

## **Project Proposal – Whistleblowing**

### **Introduction**

Professional accountants are often at the forefront of matters relating to whistleblowing, with money or other financial matters often being at the core of the ethical issue; accountants have access to information and the expertise to understand these financial matters.

New whistleblower legislation, effective in 2019, encourages disclosure of certain matters in the public interest. Acting in the public interest is a fundamental ethical requirement of all professional accountants. However, the fundamental principles also require a professional accountant to comply with the principle of confidentiality. This project aims to clarify how the whistleblowing legislation interacts with the professional and ethical obligations of professional accountants set out in APESB pronouncements.

### **Background**

In 2019, new Federal whistleblower legislation was enacted (via the *Treasury Laws Amendment (Enhancing Whistleblowers Protections) Bill 2018*). The legislation broadened the existing protections and remedies for corporate and financial sector whistleblowers in the *Corporations Act 2001* and extended protection to whistleblowers regarding breaches of the tax law or misconduct relating to an entity's tax affairs (via the *Taxation Administration Act 1953*). The legislation became effective from 1 July 2019. This includes a requirement for all public companies, large proprietary companies and corporate trustees of APRA-regulated superannuation entities to have a whistleblower policy (and supporting procedures) in place from 1 January 2020.

In February 2020, the Professional Standards department of Chartered Accountants Australia and New Zealand (CA ANZ) approached APESB to request assistance with the interaction of the confidentiality provisions in the Code with the new whistleblowing legislation, especially whether it is a breach of the confidentiality provisions in the Code if a member reports using whistleblower protections.

### **Key Considerations**

In undertaking this project, APESB will need to consider:

1) Timeliness of project outcomes

The request from CA ANZ indicates that there is a current need for guidance and resources for members on whistleblowing, which needs to be balanced against ensuring any outcome of this project is appropriate and measured.

Technical Staff may need to consider some short-term actions to address the current needs of members while the longer-term project is being conducted. For example, the promotion of current guidance material in APES GN 40 *Ethical Conflicts in the Workplace – Considerations*

for Members in Business on Whistleblowing or the confidentiality provisions in APES 220 Taxation Services.

## 2) Guidance available from the professional bodies/regulators

Technical Staff are aware that some of the professional accounting bodies and regulators have issued guidance in relation to whistleblowing which will need to be considered as part of this project, such as:

- Tax Practitioners Board (TPB) guidance discusses the whistleblowing legislation and sets out some practical examples and questions and answers. The guidance is available on the [TPB website](#).
- ASIC has released a range of guidance resources on whistleblowing, including information sheets and Regulatory Guidance Statements (available on the [ASIC website](#)).
- CPA Australia issued a [whistleblowing guide](#) in 2013. We are not currently aware if this guide will be updated for the new whistleblowing legislation.

## 3) IESBA's current project on Technology

Technical Staff are aware that the International Standards Board for Accountants (IESBA) are planning to review the confidentiality provisions of the Code as part of their new Technology project. The IESBA will be considering these provisions in light of privacy requirements and the accessibility of information. The IESBA will be considering a project proposal for Technology at their March 2020 Board Meeting. APESB will need to monitor the developments of the IESBA in relation to this matter and consider amendments to APESB pronouncements, if applicable.

## **Proposed Project Plan**

Appendix A presents the proposed project plan for whistleblowing. It lists the key project activities, proposed timeline, project risk assessment and resource requirements.

## **Other Matters**

### ***Impact on accounting, auditing, or other relevant standards***

Not applicable.

### ***Related legislative developments***

The new whistleblowing legislation is effective through the following key pieces of legislation:

- *Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2018*;
- *Corporations Act 2001*; and
- *Taxation Administration Act 1953*.

### ***Related international developments***

Other than the IESBA developments, no other developments that impact upon this project are noted at this stage.

### ***Benefits of this project***

This project will assist Members in their understanding and application of APESB pronouncements when facing ethical issues, including whistleblowing.

## Appendix A

<b>Project Plan on Whistleblowing</b>	
<b>Objective</b>	To review the new whistleblowing protections and determine if APESB need to issue specific requirements or guidance in relation to the whistleblowing protections.
<b>Project Steps</b>	<ul style="list-style-type: none"> <li>• Internal review/research into the new whistleblowing legislation and current guidance available for members.</li> <li>• Internal review and analysis of current provisions in APESB pronouncements relating to confidentiality, privacy and whistleblowing.</li> <li>• APESB Technical Staff to liaise and discuss issues with the professional standards teams of the professional accounting bodies.</li> <li>• Consideration of developments in IESBA's Technology project and potential impacts on the confidentiality provisions in the Code.</li> <li>• APESB Technical Staff to develop proposed outcomes for consideration by the Board at the August 2020 Board Meeting.</li> <li>• Consult with stakeholders on the determined approach to develop any required materials or proposed amendments to APESB pronouncements.</li> <li>• Present the final project outcome for the Board's approval at a Board meeting in 2021.</li> <li>• Release the Board approved outcome (either as a revision to APESB pronouncements or the release of supplementary guidance material) on the APESB website.</li> </ul>
<b>Resource Requirements</b>	<ul style="list-style-type: none"> <li>• Estimated Technical Staff time on this project will be approximately 6-8 weeks.</li> <li>• Costs may be required for stakeholder engagement, which will either be in the form of teleconferencing facilities or travel for APESB Staff (as required). The Costs are not expected to be significant and could be covered by existing allocation for taskforces, events and thought leadership activities in APESB's budget.</li> <li>• Other sundry costs like printing and stationery.</li> </ul>
<b>Timeline</b>	This project is anticipated to take approximately twelve to eighteen months.
<b>Project Risk Assessment (Key risks)</b>	<p><b>Risk 1</b> Project outcomes are not acceptable or adopted by Members, Professional Accounting Bodies and other Stakeholders.</p> <p><i>Assessment:</i></p> <ul style="list-style-type: none"> <li>• Probability: Low</li> <li>• Impact: Medium</li> <li>• Risk rating: Low</li> </ul>

## Project Plan on Whistleblowing

*Mitigating Controls:*

- Proactively consult with stakeholders through the project, especially the professional standards teams of the Professional Accounting Bodies.
- Carefully assess any proposed changes to APESB pronouncements including the practical implications of the changes.

**Risk 2**

Risks of costs rising significantly during the project.

*Assessment:*

- Probability: Low
- Impact: Low
- Risk rating: Low

*Mitigating Controls:*

- Monitoring of time and costs on a regular basis.