"However, a Member shall not report otherwise on the matters set out in paragraph 5.7 as to do so would contravene the requirements in that paragraph"</i>.</p> <p>We understand that the intention of paragraph 5.7 was to make it clear that a DDC Observer should not sign a report that is a report of the DDC. We agree that Members in Public Practice who are prevented from being a DDC Member due to independence obligations should not sign or be a party to any collective reports or documents issued by the DDC. However we do not consider there is any reason to otherwise restrict Members, such as DDC Observers, from determining the appropriateness or form of reports to be provided to the Client or the DDC, if such Member concludes there is no independence issue in doing so. We therefore do not agree that a Member, including those acting in the capacity of DDC Observer, should be precluded from reporting on the matters set out in paragraph 5.9 if the member has determined that it would not be inconsistent with their independence obligations.</p>

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			Given the prohibition on a Member's ability to sign a report to Those Charged With Governance of a general nature in relation to the Public Document exists in paragraph 5.7, regardless of the proposed amendment to paragraph 5.9, we instead suggest that paragraph 5.9 should include a statement that any report or letter provided under paragraph 5.9 is not in contravention of paragraph 5.7.
13	5.9	KPMG	We believe the changes to paragraph 5.9 provide important clarity with respect to the requirements of paragraph 5.7.
14	5.9	CPA Australia	However, we are of the view that the addition in paragraph 5.9 could be stated more clearly in positive terms. Accordingly, we suggest that the sentence: "However, a Member shall not report otherwise on the matters set out in paragraph 5.7 as to do so would contravene the requirements in that paragraph" be replaced by: "However, a Member shall only report on the matters set out in paragraph 5.7."
15	7.9	PwC	Paragraph 7.9: Subject to our comments in relation to the definition and form of the New Circumstances Statement, we have no objection to the inclusion of paragraph 7.9.
16	7.9 7.11 Appendix 3	KPMG	In particular, the drafting of paragraphs 7.9 through 7.11 inclusive provides important clarity with respect to the professional obligations of a Member in Public Practice when providing a new circumstances sign-off as either a Due Diligence Committee Member or a Due Diligence Committee Observer. The inclusion of the example New Circumstances Statement in Appendix 3 further supports this and should drive consistency in compliance with the requirements of APES 350 across the profession.
17	7.10	PwC	<p>Paragraph 7.10: We would suggest the following amendment to the new paragraph 7.10, for clarity and so it is consistent with the principle in paragraph 5.7, by analogy:</p> <p>"A Member in Public Practice who is a DDC Member shall not provide a New Circumstances Statement. because the a Due Diligence Committee's new circumstances sign off to Those Charged with Governance of the Client as a DDC Member and where that sign off, which is approved and signed concurrently by the other members of the Due Diligence Committee."</p> <p>We suggest this amendment because the proposed new paragraph 7.10 seems to suggest it is mandatory for a DDC member to sign the DDC's new circumstances sign off, even though the new circumstances sign offs provided by DDC members can vary in form and content, and it is currently up to the individual DDC member to agree the particular form of statement with the other DDC members.</p>

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18	7.10	Deloitte	<p>Paragraph 7.10</p> <p>We consider that the proposed paragraphs 7.9 to 7.11 do not make it sufficiently clear that a New Circumstances Statement should only be prepared by a DDC Observer and that it is intended as an alternative to a new circumstances sign off, which a DDC Member can sign. We suggest the following amendment be made to paragraph 7.10:</p> <p>A Member in Public Practice who is a DDC Member shall not provide a New Circumstances Statement because the Member, as a DDC Member, the <u>Member in Public Practice</u> shall only sign the Due Diligence Committee's new circumstances sign-off to Those Charged with Governance of the Client, which is approved and signed concurrently by other members of the Due Diligence Committee.</p>
19	7.11	PwC	<p>Paragraph 7.11: Subject to our comments in relation to the definition and form of the New Circumstances Statement, we have no objection to the inclusion of paragraph 7.11.</p>
20	Appendix 2	EY	<p>Materiality</p> <p>Our recent experience has indicated that due diligence committees ("DDC") look for consistency in the basis on which the quantitative materiality recommendations are made by members in public practice. The Materiality letter template recommends separate materiality amounts be calculated for misstatements in the income statement and for misstatements and reclassifications in the balance sheet. However, under Australian auditing standards reclassifications are considered a type of misstatement and we believe that the template does not acknowledge that reclassifications may occur and require consideration for the income statement as well.</p> <p>We also note that materiality amounts calculated separately for income statement and balance sheet does not align to the practice in financial statement audits where materiality is typically calculated on a single measurement base. In certain industries, for example in the property sector, having two measurement bases may lead to significant variations between the misstatement amounts calculated for the income statement and the balance sheet.</p>
21	Appendix 2	PwC	<p>Materiality Letter</p> <p>The form of the Materiality Letter attached to the current version of the Standard is out of date as a result of changes to Australian Accounting Standards since APES 350 was last re-issued. We therefore support the proposed revisions to the form of Materiality Letter.</p>

Staff Instructions:

- Comments of a “general” nature should be dealt with first, followed by paragraph specific comments.
- Respondents’ comments must be copied verbatim into this table.
- Comments should be dealt with in paragraph order, not respondent order. Use acronyms only for respondents. Update the attached table with details of additional respondents.

RESPONDENTS

1	EY	Ernst & Young
2	PwC	PricewaterhouseCoopers Australia
3	Deloitte	Deloitte
4	KPMG	KPMG
5	CA ANZ	Chartered Accountants Australia & New Zealand
6	CPA Australia	CPA Australia