

AGENDA PAPER

Item Number: 10
Date of Meeting: 10 June 2021
Subject: Proposed revisions to APES 110 for Non-Assurance Services

Action required **For discussion** **For noting** **For information**

Purpose

To obtain the Board's approval:

- subject to the Board's review comments and editorials, to issue an Exposure Draft on proposed revisions to the Non-assurance Services (NAS) related provisions of APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* (the Code); and
- of Technical Staff's proposed way forward in relation to the revisions to the NAS provisions of the Code.

Background

The IESBA has been working on a project relating to NAS since 2018. In January 2020, the IESBA released an Exposure Draft [Proposed Revisions to the Non-Assurance Services Provisions of the Code](#) (the NAS ED).

APESB carried out two Australian stakeholder engagement activities in April 2020 that gathered valuable input to inform the [APESB's Submission to IESBA](#) on proposed amendments to the NAS provisions of the Code made in June 2020.

Technical Staff provided the APESB Board with an update on the IESBA's NAS Exposure Draft and a summary of global feedback on the proposals at the November 2020 Board meeting ([BM 104 Agenda Item 2](#)).

While these developments were taking place internationally, locally in 2019, the PJC Inquiry commenced considering audit regulation in Australia. The PJC held public hearings in 2019 and 2020 and subsequently issued an interim report in February 2020.

The Final Report of the PJC was released in November 2020, which reconfirmed the recommendations set out in the Interim Report. At the date of writing this paper, the Federal Government is yet to release its response to the PJC's recommendations.

At the March 2021 Board Meeting, the Board considered a preliminary draft of the APESB Exposure Draft proposing amendments to the Code ([BM 105 Agenda Item 10](#)). The preliminary Exposure Draft was based on the final text of the revisions approved by the IESBA at their

November/December 2020 Board Meeting. The text and final standard were to be considered and approved by the PIOB in April 2021.

On 28 April 2021, the IESBA issued the final pronouncement: [Revisions to the Non-Assurance Services Provisions of the Code](#). The changes are to the provisions of the *International Code of Ethics for Professional Accountants (including International Independence Standards)* (the IESBA Code) and are effective from 15 December 2022.

Key Considerations

To maintain alignment with the IESBA Code, Technical Staff are proposing to issue for exposure the revisions to the NAS-related provisions of the Code. The Board reviewed a preliminary draft of the exposure draft at the March 2021 Board Meeting (Refer to BM105 [Agenda Item 10\(f\)](#) for the clean version of the draft exposure draft).

Due to the limited changes being presented to the Board in this Board Paper, Technical Staff have not reproduced the complete exposure draft in this agenda paper. Instead, the proposed changes are set out in the attached extract Agenda paper 10(a).

In relation to the new amendments to the NAS-related provisions, the following matters have been considered by Technical Staff.

a) The IESBA Final Pronouncement versus the IESBA approved text

To facilitate the efficient and timely release of this ED, Technical Staff prepared a preliminary draft of the Exposure Draft based on the final text of the IESBA's NAS Pronouncement. At the time of preparing the draft ED, the approval from the PIOB was outstanding. However, this approval was given on 28 April 2021. The IESBA has subsequently released the final pronouncement for NAS.

APESB Technical Staff have reviewed the final pronouncement released by the IESBA and compared it to the final text used as the basis of preparing the preliminary exposure draft. There were several changes to the IESBA final pronouncement. However, these changes are to ensure consistency across the provisions and to address editorial matters. Technical Staff are pleased to note that the IESBA addressed some of the issues noted by APESB Technical Staff during its review of the pronouncement.

A summary of the changes is listed below:

- A new sentence has been included at the end of proposed paragraphs 605.4 A3, 606.4 A3 and 608.5 A1, which provides a cross-reference to the relevant requirement if a self-review threat for an audit client that is a public interest entity is identified. For example, 'When a self-review threat for an Audit Client that is a Public Interest Entity has been identified, paragraph R60X.X applies.'
- Change to the location of commas in proposed paragraph R600.25 (b) as follows
'(b) Non-assurance services currently in progress that are not permitted under this section for Audit Clients that are Public Interest Entities are ended before, or, if that is not possible, as soon as practicable after the client becomes a Public Interest Entity; and'
- The first dot point in proposed paragraph 601.3 A1 has been changed by replacing the 'and' with an 'or' so that the point reads 'Preparing accounting records or and financial statements.'
- Removed the word 'new' from proposed paragraph 604.11 A1, so that the end of the sentence reads 'advising on the application of a **new** tax law or regulation.'

- Proposed paragraph 605.3 A1 has been amended as follows:
‘Performing ~~a significant~~ part of the client’s internal audit activities increases the possibility that individuals within the Firm or the Network Firm providing internal audit services will assume a management responsibility.’
- The lead in sentence to proposed paragraph 608.5 A1 has been amended to refer to the identification and evaluation of threats (and to make this paragraph consistent with other provisions. The changes to the sentence are as follows, ‘Factors that are relevant in identifying ~~evaluating the level of~~ self-review or advocacy threats created by providing legal advice to an Audit Client, and evaluating the level of such threats include:...’
- To correct a numbering error, proposed paragraphs 601.2 A3 to R601.6 have been renumbered as 601.3 A1 to R601.7. This change has also meant that proposed paragraphs that contain a reference to these provisions need to be updated. This affects proposed renumbered paragraphs 601.5 A2 and R601.7.
- Editorial corrections to a number of paragraphs:
 - proposed paragraphs R400.32(a) and R600.25(a), change the punctuation marks at the end of bullet points to a semi-colon.
 - proposed paragraph R600.24 insert the word ‘the’ before the words ‘Network Firm’.
 - proposed paragraph R601.7, insert the word ‘a’ before the words ‘related entity’.
 - proposed paragraph 604.9 A2, remove the word ‘the’ before the words ‘providing the service’;
 - proposed paragraphs R604.13 (a) and 606.4 A3, and the heading above proposed paragraph 950.9 A1, changed the capitalisation of specific words to align with drafting provisions.
 - proposed paragraph 604.17 A1, changed the word ‘services’ to ‘service’.
 - proposed paragraph 604.17 A2, insert the word ‘a’ before the words ‘Network Firm’.
 - proposed paragraph 950.12 A1, change the word ‘includes’ to ‘include’.

Technical Staff are proposing to include these changes in the APESB Exposure Draft on NAS.

b) Stakeholder Engagement

At the March 2021 Board Meeting, the Board requested that Technical Staff undertake further engagement with stakeholders in relation to the proposed revisions to the NAS provisions in the Code. The engagement was to ascertain key matters the Board should consider as part of their deliberations on the NAS proposals.

A stakeholder engagement session was held on 27 May 2021. The session was attended by regulators, accounting firms, professional accounting bodies and national standard setters. The discussion focused on the proposed revisions to the NAS provisions, measures to address recommendations from the PJC Inquiry into the *Regulation of Auditing in Australia* and matters relating to Taxation services, including the meaning of the term ‘likely to prevail’ within specific provisions and the effect of advocacy threats for tax planning and tax advisory services.

In relation to the use of the term 'likely to prevail' in proposed paragraphs R604.4, 604.4 A1 and 604.12 A2(c), some stakeholders were of the view that this term required further clarification either by amending the wording or providing additional guidance material. The stakeholders' considered replacement terms such as 'almost certain' or 'highly likely'. There was general agreement that 'almost certain' was not the preferred term, but not all attending supported the term 'highly likely'. Technical staff are of the view that having a higher threshold over services such as tax advisory and planning for PIEs where significant judgement is involved will reduce threats to the auditor's independence to an acceptable level.

A Stakeholder also raised concerns over the use of the subjective term 'the Firm is confident' in proposed paragraph R604.4. Some stakeholders supported the inclusion of guidance on the meaning of this term.

The impact of an advocacy threat on tax advisory and tax planning services was also discussed. It was clear that there were differing views on the approach to be implemented. Regulatory stakeholders wanted tax planning and advisory to be prohibited for public interest entity audit clients when there is either a self-review threat or advocacy threat. However, other stakeholders were not supportive of such a change.

Stakeholders were offered the opportunity to provide any additional written feedback or comments to the Technical Staff before the June Board Meeting. At the date of writing this report, no further feedback has been received. Technical Staff will provide a verbal update on additional feedback received, if any.

Since the last Board Meeting, the APESB Technical Staff have also had several meetings with the regulators to discuss the NAS proposals.

c) Advice and Recommendations on Financial Products

As noted at the March 2021 Board meeting, a regulatory stakeholder believes APESB should consider prohibiting advice on financial products to audited entities, and [Technical Staff supported this proposal](#).

Technical Staff propose adding a requirement paragraph AUST R600.11.1 to prohibit providing advice and recommendations about financial products to audited clients.

d) Self-review Threats

As noted at the March 2021 Board meeting, Technical Staff were of the view that the prohibition on self-review threats could be strengthened.

To provide greater certainty in the Australian context, Technical Staff propose adding a guidance paragraph AUST 600.14 A1 to clarify that in most instances where NAS is provided to audit clients, it would be known if the NAS will affect the accounting records, internal controls or financial statements and if this is the case it is almost certain to create a self-review threat.

Technical Staff have liaised with the IESBA about paragraph R600.14 and its intent. We believe that the proposed AUST 600.14 A1 is consistent with the IESBA's intent that in practice, any NAS that affects the accounting records, internal controls over financial reporting, or the financial statements should create a self-review threat.

By including this guidance paragraph, Technical Staff believe it is unnecessary to make further amendments to the IESBA's paragraph R600.16 and other associated self-review threat prohibition paragraphs as previously recommended at the March 2021 Board meeting (BM 105 [Agenda Item 10\(b\)](#)).

e) **Taxation Services and Highly Likely to Prevail**

As noted at the March 2021 Board meeting, a regulatory stakeholder believes the proposed provisions on tax advisory and tax planning services should be strengthened for all audit clients, and in particular that paragraph 604.12 A2(c) “*Have a basis in tax law that is likely to prevail*” should be amended.

[Technical Staff supported developing proposals](#), and this issue was discussed with stakeholders at the meeting on 27 May 2021 addressed in b) above.

Technical Staff propose amending the IESBA paragraphs R604.4, 604.4 A1 and 601.12 A2 from references to ‘likely to prevail’ to ‘highly likely to prevail’. Due to amending the wording of paragraphs from the IESBA wording, Technical Staff propose to change these paragraph references to AUST R604.4, AUST 604.4 A1 and AUST 601.12 A2, respectively.

A further issue discussed with stakeholders at the meeting on 27 May 2021, referred to in b) above, was whether the ‘*firm is confident*’ about whether a tax treatment will prevail should be clarified. Technical Staff propose to add guidance paragraphs AUST 604.4 A2 and AUST 604.12 A4 that firms should document the factors they considered in providing tax services, tax advisory and tax planning as to why they are confident it has a basis in law that is highly likely to prevail. Some of the wording in these proposed paragraphs is based on paragraph 113 of the IESBA’s [Basis for Conclusions on NAS Revisions](#).

f) **Tax Advisory and Tax Planning Services and Advocacy Threats**

As noted at the March 2021 Board meeting, a regulatory stakeholder supports treating advocacy threats in the same way as self-review threats for PIE audit clients, which would prohibit services such as tax planning and advisory services where there is an advocacy threat to the audit engagement.

[Technical Staff supported developing proposals](#), and this issue was discussed with stakeholders at the meeting on 27 May 2021 addressed in b) above. While views differed on the treatment of advocacy threats for tax planning and tax advisory services, there was no definitive or logical argument against the prohibition other than not making changes to an international standard. Therefore, Technical Staff are of the view that the exposure draft should contain the proposed prohibition, and we should seek formal stakeholder feedback on this requirement.

To facilitate the change noted above, Technical Staff propose deleting the IESBA paragraph 604.15 A1, which lists potential safeguards to address advocacy threats and adding a requirement paragraph AUST R604.15.1 prohibiting the provision of tax advisory and tax planning services that might create an advocacy threat to audit clients that are Public Interest Entities.

g) **Internal Audit Services**

As noted at the March 2021 Board meeting, the regulatory stakeholder believes APESB should consider making the Code clearer that internal audit services provisions apply to other similar services even if not labelled ‘internal audit services’ and [Technical Staff supported this proposal](#).

Technical Staff propose including additional guidance material to the IESBA paragraph 605.2 A1 to clarify that it includes services that may not necessarily be described as an

internal audit service and that internal audit activities include reviewing risk culture, monitoring and compliance with applicable frameworks. Due to adding additional wording to this paragraph from the IESBA version, Technical Staff propose to amend this paragraph reference to AUST 605.2 A1.

h) PJC Inquiry into Regulation of Auditing in Australia

APESB Technical Staff have considered the PJC Inquiry recommendations 3, which fall within APESB's remit, which states:

The committee recommends that the Financial Reporting Council, in partnership with ASIC, by the end of the 2020–21 financial year, oversee consultation, development and introduction under Australian standards of:

- *defined categories and associated fee disclosure requirements in relation to audit and non-audit services; and*
- *a list of non-audit services that audit firms are explicitly prohibited from providing to an audited entity.*

Technical Staff are of the view that the IESBA NAS revisions and the enhanced proposals in this paper provide a solid foundation to address PJC recommendation 3 concerning developing a list of prohibited services for auditors in Australia. Technical Staff will continue to liaise with the FRC and ASIC, who have ultimately been tasked with overseeing the recommendation on prohibited services.

Way forward

Subject to the Board's approval on the NAS exposure draft, Technical Staff propose the following way forward:

- Issue the Proposed NAS Exposure Draft ED 04/21 in June 2021 with a 90-day exposure period;
- Review and analyse submissions received on ED 04/21 and consider whether any further revisions are required to the NAS related provisions of the Code;
- Monitor developments relating to the final report of the PJC Inquiry and the Government's response and consider amendments to the Code, if any; and
- Seek approval from the Board to issue an Amending Standard to the Code relating to NAS at the November 2021 Board Meeting.

Staff Recommendations

That the Board approve:

- subject to the Board's review comments and editorials, the issue of an Exposure Draft on proposed revisions to the NAS-related provisions of APES 110 (ED 04/21); and
- the Technical Staff's proposed way forward in relation to the revisions to APES 110.

Materials Presented

Agenda Item 10(a) Extract of proposed amendments to the Draft NAS Exposure Draft

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