

## AGENDA PAPER

**Item Number:** 11

**Date of Meeting:** 31 May 2023

**Subject:** Proposed revisions to APES 110 for the definition of Listed Entity and Public Interest Entity

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Action required     For discussion     For noting     For information

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### Purpose

To obtain the Board's approval, subject to the Board's review comments and editorials, to issue an amending standard *Revisions to the Definition of Listed Entity and Public Interest Entity of APES 110 Code of Ethics for Professional Accountants (including Independence Standards)* and the related Basis for Conclusions.

### Background

In December 2019, the International Ethics Standards Board for Accountants (IESBA) approved its project to review the Definitions of Listed Entity and Public Interest Entity in the *International Code of Ethics for Professional Accountants (including International Independence Standards)* (the IESBA Code).

The IESBA issued [Revisions to the Definition of Listed Entity and Public Interest Entity in the Code](#) (IESBA PIE Revisions) in April 2022 with changes to the IESBA Code effective for periods beginning on or after 15 December 2024, with early adoption permitted. The revisions included an overarching objective for additional requirements to enhance confidence in the audit of financial statements of public interest entity (PIE) audit clients, broadening the definition of PIE to include additional categories of entities and replacing the term "listed entity" with the term "publicly traded entity."

The Board considered a preliminary draft Exposure Draft (ED) incorporating the IESBA PIE Revisions into APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* (APES 110) at the June 2022 meeting ([Agenda Item 3](#)) and approved the release of the ED for public comment.

APESB released exposure draft ED 05/22 [Proposed Revisions to the Definition of Listed Entity and Public Interest Entity in the Code](#) on 22 July 2022. The ED included a request for specific comment seeking feedback on whether additional entities should be included in the list of entities that are generally considered PIEs in Australia. The comment period was scheduled to close on 28 October 2022.

At their September 2022 Board Meeting, the Board agreed to extend the comment period for this exposure draft. The comment period was subsequently extended to 12 December 2022.

## **Matters for Consideration**

### Historical development

In developing the Australian proposals to adopt the international revisions, APESB has considered that the extant APES 110's provisions in determining PIEs are higher than both the extant IESBA Code and the revisions in the issued final pronouncement.

In 2011, APESB undertook an extensive collaboration process with ASIC and APRA to determine which entities must be considered PIEs in Australia. That resulted in the PIE amendments to APES 110, issued in December 2011 and effective from 1 January 2013.

Accordingly, since 1 January 2013, the APES 110 has mandated that firms determine whether other entities are PIEs (extant paragraph AUST R400.8.1). The extant APESB's provisions recognise deposit-taking institutions, insurers and superannuation entities, disclosing and other entities as PIEs in Australia. These provisions have existed in Australia for over a decade, and we are unaware of practical implementation issues.

Therefore the IESBA revisions, in effect to move closer to the APESB's position established in 2011, is unlikely to significantly impact the recognition of an entity as a PIE in Australia.

### Audit and Prudential Regulators' Perspective

APESB Technical Staff engaged with the regulators, the Australian Securities and Investments Commission (ASIC) and the Australian Prudential Regulatory Authority (APRA) to seek their views on the proposed revisions.

Both regulators supported the proposed revisions to APES 110 relating to the definitions of Listed Entity and PIE. They were also of the view that the extant Australian position in determining PIEs should be maintained as they are not aware of any issues in applying the extant provisions in practice over the last decade.

Refer to Agenda Item 11 (c) for the confidential ASIC Staff comments. APRA provided verbal support for maintaining the extant Australian position and also supported the comments made by ASIC Staff.

### Respondents Comments

APESB received eight submissions on ED 05/22 from large accounting firms, professional bodies and regulators, which are tabulated in General and Specific Comments tables at Agenda Items 11(a) to 11(c).

Overall, stakeholders generally supported the proposal to revise APES 110 for the definitions of Listed Entity and Public Interest Entity in line with the IESBA revisions but noted some concerns outlined below.

The response to the request for specific comments and the concerns raised by stakeholders included the following:

- Request for Specific Comment – categories of entities generally considered to be PIEs

The exposure draft asked stakeholders to consider whether entities were not captured by the proposed paragraph AUST 400.18 A3, which would generally be considered a PIE in Australia.

Respondents did not identify any specific categories of entities that should be included in the proposed paragraph AUST 400.18 A3.

- Retention of the requirement to assess multiple threats to Independence in aggregate

A concern was raised as to whether the requirement to assess multiple threats to independence in aggregate (proposed paragraph AUST R400.14.1) should be maintained as a requirement, or should it be changed to guidance material (specific comment 8 in Agenda Item 11(b)).

This Australian-specific requirement has been included in APES 110 since 2010. It clarifies how multiple threats to independence should be assessed. The regulators support the retention of the extant Australian requirements in the Amending Standard, and we also note that the New Zealand Auditing and Assurance Standards Board (NZAuASB) have retained a similar requirement in their local adaptation of the IESBA Code.

As such, APESB Technical Staff believes this requirement should be maintained in APES 110.

- Interaction between the new definition of PIE and extant Australian guidance on PIEs

A couple of stakeholders have raised concerns about the proposed revised definition of PIE in the IESBA revisions (paragraph R400.17) and how it interacts with the Australian-specific guidance paragraph setting out entities that are generally considered to be PIEs in Australia (paragraph AUST 400.18 A3) (refer to specific comments 12 and 13 of agenda item 11 (b)). The concerns included:

- the broader definition of PIE could unintentionally capture entities that should not be considered to be PIEs;
- inconsistencies between the two paragraphs are confusing and will create inconsistency in the application of the requirements in practice; and
- Proposed paragraph AUST 400.18 A3 appears to create exemptions from the broader definition of PIE.

Technical Staff are of the view that the list of entities generally considered PIEs set out in paragraph AUST 400.18 A3 is consistent with the broad categories included in the definition of PIE in proposed paragraph R400.17. In addition, the Australian-specific list of entities already consists of the two new categories of PIEs (i.e., insurers and banks) added to the revised IESBA definition and, therefore, the revision to the definition of PIE in Australia is unlikely to have a significant impact on the entities classified as PIEs and should not cause inconsistency in the application of the requirements.

The AUST paragraph retains its extant drafting, which incorporates explicit categories of PIEs by referencing local laws and regulations. We note that the IESBA supports local bodies to make this clarification, as proposed paragraph 400.18 A1 sets out the option of including references to relevant laws and regulations to clarify local PIE categories. Therefore, the AUST paragraph does not create exemptions to the PIE definition. It should also not be read as suggesting that Firms can elect to reduce the categories of entities captured in the PIE definition.

APESB Technical Staff note that the NZAuASB has adopted a similar approach to APESB in PES 1 by including the definition of PIE as per the IESBA Code and then including an NZ requirement paragraph (NZ R400.17.1) which clarifies that entities that meet the tier 1 criteria in accordance with XRB A1 should be classified as PIEs.

Technical Staff also note ASIC and APRA's support for maintaining the extant list of entities generally considered PIEs in Australia. Refer to Regulator Comment 2 at Agenda Item 11 (c).

Therefore, Technical Staff are not suggesting changes to the amending Standard based on the concern raised.

- Suggested revisions to the extant Australian guidance on entities generally PIEs

Stakeholders raised a concern that the retention of the extant Australian guidance on entities that would generally be considered PIEs in Australia (proposed paragraph AUST 400.18 A3) incorporates factors that are no longer relevant or necessary (specific comment items 16 to 18 in agenda item 11(b)) and should be updated to remove the word 'shall.'

Proposed paragraph AUST 400.18 A3 retains extant application material agreed to by regulators, professional bodies and standard setters in 2011. It was incorporated into the Code in 2011 and became effective from 2013 onwards.

In considering the retention of the extant wording, APESB Technical Staff noted that:

- No issues have been raised with APESB over the last 12 years on the ability to apply and implement the extant provision in practice;
- APESB has not been informed of instances where firms are not complying with the extant requirement;
- Proposed paragraph 400.18 A1 allows local bodies to incorporate size criteria that more explicitly define the categories of PIEs in the proposed paragraph R100.17; and
- The use of the extant wording indicates that the current practices for determining PIEs in Australia would be appropriate under the new revisions.

The regulators support this view (refer to Regulator Comment 3 in agenda item 11(c)).

However, we agree that the extant wording needs to be enhanced and proposed to include the concept of '*reflecting the significant public interest in the financial condition*' in the lead-in paragraph.

A respondent has also noted that AUST R400.18 A3 uses *shall*, which denotes a requirement (Specific Comment 18 at Agenda Item 11(b)). We agree with the respondent's comments and will change it to a requirement paragraph consistent with the requirements in R400.17 and R400.18, which is reflected in Agenda Item 11 (d).

- Relevance of guidance on the clarification of PIE categories by local bodies

Some stakeholders were concerned that the proposed paragraphs 400.18 A1 and 400.18 A2 applied more as guidance for local bodies (refer to specific comments 11 and 15 in Agenda item 11 (b)) and queried whether they were superseded by proposed paragraph AUST 400.18 A3. One stakeholder suggested the removal of proposed paragraphs 400.18 A1 and 400.18 A2 or modifying these paragraphs and removing AUST para 400.18 A3.

While proposed paragraphs 400.18 A1 and 400.18 A2 provide guidance on the clarification that local bodies may provide in relation to the application of the definition of PIE in their jurisdiction, it also sets out an expectation that local bodies will provide that clarification.

Therefore, the proposed paragraph AUST 400.18 A3 provides the local jurisdiction clarification for Australia. It is based on the extant requirements in APES 110, and this paragraph must be retained.

We note that the proposed approach in APES 110 is consistent with the treatment adopted by the NZAuASB, who have retained paragraphs 400.18 A1 and 400.18 A2 in New Zealand's PES 1.

Therefore, Technical Staff do not propose amendments to these paragraphs in the amending Standard.

- Determination of PIEs by Firms - Encourage vs. shall

Some stakeholders were concerned about the proposed paragraph AUST R400.19 which requires Firms to determine if additional entities should be treated as PIEs (refer to specific comment items 19 to 23 in agenda item 11 (b)).

Stakeholders were of the view this unnecessarily elevated guidance in the IESBA Code (i.e., paragraph 400.19 A1, which encourages Firms to determine if additional entities should be treated as PIEs) to a requirement and created a burden on Firms.

Proposed paragraph AUST R400.19 maintains an existing requirement in APES 110, which has been set at a higher standard than the guidance paragraph in the IESBA Code since 2013. Therefore, it is not a newly created requirement and, as such, should not create any additional burdens for Firms.

Technical Staff note that new factors for consideration are incorporated into the proposed paragraph R400.19. However, Technical Staff believe these factors enhance the extant provision by clarifying additional circumstances where entities should be treated as PIEs and should assist Firms in the application of the provisions rather than creating additional burdens.

Therefore, Technical Staff are of the view that no changes should be made to the proposed drafting of paragraph AUST R400.19 in the amending Standard. This position aligns with the views of ASIC and APRA (as per Regulator Comment 5 in agenda item 11(c)).

- Matters for future consideration

Stakeholders have raised the following concerns relating to matters currently under consideration by the IAASB in their project on listed entities and public interest entities:

- The need for clarification on where to disclose the application of independence requirements for PIE (refer to specific comment item 24); and
- The need for consistency between the definitions used in the international audit and ethical standards (general comment item 11).

Technical Staff will continue to monitor the progress of the IAASB on these matters and update the Board if further action needs to be taken in Australia to address these concerns.

We have also noted the request (in general comment item 19) for an updated version of the Independence Guide. The APESB and the Professional Accounting Bodies jointly released this guide. We will discuss this request with the professional bodies in due course.

As limited changes are being proposed to the Amending Standard for the definitions of Listed Entity and Public Interest Entity, Technical Staff have not replicated the full version of the Standard in this agenda paper.

It is the same as the proposed revisions set out in the [exposure draft](#), apart from the matters being suggested by Technical Staff as set out below:

- Amendments to proposed paragraph 400.18 A3 in ED 05/22

Amend the extant wording to include the concept of '*reflecting the significant public interest in the financial condition*' in the lead-in paragraph of 400.18 A3.

As the paragraph uses *shall* which and to be consistent with the requirements in R400.17 and R400.18 to determine PIEs in a jurisdiction, elevate the paragraph to a requirement.

- Relocation of Stage 2 revisions from the amending Standard on Engagement Teams and Group Audits

The exposure draft for Engagement Team and Groups Audits (ET-GA) incorporated two stages of amendments with different effective dates being:

- Stage 1 set out changes relating to the revisions to the definition of Engagement Team and Group Audit, which are proposed to be effective from 1 January 2024; and

- Stage 2 set out changes to the definitions of Audit Client and Group Audit Client arising from proposed revisions to the definitions of Listed Entity and Public Interest Entity, which are proposed to be effective from 1 January 2025.

As no concerns were raised concerning the proposed changes in Stage 2 of the ET-GA exposure draft, Technical Staff believe that the Stage 2 amendments should be incorporated as part of the PIE revisions proposed to become effective from 1 January 2025. This approach will reduce the complexity of creating future compilations of APES 110.

Subject to the Board approving the deletion of these provisions in the ET-GA Amending Standard being considered at Agenda Item 12, Technical Staff propose incorporating the revisions from Stage 2 of the ET-GA ED into the PIE Amending Standard. The revisions to reflect this in the amending Standard are set out in Agenda Paper 11 (d).

Technical Staff have prepared a draft Basis for Conclusions to be released with the PIE Amending Standard. It is set out at Agenda Item 11 (e).

Therefore, Technical Staff seek the Board's approval to issue the proposed amending standard *Revisions to the Definitions of Listed Entity and Public Interest Entity in APES 110 Code of Ethics for Professional Accountants (including Independence Standards)* and the related Basis of Conclusion.

## Recommendations

The Board approve, subject to the Board's review comments and editorials, the issue of the amending standard *Revisions to the Definitions of Listed Entity and Public Interest Entity in APES 110 Code of Ethics for Professional Accountants (including Independence Standards)* and the related Basis for Conclusions.

## Materials Presented

Agenda Item 11(a)	General Comments Table ED 05/22
Agenda Item 11(b)	Specific Comments Table ED 05/22
Agenda Item 11(c)	ASIC Staff Comments CONFIDENTIAL (For Board distribution only)
Agenda Item 11(d)	Amendments for APES 110 PIE revisions (marked-up)
Agenda Item 11(e)	Draft Basis for Conclusions

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