

Constituents' Submissions

Exposure Draft 03/10—Proposed Standard: APES 110 Code of Ethics for Professional Accountants

Note: General comments relating to APESB Exposure Drafts are addressed in a separate table. This table excludes minor editorial changes.

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
1	Transitional Provisions	PB	A reference in this paragraph to “the June 2005 Code (revised July 2006)” is a reference to the IESBA Code but should be a reference to the equivalent APES 110.
2	Safeguards	ASIC	The proposed Code allows threats to independence to be disregarded if the auditor puts in place specified safeguards. However, many safeguards are inappropriate or ineffective. Some safeguards merely duplicate existing requirements imposed by the quality control and auditing standards or the existing best practice for situations that don't involve a threat to independence. In these cases, the proposed Code should specify additional safeguards or specify that the situation is not acceptable. Further, there should be a definition of safeguards and inappropriate

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			safeguards should be removed.
3	References to <i>Corporations Act</i>	ASIC	<p>We understand that the APESB decided to remove references to the audit, independence and other provisions of the Act and auditing standards from the proposed Code to avoid the need to update the Code if the relevant requirements of the Act or standards are changed. Removing the references also avoids any possible unintended misinterpretations of the provisions of the Act and auditing standards.</p> <p>We believe that there should be a prominent note at the start of the proposed Code to remind Corporations Act auditors of their auditor independence obligations under that Act, and that the Act imposes requirements that exceed those of the proposed Code in a number of areas. The note should also include a statement that the requirements of the proposed Code should not be taken to limit the general independence test or other requirements of the Act.</p>
4	References to <i>Corporations Act</i>	PwC	<p>We do not believe that the independence requirements of the Corporations Act 2001 should be included in the body of the proposed standard. However we believe that it may be appropriate to alert readers of the proposed standard to the fact that the Corporations Act 2001 imposes a far more stringent auditor rotation requirement on listed entities than that set out in the proposed standard.</p>

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			<p>The rationale for the inclusion of this requirement or a sign post to refer to the Corporations Act is that it is one of the few areas where professional pronouncements and the Corporations Act have significantly different requirements.</p>
5	Definitions	ASIC	<p>The IESBA set a minimum definition of "Public Interest Entity", which was to be reviewed for application of the independence requirements in each jurisdiction. For Australia, we believe that the definition should be aligned with the term "public accountability" in accounting standard AASB 1053 "Application of Tiers of Australian Accounting Standards", that is:</p> <p style="padding-left: 40px;"><i>“Public accountability</i> means accountability to those existing and potential resource providers and others external to the entity who make economic decisions but are not in a position to demand reports tailored to meet their particular information needs.</p> <p style="padding-left: 40px;">A for-profit private sector entity has public accountability if:</p> <p>(a) its debt or equity instruments are traded in a public market or it is in the process of issuing such instruments for trading in a public market (a domestic or foreign stock exchange or an over-the-counter market, including local and regional markets); or</p> <p>(b) it holds assets in a fiduciary capacity for a broad group of outsiders as</p>

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			<p>one of its primary businesses. This is typically the case for banks, credit unions, insurance companies, securities brokers/dealers, mutual funds and investment banks.”</p> <p>Arguably, the requirements of AASB 1053 represent better practice for Australian entities and their auditors. Consistency in the approaches between the proposed Code and the accounting standards will be simpler and may reduce any possible confusion amongst auditors and audit clients.</p>
6	Definitions	AUASB	<p>The proposed standard contains a number of new or revised definitions that are worded differently from definitions of the same terms in the AUASB standards.</p> <p>We have attached a table highlighting the differences in key definitions, with suggested changes to the proposed APES 110 definitions, to promote consistency between the revised APES 110 and AUASB standards, and thereby enhance the consistent understanding and application of both sets of standards.</p> <p>We want to keep consistency between the revised APES 110 and AUASB standards, and thereby enhance the consistent understanding and application</p>

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			<p>of both sets of standards. The definitions are:</p> <ul style="list-style-type: none"> • <i>Auditing and Assurance Standards</i> • <i>Audit Engagement</i> • <i>Review Engagement</i> • <i>Financial Statements</i>
7	Definitions	PwC	There is a typo in the definition of 'Audit Team' in (a) and (b). It should be 'All' rather than 'all'
8	Definitions	PB	Definition of "Auditing and Assurance Standards". For the revised and redrafted auditing standards in <i>Clarity</i> format the relevant "Preamble" standard is now ASA 101.
	Removal of Independence Declaration	DTT	As the Independence Declaration currently found in the in the Appendix of APES 110 has been removed from the revised APES 110, we suggest this be included in a guidebook or other guidance documents for APES 110.
9	1.1	PB	Reference at the end of this paragraph should be to page 132, not page 133.
10	100.6 – 100.11	AUASB	The revised Conceptual Framework Approach set out in paragraphs 100.6 -

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
	Conceptual Framework Approach		<p>100.11 of Part A—General Application of the Code does not explicitly require safeguards to be applied to eliminate identified threats or reduce them to an Acceptable Level. For example, paragraph 100.7 requires only that a Member determine whether appropriate safeguards are available and can be applied to eliminate the threats or reduce them to an Acceptable level. The requirement to apply safeguards is only stated explicitly in later paragraphs of section 290 when describing specific circumstances and relationships that create or may create threats to independence.</p> <p>This approach is different from existing APES 110, where the requirement to apply safeguards is specified in Part A of the standard, as well as section 290.</p> <p>It would be clearer, in our view, if the approach used in existing APES 110 was adopted in the revised standard, notwithstanding that this approach is not used in the revised International Code.</p>
11	Definitions	ASIC	Materiality - The proposed Code only applies to material contraventions and should provide guidance as to the meaning of materiality.
12	110.2	JD Came	The use of the word “believes” in paragraph 110.2 is not considered appropriate. This word in the context is inconsistent with the principles for resolving ethical conflict set out in paragraph 100.18 that suggests

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			establishing relevant facts as a vital step in resolving ethical conflicts. It is suggested that the words “the Member believes” are removed.
13	Section 120 and 130	JD Came	In section 120 and 130 the text refers to Professional Service while the term defined in paragraph 2 is “Professional Services”.
14	Section 140	KPMG	<p>Our view is that this section should end at paragraph 140.6 as the following paragraphs 140.7 and 140.8 are not appropriate for Australian members. Paragraph AUST140.7.1 goes some way to alleviating the problem for Australian members.</p> <p>Paragraph 140.8 sets out only some of a number of factors which might be considered and, for Australian members, does not give good guidance. The factors mentioned are not the critical issues for Australian members to consider, including whether the terms of the engagement allow disclosure.</p>
15	AUST 210.11.1	GT	This Australian only requirement mandates a ‘safeguard’ in the IESBA Code so that it is a requirement to seek permission from the prospective audit client to contact the current auditor, and then make the appropriate contact. Whilst we would agree that this is normally the case, there may be specific reasons why such contact is not necessary, and other safeguards can be applied. The APES Board needs to provide a justification as to why Australia should have a more restrictive requirement that that applicable globally. In the absence of any acceptable Australian only justification, we do not support this

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			requirement.
16	AUST 210.11.1	KPMG	This adds a more stringent requirement to undertake the specified steps in Australia. In our view, the safeguards approach is appropriate and we do not support this addition.
17	210.13	DTT	Paragraph 210.13 does not include the words “the nature of the Engagement and on”. We recommend this wording be retained, as there is no reason to remove it.
18	AUST 210.15.1	KPMG	The clarification provided seems superfluous and we do not support this addition.
19	AUST 210.15.1	GT	We question why there needs to be clarification that section 210 of the Code applies where an Accountant who is not a Member is involved.
20	240.3	PB	The reader of the ED is presented here with a general statement that “Contingent Fees are widely used for certain types of non-assurance engagements”, and then a footnote alerts the reader to the fact that there are provisions dealing with contingent fees in the context of assurance engagements. Given that the APESB has issued 5 standards which prohibit the use of contingent fees for certain types of engagements (APES 215, 225,

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			330, 345 and 350), we consider that it would be beneficial to provide a reference to these provisions for the reader of paragraph 240.3. Similar comments would apply to paragraphs 240.5 ff. dealing with Referral Fees and Commissions, should the APESB issue any standard restricting the use of such fees in certain engagements.
21	AUST 240.7.1	GT	This Australian only requirement mandates a 'safeguard' in the IESBA Code so that it is a requirement to disclosure to a client in writing that a referral fee or commission is applicable. Whilst we would agree that this is normally the case, there may be specific reasons why such disclosure is not necessary, and other safeguards can be applied. The APES Board needs to provide a justification why Australia should have a more restrictive requirement that that applicable globally. In the absence of any acceptable Australian only justification, we do not support this requirement.
22	AUST240.7.1	KPMG	This adds a more stringent requirement to undertake the specified steps in Australia. In our view, the safeguards approach is appropriate and we do not support this addition.
23	AUST 240.7.2	GT	The APES Board needs to provide a justification why Australia should have a more restrictive requirement that that applicable globally, by banning referral fees and commissions for an Assurance Engagement. In the absence of any

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			acceptable Australian only justification, we do not support this requirement.
24	AUST240.7.2	KPMG	This adds a more stringent requirement to undertake the specified steps in Australia. In our view, the safeguards approach is appropriate and we do not support this addition.
25	Preface: section 290 and 291	KPMG	Increased prominence is required to emphasise the need for the member/reader to consider legal obligations. We recommend that the second sentence in the fourth paragraph “Members and other readers their legal obligations” be shown in bold font and/or moved to a more prominent position in the preface.
26	290.3	PB	First dot point - The capitalisation of the term “audit” is confusing here , as it is not a defined term in the ED. We appreciate that it is capitalised in the IESBA Code because it is the first word of the dot point, but recommend that it not be capitalised in APES 110. Since the ED has changed the capitalisation of terms from the IESBA Code extensively, this change would be consistent with the APESB drafting conventions.
27	290.4	DTT	We are concerned that paragraph 290.4 contains the additional words “when applicable” with no apparent justification. It is a fundamental requirement of the Code that network firms are required to be independent of an audit client of another firm within the network (unless otherwise stated in the Code). The retention of the words “when applicable” in 290.4 suggests a less stringent

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			standard than that required by the Code and the words “when applicable” should therefore be deleted.
28	AUST 290.11.1	GT	We question why it is necessary to add additional guidance that states that it is necessary to aggregate multiple threats to Independence. Surely this is self obvious and hence the reason why the IESBA Code does not contain this requirement?
29	AUST290.11.1, AUST291.10.1	KPMG	Whilst the paragraph is self-evident, we support same as additional guidance to members in interpreting the requirements of the Code.
30	AUST 290.11.1 AUST 291.10.1	PB	The wording of this paragraph could be clarified. A suggestion <i>‘Where a Member in Public Practice identifies multiple threats to Independence, which individually may not be significant, the Member shall evaluate the significance of those threats in aggregate and the safeguards applied or in place to eliminate some or all of the threats or reduce some or all of them to an Acceptable Level in aggregate.</i>
31	290.25	PP	We concur with the description of public interest entities provided; we consider that any further prescriptive requirement regarding the types of entities that fall into this classification beyond those identified by relevant regulators, would be onerous.

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
32	290.25	PP	While we do not disagree with the content of the additional AUST paragraphs relating to inadvertent violations and multiple threats, we consider that these additions are superfluous and do not require specific, separate mention.
33	290.25 290.26	PB	The JAB consider that the APESB should provide additional guidance in the Australian context about what Australian entities should (or should not) be considered as public interest entities. In our view it would serve the public interest to ensure that certain entities are always treated as public interest entities, rather than to risk not having a consensus between one firm and the next, or one member body and the next, which might vary in their determination as to which additional entities, or certain categories of entities, to treat as public interest entities. We would encourage the APESB to consult widely in connection with any such deliberations.
34	290.29	ASIC	<p>Documentation</p> <p>The documentation requirements in paragraph 290.29 should apply to any threats to independence requiring analysis and not only those requiring significant analysis.</p> <p>There should be consistency between the general documentation requirement in paragraph 290.29 and the specific documentation requirements in other paragraphs of the proposed Code. For example, in relation to mergers and</p>

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			<p>acquisitions, paragraph 290.38 only requires documentation of certain interests and or relationships which have not been successfully terminated by the effective date of the merger or acquisition for situations described in paragraphs 290.34 to 290.36. All instances requiring analysis should be documented.</p>
35	290.29 291.29	AUASB	<p>We welcome the inclusion of new requirements and guidance on what Firms are required to document as to their conclusions regarding compliance with independence requirements (refer paragraphs 290.29 and 291.29 of the revised APES 110).</p> <p>However, the wording and location of the second sentence in paragraphs 290.29 and 291.29, which states:</p> <p><i>The absence of documentation is not a determinant of whether a Firm considered a particular matter nor whether it is independent.</i></p> <p>Seems to diminish the importance of the documentation requirements set out in the later sentences of the paragraphs in our view.</p> <p>It would be preferable if the second sentence were deleted (with the deletion</p>

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			appropriately notated, to highlight this difference from the revised International Code). If not deleted, then this sentence should be re-positioned after the documentation requirements.
36	290.105 290.113 290.115 290.117 290.133 290.136 290.221 290.228 291.107 291.110 291.112 291.127 291.129	PB	<p>In all of these paragraphs, the original IESBA wording of Having a professional accountant review the work of ...</p> <p>has been amended to Having a Member review the work of ...</p> <p>We ask that the APESB consider whether there is any particular reason to restrict these reviews to a member of one of the three Australian professional accounting bodies. The safeguard should be to have a review by a competent person, not specifically a review by a Member.</p>
37	290.107	ASIC	The auditor independence requirements of the proposed code are inconsistent with those in the Act in several areas. For example:

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
	290.122 290.124 290.125 290.139 290.140		<ul style="list-style-type: none"> • Employment with an Audit Client – paragraphs 290.139 and 290.140 require a 2 year cooling off period for retiring audit partners that join an Audit Client that is a Public Interest Entity compared to 12 months under s.324CI of the Act; • Employment with an Audit Client – the proposed Code no longer requires a 5 year cooling off period before a former partner of the firm can become an Officer or Director of a corporate Audit Client, when another former Partner of the Firm at the time when the Firm audited the client, is an Officer or Director of the client; • Financial Interests – paragraph 290.107 permits an Audit Firm retirement plan to hold a Direct or Indirect Financial Interest in an Audit Client provided safeguards are in place to reduce any threats identified to an acceptable level. This is not consistent with items 10 to 12 in ss.324CH(1) of the Act which prohibit such arrangements; • Loans and Guarantees – paragraph 290.122 permits the Firm, a member of the Audit Team or a member of that individual's Immediate Family to make or guarantee a loan to an Audit Client, provided the loan or guarantee is immaterial to the Firm or individual and the client. Items 15,16,17 and 19 in s.324CH(2) of the Act prohibit such arrangement irrespective of materiality; and • Business Relationships – paragraphs 290.124 and 290.125 provide that a Firm, or a member of the Audit Team, or a member of that

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			<p>individual's Immediate Family may enter into certain business relationships with the Audit Client or its management and hold a financial interest arising from such relationships provided the Financial Interest is immaterial and the business relationship is insignificant to the Firm and the client or its management. This is not consistent with s.324CH(1) of the Act which prohibits certain relationships between a person or a firm and the audited body not prohibited by the proposed Code, and irrespective of the materiality or significance of the relationship or financial interest.</p> <p>Further, the prohibitions in the Act on business, employment and financial relationships are more extensive in the Act than in the proposed Code in many areas.</p> <p>The APESB should consider bringing the relevant provisions of the proposed Code into line with the requirements of the Act. Removing inconsistencies will result in better practice and reduce the possibility of confusion and non-compliance with the Act.</p>
38	AUST290.39.1	ASIC	<p>The IESBA has a proposed project to review the "inadvertent violation" exemptions in the IFAC Code. We believe that the proposed exemptions for "inadvertent violations" should be removed. Such exemptions create uncertainty for practitioners and disciplinary bodies. It should be left to the</p>

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			<p>disciplinary boards of the accounting bodies to determine whether a violation of the proposed Code having regard to the relevant circumstances.</p> <p>If an exception for inadvertent violations is retained, we support the inclusion of paragraph AUST290.39.1 requiring firms to document and discuss with those charged with governance inadvertent violations which are neither trivial nor inconsequential in nature.</p>
39	AUST 290.39.1	GT	<p>We question why Australia should have additional requirements relating to Mergers and Acquisitions violations compared to the IESBA Code. In the absence of any acceptable Australian only justification, we do not support this requirement.</p>
40	AUST290.39.1	DTT	<p>We also consider that the addition of paragraph AUST290.39.1 (and equivalent paragraphs in AUST290.117.1, AUST290.133.1, AUST291.33.1, and AUST291.112.1) creates some confusion when compared to the communication obligation which already exists in paragraph 290.28 of the Code, by introducing a “trivial and inconsequential” threshold which is not used in paragraph 290.28.</p> <p>Paragraph 290.28 provides that communication is encouraged between the firm and those charged with governance of the audit client regarding relationships and other matters that “might, in the firm’s opinion, reasonably</p>

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			<p>bear on independence”. One could argue that unless an inadvertent violation is trivial and inconsequential, then it would be reasonably thought to bear on independence. We therefore question the value of varying from the Code wording in 290.28 and creating potential conflict between these paragraphs which both relate to communications with those charged with governance.</p> <p>We suggest that the same objective can be achieved, without introducing a different threshold to the communication requirements, by stating that “If an inadvertent violation of this section might reasonably bear on independence, a Firm shall document and discuss it with those Charged with Governance.”</p>
41	<p>AUST290.112.1AUST290.117.1 AUST290.133.1</p> <p>AUST291.33.1</p> <p>AUST291.33.1</p> <p>AUST291.112.1</p>	KPMG	<p>The mandating of communications with Those Charged with Governance puts additional requirements on Australian members with which we do not concur as such inadvertence is deemed not to compromise independence if certain conditions exist. Individual members should have the ability to determine whether, and to what degree of detail, such is discussed.</p>
42	AUST290.117.1	GT	<p>We question why Australia should have additional requirements relating to Financial Interests violations compared to the IESBA Code. In the absence of any acceptable Australian only justification, we do not support this</p>

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			requirement.
43	AUST290.133.1	GT	We question why Australia should have additional requirements relating to Family and Personal Relationships violations compared to the IESBA Code. In the absence of any acceptable Australian only justification, we do not support this requirement.
44	AUST290.146.1	GT	This Australian only paragraph expands the ban on a partner or employee of the Firm serving as a Director or Officer of an Audit Client, to include the management of an Administration. We support this on the basis that it is guidance on who is a Director or Officer in the Australian environment.
45	AUST290.148.1AUST291.146.1	KPMG	These paragraphs provide clarification as to the Australian inclusions of an officer and audit-critical employee and we support insertion of same.
46	AUST290.148.1	GT	This Australian only paragraph expands the ban on a partner or employee of the Firm serving as a Company Secretary. We support this on the basis that it is guidance on who is a Director or Officer in the Australian environment.
47	AUST290.148.1	PB	In the second line of this paragraph, the prohibition to act as a Company Secretary relates to a “Member”. In our view this occurrence of Member should be replaced with “partner or employee of the Firm”, otherwise

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			AUST290.148.1 will be inconsistent with AUST290.146.1, which effectively bans a partner or employee of the Firm from being an Officer of the Audit Client. Possibly AUST290.148.1 should be rewritten to just refer back to AUST290.146.1.
48	AUST290.148.1 and 291.146.1	KPMG	These paragraphs provide clarification as to the Australian inclusions of an officer and audit-critical employee and we support insertion of same.
49	AUST290.151	GT	Given that the Corporations Act has a more restrictive rotation period for listed companies, we believe that APES 110 should have an AUST paragraph that reflects the maximum 5 year rotation for listed companies. This is necessary as APES 110 will continue to be the main reference for independence in the Australian environment. The APES Board may wish to consider whether there is a need to make other Corporations Act independence references in APES 110, again as a warning that there are some more restrictive independence requirements in Australian legislation.
50	290.151	PwC	The requirements of para 290.151 in relation to rotation requirements for public interest entities are such that a key audit partner could not provide any service to an audit client for two years after he/she has served in a key audit partner role for the maximum time. This prohibition is more restrictive than the <i>Code of Ethics for Professional Accountants</i> issued by the International Federation of Accountants which would appear to limit a key audit partner

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			<p>from providing assurance services for two years.</p> <p>We believe that this is a consequence of changing the definition of “engagement team” from that used in the global standard.</p>
51	290.151	DTT	<p>In the specific case of the auditor rotation provisions, we recommend a separate AUST paragraph be included in the revised APES 110 with a reference to the relevant legislative requirement. While other legislative requirements are consistent with the principles of the Code and merely represent specific additional requirements, the auditor rotation provisions in the revised APES 110 are, in part, directly contradictory to the auditor independence requirements in the Act and we consider that there is an obligation to alert users of the Code to this in a more visible manner.</p> <p>We suggest a paragraph such as the one below be added to the revised APES 110 both to provide reference to the legislative requirement but also briefly describe the requirement:</p> <p>“AUST290.151.1: Refer to Division 5 of Part 2M.4 of the Corporations Act 2001 for additional audit partner rotation requirements that apply in respect of an audit of a Public Interest Entity that is a Listed Entity in Australia, in particular, note that that an individual shall not be the Engagement Partner or the individual responsible for the Engagement Quality Control Review for more than five years.”</p> <p>Furthermore, a footnote to paragraph 3 of the Transitional Provisions may be</p>

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			warranted indicating that certain aspects of the transitional provisions would not apply to audits of Australian listed entities.
52	290.151	ASIC	<p>Paragraphs 290.151 to 290.155 of the proposed Code would permit individual auditors to play a significant role in an audit for up to 7 years. This should be made consistent with the rotation period under s.324DA of the Act for listed entity audits, which is currently 5 years. A 5 year rotation period would ensure auditors that a fresh mind is brought to the audit more frequently and reduce any familiarity threat. We have noted a number of instances of non-compliance with the existing rotation requirements of the Act and we believe this inconsistency may cause further non-compliance issues.</p> <p>The 5 year rotation period under the Act is subject to consultation by Treasury through the Audit Quality paper issued earlier this year.</p>
53	290.154	ASIC	<p>Paragraph 290.154 of the proposed Code would permit a Key Audit Partner who has already served for six or more years when the Audit Client first becomes a Public Interest Entity to continue to serve in that capacity for an additional two years. This is a step down from the requirements of the existing Code and also creates inconsistency with the Act. Accordingly, we believe that this change should not be made</p>

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
54	290.172 290.174 290.185 290.186	ASIC	<p>The exemption for providing accounting and bookkeeping services and preparation of tax calculations in "...emergency or other unusual situations when it is impractical for the Audit Client to make other arrangements" in paragraphs 290.172, 290.174, 290.185 and 290.186 of the proposed Code should be removed.</p> <p>This exemption creates a self-review threat and undermines the purpose of an independent audit. The exemption is unnecessary given that there are relatively large numbers of qualified accountants in Australia who could be engaged to provide those services other than the auditor.</p> <p>We have significant concerns with such an exemption for any entities and, in particular, Public Interest Entities.</p> <p>The proposed Code should be reviewed in detail for other inappropriate and unnecessary exemptions.</p>
55	290.198	ASIC	<p>Internal audit services – other matters</p> <p>The proposed Code should be amended to prohibit the auditor from providing internal audit services where there is any self-review threat, not only where management functions are assumed. Consideration should be given to prohibiting internal audit services despite the provisions in paragraph 290.198 given the remaining self-review threat and the perception of a lack of</p>

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			<p>independence.</p> <p>Further, what constitutes “internal audit” and the distinction from similar other services should be more clearly defined (paragraph 290.195 of the proposed Code). Equivalent services that are not labelled as internal audit services should be treated in an equivalent manner in the proposed Code.</p>
56	290.199	ASIC	<p>Internal audit services – direct assistance</p> <p>The International Auditing and Assurance Standards Board recently issued an exposure draft proposing to deal with how auditors use internal auditors as part of the external audit work (“direct assistance”). Even with review of the internal auditor’s work and other safeguards, the internal auditor is an employee of the entity and employees should not be part of the external audit process. Review of internal audit reports and work as part of the risk assessment and as part of a company’s system of internal control is a different matter.</p> <p>Paragraph 290.199 of the proposed Code currently permits direct assistance. We believe that direct assistance should be prohibited.</p>
57	290.221 290.222 290.223	ASIC	<p>Fee dependence</p> <p>The safeguards for fee dependency do not appear to be commensurate with the potential threats to independence that the proposed Code seeks to prevent. In particular, the proposed Code should:</p>

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			<ul style="list-style-type: none"> • Outline circumstances where the auditor is required to decline an engagement as a safeguard to eliminate any self interest or intimidation threat that may arise from significant fee dependency. Paragraphs 290.221 to 290.223 do not require an auditor to decline an engagement; • Require an external review from the outset, not just in the second or subsequent year audits. The requirement for an Engagement Quality Control Review to be performed on a listed engagement prior to the issuance of an audit opinion is an existing requirement of the auditing standards and does not provide any additional safeguard against fee dependency for Public Interest Entities; • Require pre-issuance reviews in all instances as post-issuance reviews are a detective measure rather than a preventative measure; and • Include quantitative guidance as to the level of acceptable fees for non-public interest entities. <p>In addition, the level of non-audit services provided to audit clients may threaten independence but this is not considered in the proposed Code. The proposed Code should include guidance in relation to when the quantum of non-audit services may threaten independence.</p>
58	290.232	DTT	We note that various paragraphs in the proposed standard make reference to paragraph 290.232 (eg paragraphs 290.505 and 290.514). As paragraph

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			290.232 is blank, we assume these were meant to be references to paragraph 290.231, and suggest they be amended accordingly.
59	291.2	AUASB	<p>Paragraph 291.2 of the proposed standard refers to the <i>International Framework for Assurance Engagements</i>, issued by the International Auditing and Assurance Standards Board. We recommend that this reference be replaced with reference to the <i>Framework for Assurance Engagements</i> issued by the AUASB in April 2010.</p> <p>Other references to the International Framework in the revised APES 110 should also be replaced by reference to the AUASB Framework.</p>
60	291.2	PB	References in this paragraph should be amended to refer to the Australian Framework, Board and Standards.
61	AUST291.10.1	GT	We question why it is necessary to add an additional guidance that states that it is necessary to aggregate multiple threats to Independence. Surely this is self obvious and hence the reason why the IESBA Code does not contain this requirement?
62	291.11	PB	Reference in this paragraph should be made to APES 320, as the applicable standard in the Australian context, rather than to International Standards on

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			Quality Control.
63	291.33.1	GT	We question why Australia should have additional requirements relating to Engagement Period violations compared to the IESBA Code. In the absence of any acceptable Australian only justification, we do not support this requirement.
64	291.112.1	GT	We question why Australia should have additional requirements relating to Financial Interests violations compared to the IESBA Code. In the absence of any acceptable Australian only justification, we do not support this requirement.
65	291.137	DTT	Paragraph 291.137: The first part of this paragraph should be deleted, as it duplicates paragraph 291.136.
66	Section 300	JD Came	The code acknowledges Members as being able to make a living and to further the aims of their employing organisations. However, paragraph 100.1 of the fundamental principles identifies the distinguishing mark of a professional accountant as an acceptance to act in the public interest. This requires an accountant to balance self-interest with what may be in the public interest. Although third parties and the public who rely on the work of Members are identified as stakeholders in the work product of accountants there is silence on the duty that Members in Business have to the public. Perhaps Members in Business have a lower duty to the public compared to Members in Practice but this public duty remains and it is unfortunate that it

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			<p>is not referred to. Rather than only mentioning third parties who may rely on the work of accountants the code could be improved by making the public duty of Members in Business clear. While there is acceptance that Members in Business may further the legitimate aims of an employer organisation, excessive self-interest or the pursuit of the employer organisation's interest in disregard to public interest is threat to ethical behaviour. Left unchecked such excesses detract from what is expected from an accountant.</p>
67	300.5	JD Came	<p>The code expects Members in Business to encourage an ethics based culture in an employing organisation ...that emphasises importance that senior management places on ethical behaviour (Paragraph 300.5). It is suggested that there would be greater clarity if it was left that "Members in Business are expected to encourage an ethics based culture in an employing organisation". It should be clear that the principles of the code are paramount rather than what may be the lower ethical standards of senior management.</p>
68	300.9	JD Came	<p>Legislative initiatives applying to Corporations, preventing senior audit personnel working for clients have in recent years sought to eliminate a self-review threat. As it stands the code has not caught up with this action taken by the legislature to prevent the threat of self-review. Given the threat it is suggested that Members in Business be cautioned (within Paragraph 300.9) against the self review threat arising from accepting employment after having previously been engaged in the audit team and not having detected significant</p>

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			errors during the audit. That Members going into Business have not seen this threat and that the legislature has had to implement laws to safeguard against this is unfortunate given that this practice has resulted in much criticism against the profession.
69	Section 310	JD Came	The first sentence of paragraph 310.1 is redundant as it has already been provided for in paragraph 100.5.
70	Section 320	JD Came	<p>In elaborating on a code of ethical behaviour the preparation of financial statements dominates this section. Preparation of financial statements represents only a fraction of the information prepared by accountants. In preparing general purpose financial statements legislative requirements, well developed accounting standards and above all the requirement of an independent audit provide strong safeguards to the threats to ethical behaviour. The code could be of more assistance to Members in Business in alerting them to those situations posing greater threats to complying with the fundamental principles and suggesting safeguards.</p> <p>Examples of areas presenting threats to the fundamental principles that are far more profound than those presented while preparing financial statements are:</p> <ul style="list-style-type: none"> – Calculating unit prices for unitised investment portfolios, – Setting interest rates on administered investment portfolios, – Determining a basis to allocate deferred tax charges to investor balances and allocating such charges on an equitable basis, – Preparing special purpose financial reports for regulators where there are inconsistencies in terminology compared to IFRS.

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			<p>These are examples of the work expected from accountants where there is a far greater unmitigated threat to the fundamental principles. Circumstances that compound the challenge and that need to be managed to ensure compliance with the fundamental principles are:</p> <ul style="list-style-type: none"> – a lack of clear standards and practices for dealing with the issues, – balancing of corporate interests with customer interests, – Matters that are important are not all fact based but are based on apportionment and judgement require careful definition and should be documented – The lack of time and resources to complete the tasks properly given competing priorities <p>The challenges for Members in Business are therefore more diverse than the superficial insight offered in the code. More importantly very few safeguards are offered in the code other than in Part A.</p>
71	330.1	JD Came	<p>The first paragraph of this section confuses principles and leads to outcomes that would be of detriment to Members in Business.</p> <p>In the second sentence of paragraph 330.1 a member is cautioned not to intentionally mislead an employer as to the level of expertise or experience possessed. This more appropriately describes the fundamental principle of integrity already sufficiently dealt with in Part A, paragraph 100.5 (a) and Section 110. This section further expects that a Member in business will only undertake significant tasks, provided they have received sufficient specific training and experience. This is quite different from the fundamental principle of professional competence and due care in Part A at paragraph</p>

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			<p>100.5(c). Although Part C is meant to describe how the fundamental concepts apply, paragraph 330.1 restricts a Member in Business from exercising any judgement as to their ability to undertake work. As such this provision in the code goes further than envisaged by the fundamental principles and is quite different to how the code elaborates this fundamental principle for Members in Public Practice. Members in Public Practice are merely cautioned in paragraph 210.6 to provide services that they are competent to perform “The fundamental principle of professional competence and due care imposes an obligation on a Member in Public Practice to provide only those services that the Member in Public Practice is competent to perform.” Thus a Member in Practice is left to judge his competence or otherwise. By way of example, consider a Bank requesting a Member in Business to manage the project to carry out its Internal Capital Adequacy Assessment Process (“ICAAP”). Following the release of draft Standards and discussion papers by the Australian Prudential and Regulatory in mid 2007 all banks were required to carry out an ICAAP for the first time by 1 January 2008. At the time no specific training had been developed by training providers and the regulator made it clear that it would take a dim view where an institution outsourced this ICAAP to outside “experts” (the preferred course suggested for Members in Business) as the process is required to be internal. A strict reading of paragraph 330.1 of the code would oblige a Member to decline to be manager of the project given that there were no specific training initiatives</p>

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			<p>and being a new initiative no prior experience would have been relevant. Similarly, Members in the education sector would be precluded from developing any training for those expected to carry out an ICAAP until they had received specific training or experience.</p> <p>Lastly, Members in Business are directed that they shall not fail to seek appropriate expert advice and assistance when required. It may occur that an employer organisation and particularly those Charged with Governance determine that the need for “expert” advice be dispensed with after a cost benefit and risk analysis.</p>
72	Section 330	JD Came	<p>The fundamental principle of a duty of professional care is well defined in section 130 and restating its application to Members in Business in Paragraph 330.1 is unnecessary and leads to limitations being imposed on Members in Business and based on what is provided in the remainder of the section (Paragraphs 330.2 – 330.4) seem unintended.</p>
73	AUST320.2.1	GT	<p>We support additional guidance that enables a Member in Business to take steps to disassociate themselves from preparation or approval of financial statements that do not comply with Australian Accounting Standards.</p>
74	AUST320.2.1	KPMG	<p>We support this strengthening of the requirements to report non-adoption of Australian Accounting Standards for general purpose financial statements.</p>

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
75	Transitional provisions	KPMG	<p>Transitional provisions – partner rotation It should be made clear, by way of the addition of an AUST paragraph, that the Australian legal requirement for audit partner rotation for PIEs that are listed entities is 5 years.</p> <p>In addition, it would be more helpful for members to have the transition examples provided in the international standard re-worked for 5 year rotation on 30 June financial year-ends, and to have them made more understandable as they are not intuitive.</p>

Constituents' Submissions

Exposure Draft 03/10—Proposed Standard: APES 110 Code of Ethics for Professional Accountants

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

ASIC	Australian Securities and Investments Commission
AUASB	Auditing and Assurance Standards Board
DTT	Deloitte Touche Tohmatsu
EY	Ernst & Young
GT	Grant Thornton
JD Came	JD Came
KPMG	KPMG
PB	Professional Bodies (CPA Australia, ICAA, NIA)
PP	Pitcher Partners
PwC	PricewaterhouseCoopers