

16 September 2013

Mr Neil Pegg
Tax Practitioners Board
PO Box 126
HURTSVILLE NSW BC 1481
By email: tpbsubmissions@tpb.gov.au

Dear Neil,

RE: TPB Information Sheet TPB(I) D17/2013 – Code of Professional Conduct – reasonable care to ascertain a client’s state of affairs;

TPB Information Sheet TPB(I) D18/2013 – Code of Professional Conduct – reasonable care to ensure taxation laws are applied correctly; and

TPB Information Sheet TPB(I) D19/2013 – Code of Professional Conduct – managing conflicts of interest.

Accounting Professional & Ethical Standards Board Limited (APESB) welcomes the opportunity to make a submission on the Tax Practitioners Board’s (TPB) exposure drafts on the Code of Professional Conduct - *Reasonable care to ascertain a client’s state of affairs*, *Reasonable care to ensure taxation laws are applied correctly* and *Managing conflicts of interest*.

APESB’s role

APESB is governed by an independent board of directors whose primary objective is to develop and issue, in the public interest, appropriate professional and ethical standards. These standards apply to the membership of the three major Australian professional accounting bodies (CPA Australia, Institute of Chartered Accountants Australia and the Institute of Public Accountants). A secondary objective of the APESB is to provide the opportunity or forum for the discussion and consideration of issues relating to professional and ethical standards for accountants. Our essential function is the setting of standards, and in doing this we endeavour to incorporate a strong emphasis on professionalism and the role of sound judgement in those accountants who are obliged to follow our standards. We believe that setting high quality standards with demanding criteria contributes to the professional standing and behaviour of members of the accounting profession.

General comments

APESB is generally supportive of the guidance issued by the TPB on the application of reasonable care requirements and the management of conflicts of interest. APESB believes that the guidance will assist members and taxation practitioners in fulfilling their professional and ethical obligations when providing taxation services to clients.

Comments on specific paragraphs

TPB(I)D17/2013 – Paragraph 11

TPB(I)D18/2013 – Paragraph 11

Paragraph 11 of TPB(I)D17/2013 and TPB(I)D18/2013 refers to APES 110 *The Code of Ethics for Professional Accountants* (APES 110¹) and the fundamental principle of professional competence and due care. However, the professional and ethical obligations of members of the three major professional accounting bodies who undertake taxation services are specified in APES 220 *Taxation Services* (APES 220²). Further paragraphs 3.11 – 3.17 of APES 220 addresses the fundamental principle of professional competence and due care in the context of taxation services. Accordingly, we believe that for completeness the TPB should consider making a reference to APES 220.

TPB(I)D17/2013 and TPB(I)D18/2013 – General Comments

The TPB may also consider making a general reference to the following paragraphs of APES 220 which addresses aspects of taking reasonable care to ascertain a client's state of affairs and to ensure taxation laws are applied correctly:

- Paragraph 4: Preparation and lodgement of returns to revenue authorities;
- Paragraph 5: Tax schemes and arrangements; and
- Paragraph 7: False and misleading information.

TPB(I)D19/2013 – General Comments

We note that you have referred to Part A of APES 110, which has general application to all members. As you are aware Section 220 of Part B and Section 310 of Part C of APES 110 provides further requirements and guidance in respect of conflicts of interest dependent on whether the member is in public practice or business. We also draw your attention to APESB's current exposure draft, ED 02/13 *Proposed Amendments to APES 110 Code of Ethics for Professional Accountants due to revisions to IESBA's Code of Ethics for Professional Accountants*³. APESB proposes to amend APES 110 consistent with the amendments incorporated internationally in the *Code of Ethics for Professional Accountants* issued by the International Ethics Standard Board for Accountants (IESBA). The proposed revisions are primarily in respect of conflicts of interests and breach of a requirement of the Code.

TPB(I)D19/2013 – Paragraph 9

We note that you refer to the fundamental principle of objectivity in this exposure draft. Similar to our comments above we would like to bring to your attention paragraphs 3.4 -3.5 of APES 220 which discusses this fundamental principle in the context of taxation services.

1

<http://www.apesb.org.au/attachments/Compiled%20APES%20110%20Code%20of%20Ethics%20for%20Professional%20Accountants%20-%20December%202011.pdf>

2

[http://www.apesb.org.au/attachments/Revised%20APES%20220%20Taxation%20Services%20\(March%202011\)%20-%20Final.pdf](http://www.apesb.org.au/attachments/Revised%20APES%20220%20Taxation%20Services%20(March%202011)%20-%20Final.pdf)

³ <http://www.apesb.org.au/attachments/ED%20APES110%20Amendments%20-%20IESBA%20Code%20-%2028%20Aug%202013.pdf>

TPB(I)D19/2013 – Paragraph 27

The TPB has identified a number of additional procedures that it considers acceptable to manage conflicts of interest. One such procedure is seeking advice from an independent third party, which may include legal advice. Reference is then made in TPB(I)19/2013 to sections 220.4 and 310.3 of APES 110.

We believe that a better approach is for the TPB to make a general reference to Section 220 and Section 310 of the Code. This serves two purposes:

- A Member has to refer to the whole section rather than just look at one paragraph and this reduces the likelihood of that particular paragraph being taken out of context; and
- In circumstances where the specific paragraph reference changes (for example, due to the current APES 110 ED) then the TPB will have to update the cross reference. However, it is less likely that the section reference (i.e. Section 220 and Section 310) will change and thus if the recommended approach is adopted then it is less likely that TPB will have to update the cross reference.

TPB(I)D19/2013 – Example 2- Registered agent has a personal interest

Example 2 of TPB(I)D19/2013 states that Lucia has satisfied her obligations of disclosure under Code Item 5 by disclosing her conflict of interest to her client. We note that in circumstances where a member receives a commission the requirements under Section 240 *Fees and Other Types of Remuneration* of APES 110 are more extensive than mere disclosure. Specifically paragraph AUST240.7 mandates that the client be informed in writing of the existence of such arrangements, the identity of other parties and the method of calculation of referral fees or commissions. We recommend that you consider adopting similar requirements or make a note that APES 110 has higher requirements in respect of commissions.

We hope you find these comments useful in your final deliberations and if you require any additional information, please do not hesitate to contact me at kspargo@bigpond.net.au or Channa Wijesinghe, Technical Director at channa.wijesinghe@apesb.org.au.

Yours sincerely



Kate Spargo

Chairman