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Ms Kate Spargo
Chairperson
Accounting Professional and Ethical Standards Board
Level 7, 600 Bourke Street
Melbourne VIC 3000

25 July 2011

Dear Ms Spargo

CONSULTATION PAPER: PROPOSED DEFINITION OF PUBLIC INTEREST ENTITY FOR THE CODE

We appreciate the opportunity to comment on Consultation Paper: Proposed definition of *Public Interest Entity* for the Code.

Overall we are supportive of the APESB's efforts to define Public Interest Entity in the Australian context in order to assist in consensus between professional services firms.

We respond to the specific matters for comment as follows:

1. **APESB's proposed definition of *"Public Interest Entity"* for APES 110**

We support the APESB's proposed definition of *Public Interest Entity*.

2. **APESB's preliminary views on entities that will generally be captured by the definition of a *Public Interest Entity***

We do not support the opinion that APRA regulated entities (Authorised Deposit-taking Institutions, General Insurance Companies and Life Insurance Companies) are Public Interest Entities as defined in limb (b) of paragraph 290.25(b).

APS 510 states in paragraph 60 (and equivalent paragraphs in GPS 510 and LPS 510) that the Board Audit Committee must assess whether the auditor meets the Audit Independence tests set out in APES 110 as well as the additional auditor independence requirements set out in the Prudential Standard. It does not state that the auditor must meet the additional independence requirements in APES 110 for Listed Entities.

Paragraph 77 of APS 510 refers to Audit Rotation and provides similar requirements to that for Listed Entities under APES 110. APS 510 however, does not prescribe other additional independence requirements for Authorised Deposit-taking Institutions that are included in APES 110 for Public Interest Entities (or Listed Entities in the previous version of APES 110), such as a prohibition on performing accounting, payroll and bookkeeping services, or on preparing the financial statements.

We consider that the setting of independence requirements for regulated entities should be left to the regulators, and the best person to determine the regulations for Authorised Deposit-taking Institutions, General Insurance Companies and Life Insurance Companies is APRA.

APRA is aware of the non-assurance work currently being performed by auditors on APRA regulated entities, specifically in respect of Internal Audit assignments, and has not sought to prohibit this work so long as the auditor can demonstrate that appropriate safeguards to support independence are in place.

3. APESB's view that the definition of a *Public Interest Entity* in APES 110 is different to AASB's definition of a *Publicly Accountable Entity*

We support the APESB's view that the definition of a *Public Interest Entity* in APES 110 is different to AASB's definition of a *Publicly Accountable Entity*.

4. Other matters

We note that the APESB proposes that the definition of Public Interest Entity in the revised APES 110 be operative from 1 January 2012. Firms may be contracted to perform non-assurance work for entities that now fall under the definition of Public Interest Entities up to 30 June 2012. We therefore propose that the transitional provisions for non-assurance services be extended to services being completed before 1 July 2012.

We would be pleased to discuss out comments with members of APESB or its staff. Should you wish to do so, please contact me on (07) 3237 5999.

Yours sincerely

BDO Australia Ltd

Tim Kendall

Tim Kendall
National Audit Leader

KPMG

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Our ref APES Submission - 19889002_1

Ms Kate Spargo
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28 July 2011

Dear Ms Spargo

Consultation Paper: Proposed Definition of Public Interest Entity for the Code

We are pleased to have the opportunity to comment on the Consultation Paper issued by the Accounting Professional and Ethical Standards Board ("APESB").

We consider that the international language of ethics and independence should be as consistent as possible across jurisdictions to limit possible cross-border misunderstandings and expectation gaps. Therefore our overall view is that APESB should retain the original wording of paragraph 290.26 when revising APES 110 until further and wider public consultation has been made.

Our specific responses are outlined in more detail in the attachment to this letter.

We would be pleased to discuss our comments with members of APESB or its staff. Should you wish to do so, please contact me on (07) 3233 3101.

Yours sincerely

Warren Austin
Ethics and Independence Partner

ATTACHMENT

Responses to Consultation Paper matters

(i) APESB's proposed definition of "Public Interest Entity" for APES 110

The definition of a PIE is specified in para 290.25 and is unchanged.

The proposed change to the "guidance" of 290.26 to mandate that firms "shall determine ...." is considered superfluous as, if the objective is to expand the scope of coverage, then 290.25 is where any such changes should be made.

The use of "shall determine" will not necessarily lead to any wider capture of entities as the outcomes may well be unchanged as, in "considering" a treatment, one also makes a decision as whether or not to adopt a particular view.

Further, "shall determine" will require a far-ranging assessment of potential entities by firms using internally developed cut-offs and guidelines for terms such as "large number", "wide range" "size" against a background of what a firm believes is in "the public interest". This will inevitably lead to highly variable outcomes as to what is a PIE between member bodies, firms and between Australian and overseas offices of network firms.

Underlying the proposed changes is an unstated view of what is "the public interest". As accountants, our focus is on financial matters and thus the public interest we serve is narrower in scope than what may generally be considered through say public policy and regulatory regimes in non-financial areas. Underlying the definition of a PIE is what is the public interest being served by requiring a higher standard of auditor independence and where should the cut-off between a PIE and non-PIE be considering the costs and benefits between the two. The proposed changes to APES 110 do not address these fundamental issues.

In summary, KPMG's view is that 290.25 provides sufficient direction and coverage and that the proposed amendment to 290.26 to mandate determination is not warranted.

Against this background, the inclusion of "public issuers of debt and equity instruments" is a logical addition to examples of entities that may be considered, and that change is supported as further guidance to consider subject to the next paragraph.

As outlined in our previous submission to APESB on the revision of APES 110 in line with IFAC, to provide some consistency around interpretations of what other additional entities or categories of entities may be considered as public interest entities, separate guidance should be developed by way of public consultation. The Australian co-regulatory environment provides an imperative to develop consistency across our local jurisdictions. We recognise that co-regulatory development and agreement of guidance on public interest entities will be time consuming.

(ii) **APESB's preliminary views on entities that will generally be captured**

As the views proferred by APESB are "preliminary", it is not clear what will subsequently happen with them and whether they are to be promulgated as is and/or amended subsequently, and the form in which will be promulgated (eg as a guidance Appendix to APES 110?).

We don't concur with the inclusion of all Disclosing entities in the definition of a PIE as not all will meet the "large number and wide range of stakeholders" basis of 290.26 as such can have as few as 100 security holders. What public interest is being served by inclusion of entities of this size is not clear.

The same issue applies to co-operatives that issue debentures to the public (and to pension funds also).

For APRA-regulated entities, we agree that in substance, the overall auditor independence requirements are, as noted in APS 510, "substantially consistent" with the requirements of the Corporations Act.

Whilst we don't concur that they are therefore captured under 290.25(b), it would be appropriate to include APRA-regulated entities in the definition under 290.25(b) subject to specification of appropriate size limits.

We do not agree with "tier 1" public sector entities being considered likely to be captured in the definition of a PIE as the respective federal ANAO and state Auditors General are responsible for setting their own requirements for auditor independence and there are already structures in place for same.

(iii) **"Public Interest Entity" vs "Publicly Accountable Entity"**

We concur with the APESB view that these two definitions are fundamentally different in nature and intended coverage and we support not linking the two for purposes of independence considerations.

(iv) **Other comments**

We note the proposed operative date of any revision to the definition of a PIE is 1 January 2012. Depending on the extent and impact of any revisions made by APESB, we consider this to be too short a time frame to allow firms to re-assess and accommodate any changed engagement services and particularly partner rotation requirements. As regards partner rotation, there could be substantial impacts on firms and clients unless appropriate and extended transition requirements are also provided. We would propose that application of any changes to APES 110 should be operative for financial years commencing on or after 1 January 2013.

Grant Thornton

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28 July 2011

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Dear Kate

CONSULTATION PAPER: PROPOSED DEFINITION OF PUBLIC INTEREST ENTITY FOR THE CODE

Grant Thornton Australia Limited (Grant Thornton) appreciates the opportunity to comment on the Accounting Professional and Ethical Standards Board's (APESB) Consultation Paper: Proposed Definition of *Public Interest Entity* for the Code.

Grant Thornton's response reflects our position as auditors and business advisers both to listed companies and privately held companies and businesses.

Grant Thornton supports the intent of the Consultation Paper which is to maintain consistency with the global Code of Ethics for Professional Accountants issued by the International Ethics Standards Board for Accountants (IESBA) and on which APES 110 is based. On that basis we note that APES 110 defines a Public Interest Entity as being a Listed Entity, any Entity that is defined as a Public Interest Entity by regulation or legislation, and any Entity where the audit is required to be conducted in compliance with Listed Entity independence requirements which can be via Regulation by a Regulator.

1. APESB's proposed definition of "Public Interest Entity" for APES 110

Whilst the proposed amendments to the definition of a Public Interest Entity in paragraph 290.26 does not in our view change the application of what is a Public Interest Entity, we do question why there needs to be any changes in wording given that the proposed changes still leave it to the firms to determine what is, on specific facts and circumstances, a Public Interest Entity.

Requiring firms to 'shall determine' rather than 'are encouraged to determine' does impose additional documentation requirements on Australia firms for no good reason that we see, particularly when the Factors to be considered are listed as 'include' and Examples 'may include', so leaving it to the professional judgment of the firms. On that basis we don't

believe that the purported intent to 'strengthen the requirement' to determine if an entity is a Public Interest Entity, actually achieves this purpose.

2. APESB's preliminary views on entities that will generally be captured by the definition of a Public Interest Entity

We question the need for the guidance and the examples contained in the Consultation Paper given that it is up to the Regulator who must go through a public due process to determine whether an Entity or groups of Entities are Public Interest Entities.

For instance we believe that there may be small disclosing entities, or insurance companies that have minimal public interaction (e.g. captive single purpose corporate insurance vehicles) where upon detailed examination they are not Public Interest Entities even though the Consultation Paper states that they are 'likely to be'. We believe that such statements raise expectation gap issues.

We also note that a APRA which is a Prudential Regulator whilst generally requiring Listed Entity Independence rules for particular groups of Entities (i.e. Credit Unions) has granted certain exemptions from say auditor rotation, and in our view such an exemption takes the particular exempted entity outside the Public Interest Entity definition.

Similarly we believe that it should be left to Government to determine what is a Public Interest Entity in the public sector. For example we believe that say a 300 bed retirement village would generally be a Public Interest Entity but question whether a small rural area that has say a 10 bed nursing home, requires the extra costs of auditor independence when it may well be considered by Government as being other than a Public Interest Entity.

3. APESB's view that the definition of a Public Interest Entity in APES 110 is different to AASB's definition of a Publicly Accountable Entity

We agree with the Consultation Paper that the AASB's (and IASB's) definition of 'Public Accountability' is quite different to the IESBA's and APESB's definition of Public Interest Entity. The 2 definitions are used for different purposes.

4. Operative Date

The proposed operative date of 1 January 2012 is the same operative date that the IESBA has set and which Grant Thornton is required to comply with as a member of the Global Forum of Firms and as part of our membership of Grant Thornton International. However if the APESB believes that the proposed amendments to the definition of Public Interest Entities does modify the application in any way, then we believe that a clear year's notice should be provided so that any necessary changes can be implemented. Assuming the APESB issues its amended standard towards the end of 2011 we suggest that this would require a late 2012 application date or better still the more common 1 January 2013 date.

If you require any further information or comment, please contact me.

Yours sincerely
GRANT THORNTON AUSTRALIA LIMITED

Keith Reilly
National Head of Professional Standards

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28 July 2011

Ms Kate Spargo
Chairman
Accounting Professional & Ethical Standards Board Ltd

Email: sub@apesb.org.au

Dear Ms Spargo

CONSULTATION PAPER: PROPOSED DEFINITION OF *PUBLIC INTEREST ENTITY* FOR THE CODE

We appreciate the opportunity to provide our comments on this Consultation Paper. Pitcher Partners is an association of independent firms operating from all major cities in Australia. Our clients come from a wide range of industries and include listed and non-listed disclosing entities, large private businesses, family groups, government entities and small to medium sized enterprises.

(i) APESB's proposed definition of a "*Public Interest Entity*" for APES 110

The APESB has amended paragraph 290.26 to require a positive action by firms and member bodies in the determination of whether additional entities should be treated as public interest entities. However, the criteria for this determination are not clearly defined in the bullet points and are therefore open to interpretation. We consider that paragraph 290.25 already provides a clear definition of entities that *must* be included as public interest entities, and paragraph 290.26, as drafted by the IESBA, is intended only to *encourage* further application in certain circumstances by reference to the specific conditions of individual entities and the firms concerned.

While we concur with the addition of 'public issuers of debt and equity instruments' as an example of businesses that hold assets in a fiduciary capacity, we do not consider that every instance in the examples given will result in the identification of a public interest entity. For example, as self-managed superannuation funds are limited to four members, there are many small pension funds that have been set up by family businesses, or small family groups, which would not be considered as public interest entities.

We are also concerned that the redrafting by the APESB might prompt groups of entities, such as 'disclosing entities' to be drawn into a generic classification of public interest entities. There are many small disclosing entities with only 100 members and relatively low asset bases, which would not be considered public interest entities.

In the absence of appropriate amendment, the APESB should be mindful of the adverse impact that onerous independence obligations might have on smaller audit firms, and hence the impact on the Australian market for audit services.

We support retention of the IESBA drafting as "...are encouraged to determine..." to allow consideration of additional entities on a case by case basis, rather than forcing rigid criteria to be applied across groups of entities. Alternatively, if "shall determine" is retained, the entity size and number of employees needs to be set at a high level to prevent onerous auditor independence requirements being applied to relatively small entities.

(ii) **APESB's preliminary views on entities that will generally be captured by the definition of a *Public Interest Entity***

We have examined the list of entities, which the APESB considers share the need for similar auditor independence requirements as a listed entity. We recognise that there may be entities in each of these categories that will be public interest entities. However, as discussed above, there will also be many entities that do *not* have economic significance and which should *not* be classified as public interest entities. We consider that inclusion of these categories will have an adverse impact on the market for audit services, if rotation is extended to each and every entity in these categories. If these categories are retained, they should be supported by specific size criteria to ensure that only economically significant entities are recognised as being public interest entities.

We also question the practical implications of including public sector entities within the definition of public interest entities when they are audited by the Auditor-General.

(iii) **APESB's view that the definition of a *Public Interest Entity* in APES 110 is different to AASB's definition of a *Publicly Accountable Entity***

We concur with the APESB that it is not appropriate to link the definitions of "public accountability" and "public interest entities" and with the reasons given for that conclusion.

Yours sincerely

S D AZOOR HUGHES
Partner

pwc

Ms Kate Spago
The Chairman
Accounting Professional & Ethical Standards Board Limited
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28 July 2011

Dear Kate

Proposed Definition of *Public Interest Entity* for the Code

Thank you for the opportunity to comment on the Accounting and Professional and Ethical Standard Board's ("APESB") consultation paper: Proposed Definition of *Public Interest Entity* for the Code.

General observations

As a general principle, we believe that minimal changes should be made to global standards so as to avoid unnecessary complexity. However we support any changes to the global standard where there is a clearly demonstrable reason.

We agree with the views expressed in the consultation paper that the definition of *Public Interest Entities* covers more than listed entities as many entities, because of the nature of their activities and their impact on the community would also be entities of public interest.

We are concerned that an overly prescriptive approach to the *Public Interest Entity* definition may lead to a situation where members adopt an approach that if a certain type of entity is not "on the list" then it should not be regarded as a *Public Interest Entity* rather than applying a principles based approach that considers the attributes of the entity.

In the event that a decision is made that extends the number and types of entities to be included as *Public Interest Entities*, APESB should consider extending the operative date to financial years commencing on or after 1 January 2013 for these additional *Public Interest Entities* . This will allow firms to transition both the rotation and scope of service requirements in an orderly matter and with minimal disruption.

Responses to questions posed in the consultation paper

i) APESB's proposed definition of "Public Interest Entity" for APES 110

We are generally supportive of the proposed changes to the definition of "Public Interest Entity" on the basis that minimal changes are proposed. However given the requirement to actively consider whether an entity is a "Public Interest Entity" it may be that more guidance than that already given in the Code may be appropriate.

While it is abundantly clear that certain types of entities such as banks are "Public Interest Entities", there are other entities where professional judgement needs to be exercised by the auditor to make this determination so further guidance may be helpful.

We are confused by the inclusion of the phrase "public issuers of debt and equity instruments" in paragraph 290.26 of the definition as we believe that such entities would be regarded as "listed entities" under paragraph 290.25 of the Code. If on the other hand, the inclusion of the phrase is to include issuers of debt and equity where such instruments are not listed then we believe that further guidance may be required on this aspect to make sure that there is consideration of the public interest.

For example, we do not believe that a golf club would be regarded as a "Public Interest Entity" where the issue of the bond/debt instrument is the mechanism by which an individual becomes a member of the golf club. Alternatively there may be an argument to say that where an entity issues unlisted debt or equity instruments to the public that there may be a public interest element depending on the nature of the instrument issued and the type and number of investors.

ii) APESB's preliminary views on entities that will generally be captured by the definition of Public Interest Entity

Our views on APESB's preliminary views are as follows:

a) We agree that listed entities as defined in APES 110 includes listed companies, managed investment schemes or other body that is listed on a prescribed financial market operated in Australia. We note that the definition of listed entities in APES 110 also extends to Australian audit clients that are listed overseas. We concur that this category is captured by paragraph 290.25(a) of the Code.

b) In the case of disclosing entities we do not believe that the same independence apply to them as listed entities and thus are not caught by the definition of "Public Interest Entity" under paragraph 290.25 of the definition. However we believe that it is appropriate to consider whether disclosing entities are public interest entities under paragraph 290.26 of the Code. Given the nature of disclosing entities there is likely to be an argument that such entities should be treated as public interest entities. However we believe that it is appropriate that consideration be given to whether there is a public interest element to these types of entities where there are a small number of people holding Enhanced Disclosure Securities. We do not believe that all disclosing entities are *Public Interest Entities.*

c) We do not believe that all co-operatives that issue debentures to the public will have a public interest element. We believe that this will depend on the number of people holding the debentures, the nature of the holders of the debentures e.g. institutional investors, whether the investors are sophisticated investors, the terms of the debentures etc.

d) While we regard some of the entities regulated by APRA as public interest entities we do not believe that the same independence requirements apply to these entities as apply to listed entities and therefore they are not captured by paragraph 290.25 of the Code. However, we consider it appropriate to consider whether such entities are public interest entities under paragraph 290.26 of the Code. We do not believe that all entities regulated by APRA would be regarded as Public Interest Entities.

This is due to the fact that APRA regulates a variety of entities only some of which will have attributes of a Public Interest Entity. For example a small superannuation plan of ten members is unlikely to be a Public Interest Entity whereas an Industry superannuation fund with a large number of members is likely to be a Public Interest Entity.

e) We do not believe that all Public Sector Entities would be regarded as Public Interest Entities merely because they have tier 1 financial reporting requirements. In practice the independence requirements applicable to federal state and territory governments is set by the auditor general responsible for these audits.

iii) APESB's view that the definition of a Public Interest Entity is different to AASB's definition of a Publicly Accountable Entity

We agree with the APESB's view that a Public Interest Entity is different to a Publicly Accountable Entity. It is not unusual for there to be many users of an entity's financial statements, examples include bankers, finance companies, supplier's customers etc. In order to meet the information requirements of these various parties such entities are required to prepare financial statements applying all applicable IFRS accounting standards. Such entities may or may not have a public interest element to them. As noted previously we believe that the attributes of an entity needs to be considered to determine whether it is a Public Interest Entity. The linking of two different but similar concepts may lead to confusion as to what constitutes a Public Interest Entity.

We look forward to discussing this matter further. Please do not hesitate to contact me on 02) 82660102 if you have any questions.

Yours faithfully

Niamh Scanlon

Niamh Scanlon
Independence Partner

Deloitte.

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28 July 2011

The Chairperson
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Via email: sub@apesb.org.au

Dear Kate,

Consultation Paper: Proposed Definition of Public Interest Entity for the Code

We appreciate the opportunity to comment on the Consultation Paper: Proposed Definition of Public Interest Entity for the Code (the Paper) issued by the Accounting Professional & Ethical Standards Board (APESB) in June 2011.

We are supportive of the objective of the APESB in issuing the Paper and its effort to maintain close consistency with the wording and structure of the IFAC Code.

We also support the view that the more restrictive independence requirements in the Code should be applied where an important public interest exists, and therefore agree that the definition of PIE does not just apply to listed entities.

In our view, the intention of paragraph 290.25 is to ensure that the auditors of non-listed entities that are required by local law or regulation to comply with the same independence provisions as those that apply to listed entities cannot avoid applying the stricter provisions of the Code.

That is, paragraph 290.25 is in place to respect and support local regulatory and legislative decision making, where a regulator has specified entities which are defined as PIEs (such as by the European Union) or in respect of which the audit is required to be conducted in compliance with listed entity independence requirements (such as certain large banking organisations in the United States which are required by the FDIC to have audits conducted in accordance with the US SEC independence rules applicable to listed companies, whether or not they are public companies).

Paragraph 290.26 then allows for member bodies and firms to also determine in the local jurisdiction, the types of entities, or categories of entities, that may be treated as PIEs.

1. Proposed Definition of PIE for APES 110

As we have stated in previous submissions, we consider that APES 110 should reflect the wording and structure of the IFAC Code as closely as possible, preferably with no changes, unless changes are shown to be required for legislative or regulatory reasons.

The addition of "public issuers of debt and equity instruments" to the definition of PIE adds helpful guidance to assist in the consideration of types of entities that may be considered PIEs.

However, adding "shall determine" may not achieve the consistency in approach or greater consensus between firms requested by ASIC and the professional bodies, as indicated in the Background section of the Paper. The proposed change in wording to require member bodies and firms to determine whether to treat additional entities as PIEs may result in a number of different interpretations and it is not clear what public interest outcome this change is seeking to achieve.

2. Entities that will generally be captured by the definition of PIE

It is unclear in section (ii) of the Paper whether the APESB is intending to make a determination as a member body under paragraph 290.26, or to set out its view regarding which entities may meet the definition of paragraph 290.25(b).

As noted in the introduction, we do not consider that 290.25(b) currently has application in this jurisdiction. Although the categories of entities set out in section (ii) of the Paper do exhibit some characteristics of independence requirements imposed on listed entities (i.e. rotation requirements for APRA entities), the auditors of these entities are not required by any regulator to comply with the "same independence requirements that apply to the audit of Listed Entities".

If the intention of section (ii) of the Paper is for APESB to determine under paragraph 290.26 whether other entities should be treated as PIEs, then we recommend the requirement that the entity has "a large number and wide range of stakeholders" and the factors of "size", "number of employees" and the "holding of assets in a fiduciary capacity" must be taken into account. Without doing so, it would appear that the Paper fails to identify the public interest that it is seeking to protect.

We are concerned that defining broad "categories" of entities as PIEs may lead to the inclusion of a number of smaller entities that do not in fact have a large number or wide range of stakeholders, nor meet any of the factors above, and therefore do not meet the definition of a PIE. This "one size fits all" approach may have a detrimental business impact on smaller entities which could result in reduced resource availability to service those smaller entities.

For example, non-listed disclosing entities can have a minimum of 100 security holders and we do not consider that this would prima facie meet the criteria of a large number and wide range of stakeholders. This would also be the case for co-operatives that issue debentures to the public. There can be small and large, profit and not-for-profit co-operatives as well as debentures offered to members and/or to employees. The size, nature and range of stakeholders for each entity may in fact be very different and lead to a different conclusion when evaluating whether in fact they meet the definition of a PIE.

APRA as the prudential regulator has determined that the auditors of ADIs, General Insurance and Life Insurance entities that are subject to APRA prudential standards must comply with some (but not all) of the Corporations Act independence requirements that apply to listed entities, however we believe that it is also reasonable to be able to take size into account for the reasons stated above.

We do not agree that Tier 1 public sector entities meet the definition of a PIE. Even if it is argued that the holding of assets in a fiduciary capacity is not a critical factor, we consider that it is the role of the Auditors General to account to taxpayers for management of public funds and therefore determine whether certain entities should be treated as PIEs. Most Auditors General have already developed comprehensive independence rules that apply at a State and Federal level which are different and in some cases more prescriptive than the Code.

In summary, we recommend that the other factors outlined in the Code be considered – most importantly size – to add to the guidance on what entities may be considered PIEs. We agree on this basis that there may be many large managed investment schemes, retail superannuation funds, banks and insurance companies that should be considered PIEs, however do not agree with the nomination of broad categories without the consideration of these factors.

3. PIE in APES 110 is different to AASB's definition of a Publicly Accountable Entity

We agree with the conclusion that the definition of PIE is different to AASB's definition of Publicly Accountable Entity (PAE). These two definitions have different purposes and meanings, and therefore it would not be appropriate to include PAE in the definition of PIE.

4. Other Matters

a. If the operative date refers only to the proposed changes to the wording of paragraph 290.26, then we do not have concerns with the date. However if the intention of the APESB is to define what entities must be considered PIEs by firms, then we consider that the proposed operative date of 1 January 2012 will not leave enough time for firms to prepare for increased auditor rotation requirements and non audit service restrictions that may apply to the additional entities. We suggest transitional provisions similar to those provided when APES 110 was re-issued containing key audit partner rotation requirements and increased non-audit service restrictions for PIEs and that the provisions apply as of 1 January 2013 at the earliest.

b. If paragraph 290.26 is amended we recommend the Conformity with International Pronouncements section in APES 110 should be updated to indicate the difference to the IFAC Code.

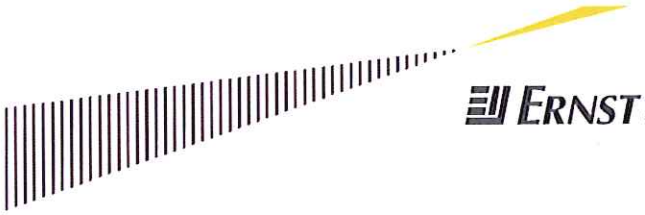
We would be pleased to discuss our comments with you. If you wish to do so, please do not hesitate to contact me on (02) 9322 5258.

Yours sincerely,

Deloitte Touche Tohmatsu

Marisa Orbea

Partner



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28 July 2011

Ms Kate Spargo
Chairman
Accounting Professional and Ethical Standards Board
Level 7, 600 Bourke Street
Melbourne VIC 3000

By E-mail: sub@apesb.org.au

Public Interest Entity Consultation Paper

Dear Ms Spargo,

We appreciate this opportunity to comment on this important Consultation Paper as it addresses an issue that has significant impact for the users of audit opinions and practical implications for the profession.

Public Interest

A consideration of "public interest entities" "PIE" implies a consideration of what is "public interest", particularly in a context of how professional accountants and auditors may impact that.. As you are aware IFAC is currently attempting to define a framework around this concept in "IFAC Policy Position Paper #4 A Public Interest Framework for the Accountancy Profession."
In looking at that Paper and some of the submissions to IFAC regarding it, it becomes apparent that "public interest" as a concept is difficult to define, and can range over a vast continuum of possibilities and concepts.

However taking just several of the comments from the paper and submissions is useful to inform our current thinking about the definition of a PIE.

The PIE definition for the purpose of inclusion in APES 110 discussion largely impacts certain requirements regarding auditors of financial statements and their independence and objectivity eg rotation and restriction of services. Therefore it is reasonable to assume for the purposes of this consultation paper that "the public", and the interests they have should be closely aligned to financial reporting (and the audit thereof) and the interests the public has in financial reporting are the concepts that drive the definition of a PIE. For example if the overwhelming public interest in an entity is about other matters, eg service delivery, taxation, equity, resources, policy, or charitable activities, then for the purpose of APES 110 definition of a PIE these entities should be disregarded. Indeed the Board in its submission to IFAC makes the point that professional accountants and their services cannot serve all public interests.

Secondly, the first principle of the IFAC paper is "1. Consideration of costs and benefits for society as a whole" Without narrowing the intent of this principle unreasonably, we believe it is important that any solution to PIE definition needs to achieve a balance between overall benefit and the direct and hidden overall costs.

The costs arising from expansion of the category of PIEs include increased costs incurred by audit firms and their clients, and hence stakeholders of the clients, in managing their compliance with APES 110 , including the maintenance of records for rotation purposes and increased monitoring of non-audit services. In addition increasing rotation requirements for small entities may mean that only larger firms have the required pool of registered auditors, perhaps leading to a increased concentration of audits in fewer firms. There also can be a hidden cost in some necessary non audit services being performed by firms that are not as familiar with the client's needs as the auditors.

Combining these two concepts we believe a PIE should be defined for the purposes of APES 110 based on the principle that the interest of the public in a PIE needs to be overwhelmingly connected with a personal financial stake of the members of the public in that entity, and that stake in total has to be significant. It is not sufficient that the interest be conceptual and broad based.

Specific Comments

You have asked for comments on three maters as follows

(i) APESB's Proposed Definition of a PIE for APES110.
We are broadly supportive of the definition as set out, including the change in wording from "are encouraged to" to "shall". In order to comply with the principles set out by IESBA and APES 110 we feel "shall" is a better term to allow maximum possible consideration of this issue by professional accountants.
We wonder whether the wording from APESB saying that "member bodies" shall do something is required. Perhaps some slight wording change is needed here to direct the message to the right persons.

In addition audit committees and boards need to consider the issues and in the interests of joint responsibility for independence matters their view should be sought, or taken into account in deciding if an entity is a PIE, as opposed to most responsibility resting on the professional accountant.

The addition of the phrase "public issuers of debt and equity instruments" is intended to amplify the other provisions of the Code and fits with our principle referred to above about a personal financial stakes. However please refer to our comments below concerning the use of the definition of "disclosing entities" in an Australia context in an attempt to define entities that may fit the category of public issuers.

(ii) APESB's preliminary views on entities that will generally be captured by the definition of a Public Interest Entity

We wish to make a number of comments on this section. However we welcome guidance being given on what entities are likely PIEs. If this was to be included in APES 110 we believe that additional text emphasising that circumstances may differ in specific cases and there may be situations where strict application of the guidance is not appropriate.

Firstly referring back to the principle position described above, we feel that in all categories of entitles that APESB may wish to express a view on, a threshold should be set in terms of the sum total of members of the public that have a stake, and/or the total of that financial stake, below which it is considered that the overall costs of implementing the definition exceed the benefit if that definition was adopted. In short, if the number of members of the public that have an interest in that entity are small, or the financial stake in total in that entity is small then the entity should not be defined as a PIE for the purposes of APES 110.

It is recognised that the interests of an individual may be important to them, but there must be an overall consideration of the situation.

Setting such thresholds may be difficult, and that difficulty may lead to the proposition that it should be set by individual members and firms. However some guidance may be useful. An example, and by no means is this the only way of defining a threshold, is that here are minimum shareholder numbers required for listed entities (approx 300), and perhaps that is a useful threshold to consider by saying that a PIE should have no less than, say, 300, unrelated public persons who have a personal financial stake. In addition a threshold could be set on the total of that financial interest for each potential PIE, e.g. the total financial stake or amount due to non related members of the public exceeds, say, $1,000 million. We believe both threshold tests need to be met.

By such a threshold being set a balance between the benefit and costs of the PIE definition will be better achieved.

Disclosing entities. We believe this category will include many smaller entities and schemes. Included will be many agricultural products MIS's, which are more properly characterised as contracts to perform services as opposed to personal financial stakes. We believe the thresholds discussed above need to be applied to this category, other than of course to listed entities.

APRA regulated entities. In some cases these entities are wholly owned subsidiaries or branches of offshore parents required to register in Australia under APRA in order to conduct business. Some conduct a low level of business primarily for large corporates who may not rely on audited financial reports of the local entity as the basis for decision making, e.g. reinsurance operations. In many cases these entities would be regarded as PIEs, but, we would contend, subject to the thresholds.

Public Sector Entities In our view such entities should not be included in the definition of a PIE. It is undoubted that the overall activities of such entities are a mater of public interest. However in line with our views on the principles of defining public interest for the purpose of APES 110 we believe that "public interest" is not sufficiently connected to a close personal financial stake to warrant inclusion as PIEs. In our view the public interest is more concerned with policy, resource allocation, service delivery and national strategy. There is, of course, an element of interest in the financial reports, but we believe this is less significant to the public than interest in these other matters. In addition governments and Auditors-General will have their own arrangements for the governance and audit of public entities.

Superannuation and Pension Funds Superannuation and pension funds are not mentioned in the list of entities that are most likely PIEs. It is difficult to argue, given the nature of such funds and the increasing reliance by the public on them for post retirement income, that larger public offer superannuation funds are not PIEs, despite financial reports not being automatically distributed to members or prominently published in full in many cases. We believe that the threshold referred to above should apply to such funds, and the larger funds are included specifically in your list of entities.

(iii) APESB's view that the definition of a Public Interest Entity in APES 110 is different to APESB's definition of a Publicly Accountable Entity.

We concur with the views expressed in the consultation paper.

Transition

It is likely that a number of entities will be designated at PIEs following the projected changes to APES 110. We believe a transition period is needed to facilitate the implementation of these changes. It would be appropriate to apply the changes for the first time in financial periods beginning on or after 1 January 2013. Transition should also include provision for exceptional circumstances, where a further short period of transition is permitted if required.

Conclusion

In summary we believe that the definition of PIE should be set such that Disclosing Entities and Public Offer superannuation funds with over 300 members and over $1billion of net assets should be designated as PIEs. This size cut-off is important to avoid imposing an undue burden on relatively small entities or entities with a small number of stakeholders. In our view this threshold should also be applied to APRA regulated deposit -taking and insurance entities. In our view public sector entities will generally not meet the definition of PIEs that is relevant for the purpose of APES 110.

We would be happy to discuss this submission further, if required.

Yours Sincerely

David Balcombe
Partner

Australian Government
Auditing and Assurance Standards Board

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Melbourne VIC 3000 Australia
PO Box 204, Collins Street West
Melbourne VIC 8007

28 July 2011

Ms Kate Spargo
Chairperson
Accounting Professional and Ethical Standards Board Limited
Level 7
600 Bourke Street
Melbourne VIC 3000

Dear Kate,

Accounting Professional and Ethical Standards Board Limited Consultation Paper: Proposed Definition of *Public Interest Entity* for the Code

The Auditing and Assurance Standards Board (AUASB) appreciates the opportunity to comment on APESB Consultation Paper CP 01/11.

Overall, we support the APESB's proposed changes to APES 110 *Code of Ethics for Professional Accountants*. In particular, we note that the proposed changes will strengthen the requirement for firms and member bodies to determine whether to treat additional entities, or certain categories of entities, as Public Interest Entities. At the same time, APES 110 will continue to align with the *Code of Ethics for Professional Accountants* issued by the International Ethics Standard Board for Accountants (IESBA) in July 2009. It is in the public interest to have globally consistent and high quality standards on ethical requirements, including independence requirements for audit and assurance practitioners.

We provide a specific comment on the drafting of the definition of Public Interest Entity in the attachment to this letter.

Yours sincerely,

Merran Kelsall
Chairman

Attachment

Telephone: + 61 3 8080 7400 Facsimile: + 61 3 8080 7450 Email: enquiries@auasb.gov.au Web: www.auasb.gov.au
ABN 80 959 780 601

Attachment

Definition of Public Interest Entity

The definition of Public Interest Entity in the list of definitions in the Code is:

> ***Public Interest Entity*** means:
>
> *(a) A Listed Entity; **and***
>
> *(b) An entity (a) defined by regulation or legislation as a public interest entity or (b) for which the audit is required by regulation or legislation to be conducted in compliance with the same Independence requirements that apply to the audit of Listed Entities. Such regulation may be promulgated by any relevant regulator, including an audit regulator.*

We suggest that use of the word "**and**" after "(a) A listed Entity" in this definition (and in proposed changes to paragraph 290.25 of the Code – see below) may lead to the unintended consequence that only certain listed entities are covered by the definition.

The word "and" implies that, for an entity to be a public interest entity, it must meet both limbs of the definition, i.e. it must be both a listed entity **and** an entity (a) defined by regulation or legislation as a public interest entity or (b) for which the audit is required by regulation or legislation to be conducted in compliance with the same Independence requirements that apply to the audit of Listed Entities.

Accordingly, to tighten the definition and reduce the risk of misinterpretation, we suggest that "**and**" be replaced by "**or**" in this instance.

We note that APESB adopted this approach with the definition of "Firm" in the Code, i.e. while the IESBA uses "**and**" in the definition of "Firm", APESB replaced "**and**" with "**or**". Using "and" in the definition of "Firm" would have implied that all four of the limbs of the definition needed to be met, whereas the intention is that only one limb is required to meet the definition.

Paragraph 290.25

CP 01/11 (page 5) is not entirely clear in relation to the proposed changes to paragraph 290.25 of the Code, as it does not show the proposed changes in mark up. However, it seems to suggest that paragraph 290.25 of the Code will be amended, as follows:

> Proposed paragraph 290.25 in CP 01/11:
>
> ~~*Section 290 contains additional provisions that reflect the extent of public interest in certain entities. For the purpose of this section,*~~ *Public Interest* ~~*Entities*~~ *Entity* ~~*are:*~~
>
> *(a)* ~~*All*~~ *A Listed* ~~*Entities*~~*Entity; and*
>
> *(b)* ~~*Any*~~ *An entity (a) defined by regulation or legislation as a public interest entity; or (b) for which the audit is required by regulation or legislation to be conducted in compliance with the same Independence requirements that apply to the audit of Listed Entities. Such regulation may be promulgated by any relevant regulator, including an audit regulator.*

It appears that, while the IESBA uses the plural forms of "public interest entities" and "any" in paragraph 290.25, APESB proposes to use the singular forms of "Public Interest Entity" and "An". We have no difficulty with this proposed change, as it will align with the existing definition of "Public Interest Entity" included in the list of definitions in the Code. However, again, we suggest that the word "**and**" after "(a) A listed Entity" be replaced with "**or**" to ensure the definition is applied as intended.

Paragraph 290.26

Proposed paragraph 290.26 in CP 01/11:

Firms and member bodies ~~are encouraged to~~shall determine whether to treat additional entities, or certain categories of entities, as Public Interest Entities because they have a large number and wide range of stakeholders. Factors to be considered include:

- *The nature of the business, such as the holding of assets in a fiduciary capacity for a large number of stakeholders. Examples may include financial institutions, such as banks and insurance companies, public issuers of debt and equity instruments and pension funds;*
- *Size; and*
- *Number of employees.*

We support the use of "shall" to replace "are encouraged to", as this will strengthen of the requirement for firms and member bodies to determine whether to treat additional entities, or certain categories of entities, as Public Interest Entities.

We support the inclusion of "public issuers of debt and equity instruments", as these entities may have a public interest element in certain circumstance. By stating them explicitly, firms and member bodies will be required to determine whether public issuers of debt and equity instruments should be treated as Public Interest Entities.

ASIC
Australian Securities & Investments Commission

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1 August 2011

Ms Kate Spargo
The Chairman
Accounting Professional & Ethical Standards Board Limited
Level 7, 600 Bourke Street
MELBOURNE VIC 3000

Dear Ms Spargo

CONSULTATION PAPER 01/11 – PROPOSED DEFINITION OF *PUBLIC INTEREST ENTITY* FOR THE CODE

Thank you for the opportunity to comment on the consultation paper on the proposed revisions to the definition of Public Interest Entity in the revised APES 110 "Code of Ethics for Professional Accountants" (**"the Code"**).

We welcome the Accounting Professional & Ethical Standards Board's (**"APESB's"**) focus on the review of the current definition of Public Interest Entities. The definition set by the International Ethics Standards Board for Accountants (**"IESBA"**) was a minimum definition, to be reviewed for the application of the independence requirements in each jurisdiction.

The revision of the definition of Public Interest Entities is an opportunity to provide greater clarity to practitioners and professional bodies.

Ability to define "public interest entity"

The second last paragraph on page 7 of the Consultation Paper says "Currently in Australia ASIC has not specified in regulation which entities have a public interest element. However, the Australian Accounting Standards Board (AASB) has defined *Publicly Accountable Entity* in AASB 1053 ...".

The Board appears to assume that ASIC is able to create a regulatory or legislative requirement as to the entities that are Public Interest Entities for the purposes of the second limb of the definition in paragraph 290.25 of the Code. Neither ASIC or the AASB has such an ability.

Accordingly, we believe that it is the role of the APESB to specify the entities that are Public Interest Entities for the purposes of applying the Code.

Use of "public accountability" definition

In our earlier submission to the APESB on the revised Code, we stated that we believe the definition of Public Interest Entity should be aligned with the term "public accountability" in accounting standard AASB 1053 "Application of Tiers of Australian Accounting Standards". We remain of the view that consistency in approaches between the proposed Code and the accounting standards will be simpler and may reduce any possible confusion among auditors and audit clients.

The APESB's proposed amendment to paragraph 290.26 of the Code requires firms and member bodies to determine whether to treat additional entities or certain categories of entities as Public Interest Entities. Factors are provided for consideration, including a factor that bears resemblance to the part of the AASB's definition of "public accountability" dealing with entities holding assets in a fiduciary capacity. However, firms need only consider whether such entities are Public Interest Entities. The firms are not required to treat these entities as public interest entities.

To avoid confusion and inconsistent application of the Code, the Board should require entities that hold assets in a fiduciary capacity for a broad group of users as one of their primary businesses to be treated as Public Interest Entities, consistent with the "public accountability" definition in AASB 1053.

Types of entities

The Consultation Paper lists types of entities that the APESB considers will generally be captured by the revised definition of a Public Interest Entity. To avoid possible confusion and inconsistency, we believe that these entities should be deemed to be Public Interest Entities.

We also believe that the following types of entities should be deemed to be Public Interest Entities:

- unlisted registered managed investment schemes; and
- regulated superannuation plans.

These entities hold assets for their members. Their responsible entities and trustees are subject to fiduciary obligations in relation to the assets held for members.

At this time, self-managed superannuation fund auditor independence requirements are being considered separately by government.

Please do not hesitate to contact me on (02) 9911 2079 should you have any questions in relation to this submission.

Yours faithfully

Doug Niven
Senior Executive Leader
Accountants and Auditors

1 August 2011

The Chair
Accounting Professional & Ethical Standards Board Limited
Level 7
600 Bourke Street
MELBOURNE VIC 3000

Via email: sub@apesb.org.au

Dear Ms Spargo

APESB CP 01/11
Consultation Paper: Proposed Definition of *Public Interest Entity* for the Code

Thank you for the opportunity to comment on this Consultation Paper of a proposed definition of *Public Interest Entity*. The Institute of Chartered Accountants in Australia, CPA Australia and the Institute of Public Accountants (the Joint Accounting Bodies) have considered the Consultation Paper and our comments follow.

The Joint Accounting Bodies (JAB) represent over 180,000 professional accountants in Australia. Our members work in diverse roles across public practice, commerce, industry, government, and academia throughout Australia and internationally.

General comments

The Joint Accounting Bodies welcome the APESB's consultation on this important issue of what constitutes a Public Interest Entity in the context of the independence requirements of APES 110 *Code of Ethics for Professional Accountants*. We note that where an entity is a Public Interest Entity, there are implications for a firm conducting an audit or review of that entity that involve consideration of or an impact on:

- Employment with an audit client
- Long association of senior personnel (including partner rotation) with an audit client
- Provision of non-assurance services to audit clients, specifically:
  - Accounting and bookkeeping services
  - Valuation services
  - Certain taxation services
  - Internal audit services
  - Certain IT Systems services
  - Certain recruiting services
- Where total fees from the audit client and its related entities exceed 15% of the total fees received by the firm.

There are therefore important consequences to the decision that an entity is a Public Interest Entity, both in relation to the matter of the auditor's independence, and to the conduct of the practice within which the auditor operates. Significantly, when a firm makes a determination that an entity is a Public Interest Entity, certain existing arrangements for the provision of non-assurance services to that entity may need to be terminated.

Effective date

As a consequence of member feedback about the potential impact on a firm of a determination that an audit client is a Public Interest Entity, the JAB consider that the APESB should give consideration to extending the period before these provisions become effective. Currently the effective date is 1 January 2012. Given that the issue of what constitutes a Public Interest Entity is still being clarified through this consultation process, the JAB believe that the effective date should be extended to 1 January 2013, with early adoption permitted. This should allow an appropriate timeframe for a familiarity with and an orderly transition to these Public Interest Entity provisions, which extend the requirements for listed entities to a broader group of entities.

APESB's preliminary views on entities that will generally be captured by the definition of a *Public Interest Entity*

The JAB agree with the APESB's views on entities that will generally be captured by the definition of a Public Interest Entity. We understand however that the issue of whether an entity is a Public Interest Entity will be determined on a case-by-case basis, and will ultimately be a decision made by the member in public practice. We are therefore of the view that the APESB should clarify the status of its views on this issue. Do the APESB's views constitute guidance for members in public practice, or does the APESB consider that their views are determinative of the issue? While we believe that these views should constitute guidance for members, we consider that the APESB should make a definitive statement about how members are to treat the APESB's views in this context.

Further we note that the consultation paper does not explicitly address what APRA-regulated superannuation entities would be likely to be within the definition of a Public Interest Entity. We consider that it would be beneficial for members to have the APESB's views on this issue.

APESB's view that the definition of a *Public Interest Entity* in APES 110 is different to AASB's definition of a *Publicly Accountable Entity*

The JAB agree with the APESB that the definition of a Public Interest Entity should differ from the AASB's definition of a Publicly Accountable Entity, for the reasons outlined in the consultation paper.

Comments on the wording of the definition

Two occurrences of the definition

We note that the definition of *Public Interest Entity* appears in two locations in APES 110 – in the Definitions section (Section 2) and in paragraph 290.25 – and that the wording differs slightly between these two occurrences. The wording in the Definitions section is generally expressed in the singular sense, while the wording in paragraph 290.25 is expressed in the plural.

We consider that these two occurrences of the definition should be identical, and that the use of the singular sense is to be preferred. Because an auditor will only be conducting an audit engagement in respect of an entity (not a class of entities), the issue of whether that entity is a Public Interest Entity will be considered by the auditor on a singular basis.

Use of the word "and" between (a) and (b) of the definition

The current wording of the definition uses the word "and" between the (a) and (b) parts of the definition. In our view this should be changed to the word "or" to give the correct sense of the meaning. This issue has been previously raised with the APESB.

Reference to "the audit" within part (b) of the definition

Part (b) of the definition refers to an entity "for which **the audit** is required by regulation or legislation to be conducted in compliance with the same Independence requirements that apply to the audit of Listed Entities" *[emphasis added]*. We have received member enquiries about what this reference to "the audit" denotes. In our view the meaning of this term should be derived from the context of Section 290, which would mean that it refers to audit and review engagements in which a member in public practice expresses a conclusion on financial statements (paragraph 290.1). However, we recommend that the APESB consider whether they agree with this interpretation, and whether guidance is required for members on this point.

The point at issue here is that a regulator may specify independence requirements for an assurance engagement that is not within the scope of section 290, and the question then becomes whether those requirements are to be considered in determining whether an entity is a Public Interest Entity.

Comments on the wording of paragraph 290.26

The JAB agree with the wording changes proposed to paragraph 290.26.

Reference to "member bodies" in paragraph 290.26

We note that paragraph 290.26 refers to "firms and member bodies" determining whether to treat entities as Public Interest Entities. We understand that this wording is inherited from the IESBA Code on which APES 110 is based. In our view the reference to member bodies here is not warranted in the Australian context and should be removed.

Determining Public Interest Entity status by reference to the number and range of stakeholders

The wording of paragraph 290.26 suggests that the number and range of stakeholders is a more significant factor in determining whether an entity is a Public Interest Entity than the other factors listed in that paragraph. This is because the paragraph states that the other factors (nature of the business, size and number of employees) would be considered **because** the entities or categories of entities under consideration have a large number and wide range of stakeholders. The JAB request that the APESB confirm this interpretation that the number and range of stakeholders is the most significant issue in this determination.

If the APESB agrees that the number and range of stakeholders is the primary indicator of whether an entity is a Public Interest Entity, the JAB recommends that the APESB consider whether guidance can be provided on what number and range of stakeholders might typically characterise an entity as a Public Interest Entity.

As a related issue, we request that the APESB consider whether the use of the word "and" in the reference to "a large number and wide range of stakeholders" is intended. In other words, is it necessary for an entity to have **both** a large number and a wide range of stakeholders before it needs to be considered as a potential Public Interest Entity?

If you have any questions regarding this submission, please do not hesitate to contact either Paul Meredith (The Institute) at paul.meredith@charteredaccountants.com.au, Eva Tsahuridu (CPA Australia) at Eva.Tsahuridu@cpaaustralia.com.au or Reece Agland (IPA) at reece.agland@publicaccountants.org.au .

Yours sincerely

Alex Malley
Chief Executive Officer
CPA Australia Ltd

Graham Meyer
Chief Executive Officer
Institute of Chartered Accountants in Australia

Andrew Conway
Chief Executive Officer
Institute of Public Accountants

Australian Public Policy Committee

Promoting positive public policy outcomes in auditing and accounting in Australia

GPO Box 2464
Sydney NSW 2001

4 August 2011

The Chairman
Accounting Professional and Ethical Standards Boards Limited
Level 7, 600 Bourke Street
Melbourne VIC 3000
Australia

By email to: sub@apesb.org.au

Dear Kate,

Re: Consultation Paper: Proposed Definition of *Public Interest* Entity for the Code

The Independence Task Force of the Australian Public Policy Committee (APPC) welcomes the opportunity to contribute to the Accounting Professional and Ethical Standards Board (APESB) review of the definition of "Public Interest Entity" in the revised APES 110 *Code of Ethics for Professional Accountants* in the Australian context and respond to the issues raised in Consultation Paper 01/11 (the Consultation Paper).

The APPC includes representatives of the large accounting firms and the three professional accountancy bodies in Australia[1]. The APPC's objective is to promote positive public policy outcomes in respect of audit, accounting and related services in Australia that:

1. Enhance the reputation of the accounting profession by setting and adhering to high standards of ethical and professional conduct.

2. Preserve the viability of a high quality, independent, external financial audit profession through an ongoing focus on audit quality and fair and equitable apportionment of the financial risks associated with the audit function.

3. Add value to the accounting profession's clients and stakeholders.

The Independence Task Force (ITF) is a working group of the APPC that considers issues relating to professional independence requirements for auditors as they impact on members of the profession, its clients and the investing community.

[1] The APPC includes BDO, CPA Australia, Deloitte, Ernst & Young, Grant Thornton, KPMG, PKF, PwC, The Institute of Chartered Accountants in Australia and the Institute of Public Accountants. In addition, Pitcher Partners is represented on the ITF.

This submission outlines the consensus position of the ITF on matters raised in the Consultation Paper.

It should be noted that the respective firms and professional organisations that comprise the ITF have made their own individual submissions to the APESB on the Consultation Paper. Please refer to these submissions for detail on the specific views of individual ITF members.

(i) APESB's proposed definition of a "Public Interest Entity" for APES 110

The ITF supports the general principle that changes to international standards should only be made where this is justified in the Australian context.

Accordingly, we support the definition of Public Interest Entity in paragraph 290.25.

We agree that the list of entities that might be considered to be Public Interest Entities is likely to be broader than listed entities.

We note that 290.25 allows for relevant regulators to define additional entities as Public Interest Entities by regulation or legislation. We believe this to be appropriate and note that regulators are normally well placed in terms of access to information and resources to be able to identify individual circumstances and/or sectoral issues that may warrant classification of an entity as a Public Interest Entity.

However, whilst individual views vary (refer individual submissions) there is not consensus support within the ITF for the proposed change in wording (from "are encouraged to" to "shall") in 290.26.

Paragraph 290.26 provides a mechanism for firms and member bodies to determine whether to treat additional entities, or categories of entities, as Public Interest Entities. We agree this mechanism should exist, which in practice may well be exercised in consultation with the boards and/or audit committees of the relevant entities.

However there is not consensus support within the ITF for mandating that members "shall" determine if an entity should be treated as a Public Interest Entity. It is questioned whether this change in wording will lead to any wider capture of entities classified as Public Interest Entities, whilst imposing additional documentation requirements on firms and hence additional costs.

It is also noted that the obligation to take positive action to determine if an entity is a Public Interest Entity imposed by the use of "shall" is not supported by the non-prescriptive language used elsewhere in this paragraph (e.g. "may include") and that there is a current ambiguity in the drafting as to which characteristics of the entity (number and wide range of stakeholders versus nature of the business, size and number of employees) trigger its treatment as a Public Interest Entity.

The ITF agrees that the addition of the words "public issuers of debt and equity instruments" in this section is useful but only as further guidance for consideration by a member or firm as to what might constitute a Public Interest Entity.

(ii) APESB's preliminary views on entities that will generally be captured by the definition of a Public Interest Entity

It is unclear in what context APESB is offering its preliminary views on entities that will "generally be captured by the definition of a Public Interest Entity". Specifically, it is unclear whether APESB is proposing this list under paragraph 290.25 as a regulator, or as preliminary guidance to assist members and firms under paragraph 290.26. If the former, then we believe this needs to be clarified by APESB and further specific consultation undertaken.

In either case, the ITF does not agree that all entities within the following categories:

- Disclosing entities
- Co-operatives that issue debentures to the public
- APRA-regulated entities
- Public Sector entities with Tier 1 reporting requirements

should generally be regarded as Public Interest Entities.

With the exception of Tier 1 public sector entities (where auditor independence requirements will be specified by auditors general and should not fall under limb 290.26) in each of the above categories there will conceivably be entities that will warrant consideration as Public Interest Entities. However, many in each category will not, frequently because of issues of scale.

The ITF is in agreement that category-based attempts to define what constitutes a Public Interest Entity are inappropriate. Instead, the determinants should be the characteristics of the entity in question (where the entity is not captured under limb 290.25).

It must be borne in mind that the consequence of classification of an entity as a Public Interest Entity will be that stricter independence rules will apply to the financial auditor of that entity, including in respect of auditor rotation and the provision of non-audit services.

Underlying the definition of what constitutes a Public Interest Entity is the concept of the public interest. Whilst "public interest" is not defined, for the purposes of defining a Public Interest Entity under section 290 of the Code the focus should be on the public interest served by requiring a higher standard of auditor independence. This focuses attention on financial matters and the "interests" of users of financial reports, rather than on broader issues of "the public interest" more generally. To illustrate by example, clearly the work done by many charitable organisations is in the public interest but this needs to be distinguished from the separate question of whether it is in the public interest to impose stricter independence requirements on the auditors of such organisations. The latter question is the one that should determine what constitutes a Public Interest Entity in this context.

As with any area of regulation, assessing whether imposing stricter independence requirements on auditors is in the public interest involves assessing the potential costs as well as benefits. Costs include the potential impact of rotation requirements on smaller audit firms, the possible exclusion of auditors with industry-specific knowledge from assignments in that sector, consequential impacts on audit clients and the market for audit services in general, and potentially increased compliance costs (including those arising from the need to document reasons behind professional judgments).

For these reasons, the consensus view of the ITF is that category-based definitions of what constitutes a Public Interest Entity are inappropriate and that regard needs to be had instead to the specific characteristics of an entity to determine whether it might be treated as a Public Interest Entity.

There is a clear need for guidance to be issued to assist members and firms in assessing whether to treat an entity as a Public Interest Entity under paragraph 290.26. The ITF would encourage the APESB to undertake public consultation on more detailed guidance that is needed to assist members (and boards/audit committees as appropriate) to evaluate the characteristics of an entity that might merit its treatment as a Public Interest Entity under paragraph 290.26. Such guidance should have particular regard to specifying the size characteristics (number and range of stakeholders, financial turnover, number of employees etc) that might influence determination of an entity as a Public Interest Entity under limb 290.26.

(iii) APESB's view that the definition of a Public Interest Entity is different to AASB's definition of a Publicly Accountable Entity

The ITF agrees that Public Interest Entities and Publicly Accountable Entities are not the same and that the definitions serve different purposes.

Concluding comments

The ITF agrees that should it be the intention of the APESB to prescribe additional Public Interest Entities in addition to those captured under paragraph 290.25 then a deferred commencement date of no earlier than the financial year commencing 1 January 2013 should apply.

For further information, please contact the undersigned on (02) 8266 0102 or by email to niamh.scanlon@au.pwc.com

Yours sincerely,

Niamh Scanlon

Niamh Scanlon
Chair
Independence Task Force

ACAG AUSTRALASIAN COUNCIL OF AUDITORS-GENERAL

4 August 2011

The Chairperson
Accounting Professional & Ethical Standards Board Limited
Level 7, 600 Bourke Street
Melbourne VIC 3000

Dear Ms Spargo

Consultation Paper CP 01/11: Proposed Definition of *Public Interest Entity* for the Code

Attached is the Australasian Council of Auditors-General (ACAG) response to the Consultation Paper referred to above.

The views expressed in this submission represent those of all Australian members of ACAG.

The opportunity to comment is appreciated and I trust you will find the attached comments useful.

Yours sincerely

Simon O'Neill
Chairman
ACAG Financial Reporting and Auditing Committee

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CONSULTATION PAPER: PROPOSED DEFINITION OF *PUBLIC INTEREST ENTITY* FOR THE CODE

Request for Specific Comment

The Accounting Professional & Ethical Standards Board Limited has requested comments on the following:

1. **APESB's proposed definition of *Public Interest Entity* for APES 110**

ACAG supports the inclusion in APES 110 of the revised paragraphs 25 and 26 as presented in the Consultation Paper insofar as they relate to public sector entities.

In supporting the revised paragraphs, we believe that these paragraphs do not mandate any public sector entity as a *Public Interest Entity (PIE)*, including the financial statements for the whole of government, unless the entity is:

- listed, or
- labelled as a *PIE* by regulation or legislation, or
- subject to the same independence requirements as a listed entity by regulation or legislation.

Further, ACAG is of the view that APES 110 should not prescribe any public sector entity as a *PIE*, not even the whole of government. Our difficulty is that as soon as one tries to apply the *PIE* provisions of independence, one is forced to start looking for 'carve-outs' in respect of circumstances which are appropriate to the public sector audit model and accountabilities e.g.:

- An Auditor-General cannot relinquish an audit of a client which legislation requires an Auditor-General to undertake simply because of the employment of an Audit Office's equivalent of a key audit partner with an Audit Client.

- Temporary Staff assignments in executive roles in audit clients are commonly part of senior executive development in a career public service.

- An Auditor-General appointed for a term in excess of 7 years cannot be rotated; e.g., the Commonwealth Auditor-General is appointed for a 10 year term and signs the Independent Auditor's Report for the most significant audits in the Commonwealth, including the whole of government and the general government sector financial statements.

Given these considerations, we are comfortable with paragraph 26 as drafted which would require us, as public sector auditors, to determine whether to treat additional entities as *PIEs*.

ACAG is of this view, notwithstanding that APES 110 includes an overarching provision acknowledging the primacy of the requirements of legislation over those of APES 110 and that ACAG members seek to comply with the provisions of APES 110 consistent with their legislation.

2. APESB's preliminary views on entities that will generally be captured by the definition of a *Public Interest Entity*

Having expressed our view under item (1) above as to the application of paragraphs 25 and 26 to public sector entities, we offer here some further comments on the APESB analysis of the application of the proposals.

Under item (ii), the APESB lists a number of entities that it believes are "likely to have a public interest element or share the need for similar auditor independence requirements as a listed entity" and would, according to the APESB, meet paragraph 25(b) of the definition of a *PIE*. Included in this list are the Australian Government and State, Territory and Local Governments that have Tier 1 reporting requirements under AASB 1053.

We do not read paragraph 25(b) the same way as the APESB and in particular, we do not see it as capturing governments. Paragraph 25(b) states:

> *'290.25(b) Public Interest Entity - An entity*
>
> *(a) defined by regulation or legislation as a public interest entity or*
>
> *(b) for which the audit is required by regulation or legislation to be conducted in compliance with the same Independence requirements that apply to the audit of Listed Entities. Such regulation may be promulgated by any relevant regulator, including an audit regulator. '*

In relation to leg (a), for example, as far as the Commonwealth is concerned, we are not aware of any Commonwealth entity being labelled a *PIE*, however defined, in either legislation or regulation. Further, we do not think that being defined in legislation or regulation as a *PIE* is the same as 'having a public interest element', as suggested by the APESB.

In relation to leg (b), the requirement in the definition is for the same independence requirements as for listed entities, not merely similar ones as suggested by the APESB. For example, in the Commonwealth, the Auditor-General's functions under the *Auditor-General Act 1997* include the audits of the financial statements of all Commonwealth agencies, authorities and companies, and any subsidiaries of these bodies, as well as the audit of the whole of government accounts. This and other Acts also provide for the Auditor-General's independence through a number of provisions, including the Auditor-General's security of tenure for a 10-year term, freedom from direction (subject to law), consideration by the Joint Committee of Public Accounts and Audit of the draft Australian National Audit Office (ANAO) budget and the making of recommendations to the Parliament and Minister on the ANAO budget, and a prohibition on the Finance Minister from withholding any part of the budget (voted by the Parliament) from the ANAO.

These independence provisions are not the same as those prescribed for listed entities, and therefore leg (b) in paragraph 25(b) does not apply.

3. APESB's view that the definition of a *Public Interest Entity* in APES 110 is different to AASB's definition of a *Publicly Accountable Entity*

ACAG believes that there is scope for the Australian definition of *Public Interest Entities* to capture those entities in the private sector that have 'public accountability' under AASB 1053.

If the APESB proceeds to apply the concept of 'public accountability' used in AASB 1053, it will be necessary to expressly limit the term to a private sector context. This is because the definition given in AASB 1053 is very close to the definition of a 'reporting entity' and could be read to capture public sector entities if an express limitation to the private sector was not included. In AASB 1053, the Basis for Conclusions makes it clear that the AASB intends the definition only for private sector application.