

# APESB Professional Standards Update

**Rawson Verco Need**

Adelaide

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# Agenda

- APESB's role and mandate
- IESBA's Standard on Tax Planning and Related Services
- APES 220 *Taxation Services*
- Recent ethical failings in the accounting profession
- APESB's response to the ethical failings
- IESBA's Firm Culture and Governance Project
- Q & A

# APESB's role and mandate



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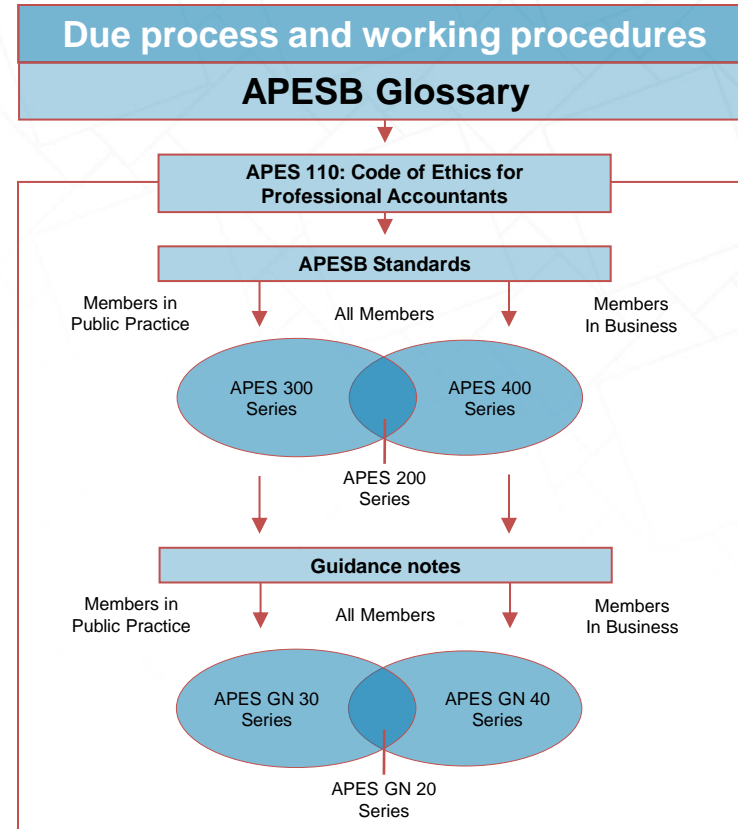
- Established in 2006 as an independent standard setter to develop professional & ethical pronouncements for the three professional accounting bodies
- Previously professional and ethical pronouncements developed by the professional accounting bodies
- Members' compliance and discipline overseen by professional bodies
- APESB's structure is globally unique
- A comprehensive suite of accounting professional pronouncements developed during the first decade of operations

# APESB's role and mandate

- Influence international standards setting process:
  - IESBA's National Standards Setters group
  - Representation on the IESBA and IFAC Committees
- To date APESB has released 21 pronouncements consisting of 15 Standards and 6 Guidance Notes
- The critical role ethics plays in maintaining the public trust, reputation and good standing of the profession

# Structure of APESB pronouncements

- **Conceptual Framework**
  - Principles based
  - Mandatory for professional accountants
- **Standard**
  - Introduces principles
  - Mandatory requirements in black letter
  - Guidance and/or explanation in grey letter
- **Guidance notes**
  - Do not introduce new principles
  - Guidance on a specific matter on which the Principles are already stated in a Standard
  - Guidance is only in grey letter



# APESB Standards primarily impact Tax Practitioners

- APES 110 – Code of Ethics for Professional Accountants (including Independence Standards) (the Code)
- APES 220 – Taxation Services
- APES 320 – Quality Management for Firms that provide Non-Assurance Services

# IESBA's Standard on Tax Planning and Related Services





# IESBA's Standard on Tax Planning and Related Services (Standard)



- In April 2024, IESBA issued the Final Pronouncement – Revisions to the Code Addressing Tax Planning and Related Services – available on [IESBA's website](#).
- On 11 July 2024, APESB issued an exposure draft ([ED 03/24](#)) on Proposed Revisions to the Code for Tax Planning and Related Service, with comments due by **4 October 2024**. The proposed revisions will be effective after **1 July 2025**, with early adoption permitted.

# Broad Spectrum of Tax Planning

## Project Objective

Develop an **ethical framework** to guide judgments and decisions when PAs in public practice (PAPPs) provide TP services or PAs in business (PAIBs) perform TP activities



## Applicability

- PAIBs – All entities (Section 280)
- PAPPs – All clients: individuals and entities (Section 380)
- Other tax advisers *encouraged* to apply the standard

## Exclusions

- Tax compliance or preparation
- Tax evasion

# Overview of Standard (PAPPs)

Description of  
Tax Planning

Related  
Services

Role of PA in  
Acting in Public  
Interest

Compliance  
with Laws and  
Regulations

Responsibilities of  
Management and  
Those Charged  
with Governance

Responsibilities  
of Professional  
Accountants

Establishing a  
Credible Basis

Applying  
“Stand-back  
Test”

Multi-  
jurisdictional  
Tax Benefits

Navigating the  
“Gray Zone”

Applying the  
Conceptual  
Framework

Disagreement  
with Client

TP Products/  
Arrangements  
Developed by a  
Third Party

Documentation

# Credible Basis

- A Professional Accountant (PA) can only provide, recommend or advise on a Tax Planning arrangement (TP arrangement) if the PA has concluded that there is a credible basis.
- When determining whether there is a credible basis:
  - Use professional judgement;
  - Must be based on tax laws and regulations prevailing at time of the assessment; and
  - Consider jurisdictional variations.
- If there is no credible basis, should explain rationale to client.



# Consideration of the Overall Tax Planning Advice or Recommendation

- Having established a credible basis, PA now performs stand back test.
- Critical public interest test which also has the PIOB's support
- Stand back test involves considering reputational and commercial risks, and wider economic consequences.
- Consider adverse implications such as negative publicity, fines or penalties.
- Consider the tax base of the jurisdiction(s) – OECD BEPS
- Communication of final basis of PA's conclusion.

# Navigating the “Grey Zone”



## What is the “grey zone?”

- Circumstances giving rise to uncertainty as to whether a proposed TP arrangement will be in compliance with the relevant tax laws and regulations
- Why does the grey zone matter?
  - Makes it *more challenging* to establish a credible basis and might, therefore, create threats to compliance with the fundamental principles

# Navigating the “Grey Zone”

Uncertainty must be discussed with client

- Explain likelihood of relevant tax authority’s acceptance of TP arrangement
- Consider any assumptions made
- Obtain further information from client to reduce uncertainty
- Discuss any reputational, commercial or wider economic consequences if TP arrangement pursued
- Discuss potential courses of action to mitigate potential adverse consequences for client, including disclosure to relevant tax authority

# Applying the Conceptual Framework

Conceptual framework must still be applied when providing a TP service, even when not in the gray zone

- Identify threats to compliance with fundamental principles
- Evaluate level of the threats
- Address the threats

Types of threats that might be created

- Self-interest
- Self-review
- Advocacy
- Intimidation



# Disagreements with Client

- Disagreements can arise – what to do?
  - Inform client of PA's assessment re credible basis
  - Explain potential consequences to client if it goes ahead
  - Advise client not to pursue TP arrangement
- If client decides to proceed with TP arrangement, advise client to:
  - Communicate difference of views to appropriate level of management and to external auditor, if any
  - Consider making full disclosure of TP arrangement to relevant tax authority
- Consider whether there is need to withdraw from engagement and client relationship given client's response to PA's advice

# Documentation

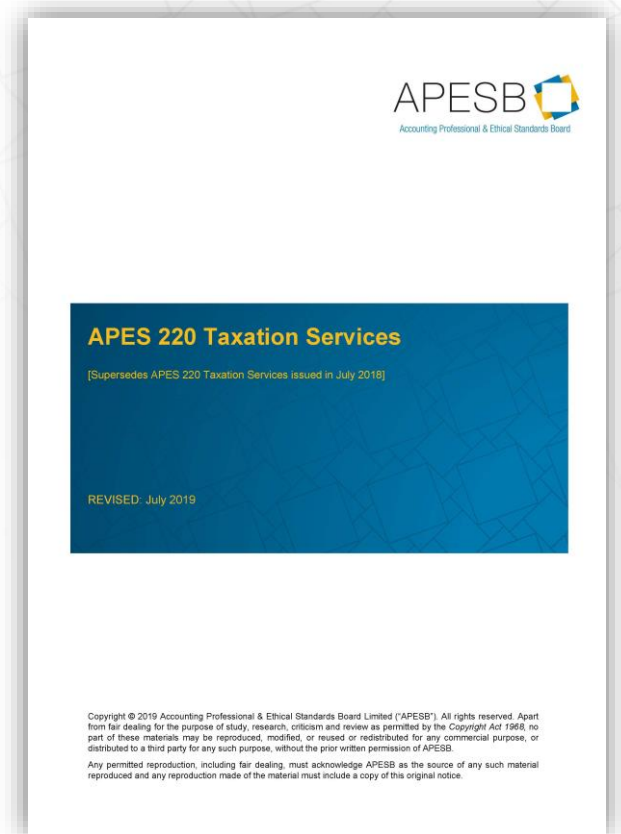
- IESBA encourages documentation while proposed APES 110 ED mandate documentation to align with extant requirements in APES 220 that requires appropriate documentation of work performed when providing Taxation Services
  - Purpose, circumstances and substance of TP arrangement
  - Identity of ultimate beneficiaries
  - Nature of any uncertainties
  - PA's analysis, courses of action considered, judgments made and conclusions reached in advising client
  - Results of discussions with client and other parties
  - Client's response to PA's advice
  - Any disagreement with the client

# APES 220 Taxation Services



# APES 220 Taxation Services

- Covers a broader range of tax services than the [IESBA's Standard on Tax Planning and Related Services](#).
- Provisions that impacted by IESBA's Standard on Tax Planning and Related Services:
  - Section 5 – Tax schemes and arrangements
  - Section 7 – False and misleading information
- On 28 June 2024, APESB issued an exposure draft ([ED 02/24](#)) of proposed amendments to APES 220 *Taxation Services* (APES 220), with comments due by **27 September 2024**.
- The proposed amendments to APES 220 are anticipated to be effective from **1 July 2025**, with early adoption permitted.



# Exposure Draft ED 02/24 for APES 220 Taxation Services

The key proposed amendments to APES 220 consist of the following:

- Amendments to extant Section 5 *Tax schemes and arrangements* to incorporate the proposed revisions to APES 110 addressing tax planning and related services (see [ED 03/24](#));
- Amendments to the definition of *Assurance Engagement* to align with APES 110;
- Adding to the definition of *Confidential Information* to align with APES 110;
- Amendments to paragraphs 3.9 and 3.12 to align with the provisions in Section 114 *Confidentiality* of APES 110 by including a reference to a duty or right to disclose confidential information and to incorporate provisions that allow reporting for NOCLAR;
- Amending paragraph 4.3 to align with laws and regulations relating to supervisory arrangements for tax and BAS agents, as set out in the Tax Practitioners Board (TPB) Information Sheet *TPB(I) 36/2021 Supervisory arrangements under the Tax Agent Services Act 2009*; and
- Amending paragraph 7.6 to update the reference to APES 320.

# Recent ethical failings in the accounting profession



# Recent global ethical failings

**UK** – Kingman and CMA Reviews, Brydon Report, FRC overhaul and Big 4 operational separation as a result:

- Carillion – KPMG LLP fined £18.5m. Auditor fined £350k, banned for 10 yrs
- BHS – PwC fined £6.5m. Auditor fined £325k, banned for 15 yrs

**EU** – Wirecard collapse in Germany 2020 – €1.9b fictitious assets, unqualified audit reports and alleged audit failures

**USA** – US SEC & PCAOB Independence and Ethics breaches

- US\$ 100M fine for EY
- US\$ 50M fine for KPMG

**AU** – Parliamentary inquiries on audit regulation, use of consultants and ethics and structural accountability

- PwC – Breach of Confidentiality (Multinational taxation schemes)
- KPMG - Conflict of interests (NSW Transport)



# Ethical failings raised by NSW inquiry Chair

- **PwC** tax advice scandal
- **KPMG** TAHE debacle
- **PwC** education investments issue
- **EY** Broderick report into workplace culture
- **KPMG** defence contracts issues
- **Deloitte's** misuse of confidential government information
- Relationship between the **Big 4 firms** and the TPB, including hosting TPB meetings in Big 4 offices
- **Deloitte's** failure to disclose a conflict of interest to Home Affairs and also with the Australian National Audit Office
- **EY** and the Santos conflict
- **Deloitte's** misuse of government information nine times last year and 18 times the year before
- **KPMG's** 88 internal complaints about staff conduct last year, majority classed as code of conduct breaches
- **Deloitte's** 121 instances of misconduct in the last financial year, with 13 including partners, and 78 instances the year before
- accusations during this inquiry by the Audit Office of "loss-leading" on auditing of local governments

## Common themes

- Big 4 Firms
- Consulting Services



# APESB's Response to the ethical failings



# APESB response to Australian ethical failings

## Media Statement on the PwC matter

- released 6 June 2023 – available on [APESB's website](#)
- APESB continue to monitor and assess impact on its standards

## Focus on firm leadership and culture:

- Recommendations to IESBA's *CP Strategy & Work Plan for 2024-2027*:
  - IESBA currently working on a project on firm leadership and cultural issues
  - Assessment of need for requirements or guidance

# APESB response to Australian ethical failings

## Stakeholder engagement

- APESB Workshop (August 2023) – focus on ToR for the PJC Inquiry & potential enhancements to the current co-regulatory framework.
- Big 6 meetings on APESB recommendations held from 18 Aug - 1 Sept 2023

## Submissions and attendance at Government Inquiries

- Senate Committee Inquiry into management & assurance of integrity by consulting services (April 2023) - [submission](#)
- NSW Government's use and management of consulting services (July 2023) - [submission](#) and [opening statement](#) from appearance at public hearing on 9 August 2023
- PJC Inquiry into Ethics & Professional Accountability (August 2023) – [submission](#) and scheduled to appear at a public hearing in early 2024

# APESB's recommendations to the Government

## Enhancement to the current regulatory framework:

- APESB consider developing:
  - a standard on the culture and governance of large professional services firms in Australia;
  - A specific standard on management consulting services;
- APESB, in conjunction with the IESBA, works towards strengthening the global Code on issues that impact firm culture and governance; and
- Encourage the enhancement of ethics modules of professional programs and mandatory continuing professional development.

# APESB's recommendations to the Government

## Transforming the existing regulatory landscape:

- Provide legislative backing for APESB's professional and ethical pronouncements;
- Move APESB under the oversight of the FRC (consistent with the Australian Accounting and Auditing standard setters);
- Require large professional service firms to prepare audited general purpose financial reports, including remuneration disclosures; and
- Establish an independent body to monitor all professional services firms that provide audit, assurance and consulting services.

# APESB's recommendations to the Government

## Enhancing ethical behaviours and public interest for all professions:

- Require financial statements disclosures on all fees paid by an entity to professional services firms on all services they have provided;
- The Government develop a rigorous Code of Ethics (such as APES 110) for any entity or persons that provide professional services to the Government;
- Extend the application of a Code of Ethics to all firms providing professional services; and
- APESB consider developing a professional agnostic APES 110 and management consulting standard that could apply to all professionals.

# IESBA's Firm Culture and Governance Project



# Outreaches (April to June 2024)

- The Standard Setting Boards' Stakeholder Advisory Council
- Firms
- Corporate governance community
- Professional accountancy organizations
- National standard setters
- Regulators
- Governments and parliamentarians
- Academia
- Other professional organizations with a nexus to the topic

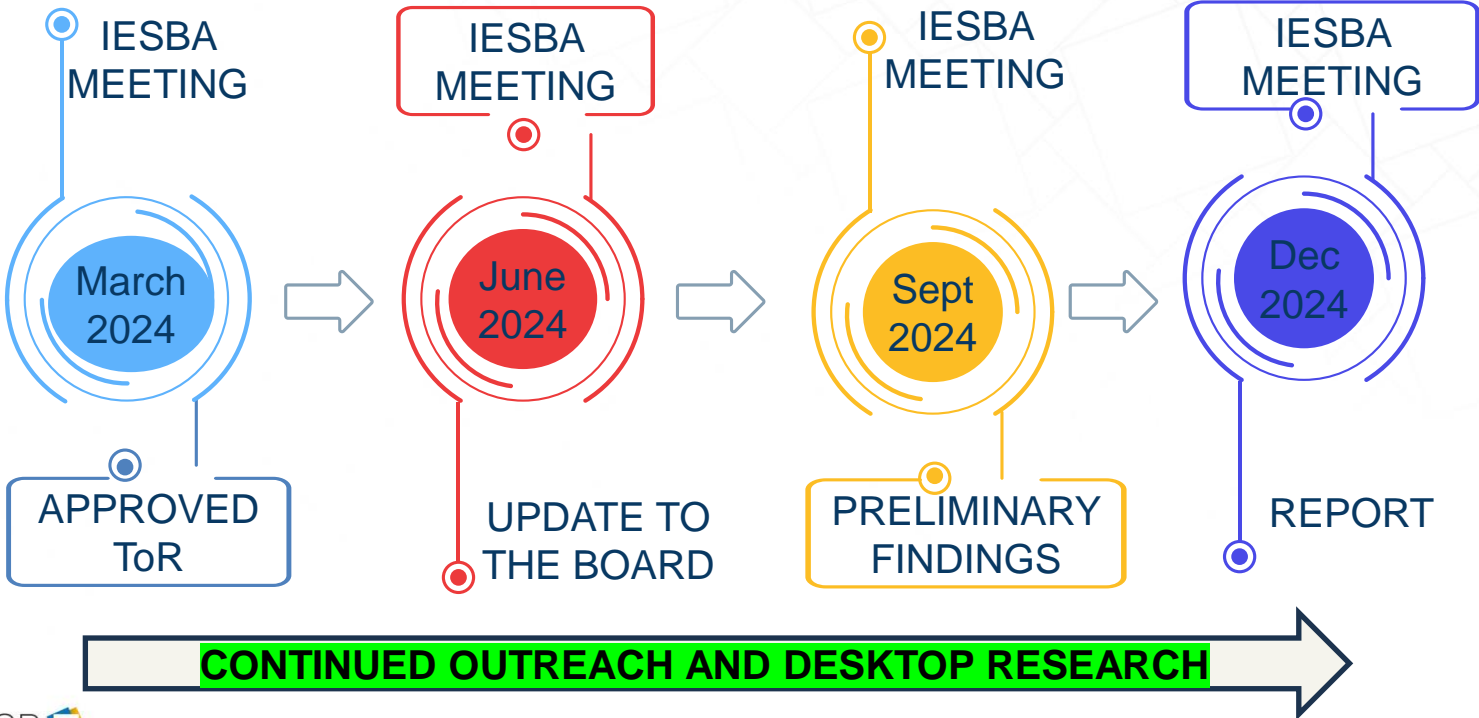




# WG Preliminary Views: Key Themes



# Way Forward and Timeline





Q & A

## Further Information

For more information visit [www.apesb.org.au](http://www.apesb.org.au)

Follow the APESB [LinkedIn page](#) for timely updates,

To download APESB's mobile app:



# Purpose & Disclaimers

This set of PowerPoint slides has been developed by APESB Technical Staff and the IESBA Technical Staff on the Code, applicable standards and relevant proposals.

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