

AGENDA PAPER

Item Number: 10
Date of Meeting: 4 March 2021
Subject: Proposed Exposure Draft on Non-Assurance Services

Action required For discussion For noting For information

Purpose

For the Board to consider the draft exposure draft which proposes revisions to the Non-Assurance Services (NAS) provisions of APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* (the Code) including:

- revisions to align with the International Ethics Standards Board for Accountants' (IESBA) Revised Non-Assurance Services (NAS) Provisions;
- present the Board with Technical Staff's assessment of self-review threat provisions;
- requests from a key stakeholder to consider various matters; and
- options to address the recommendations from the inquiry into the regulation of auditing in Australia by the Parliamentary Joint Committee on Corporations and Financial Services (PJC Inquiry).

Background

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

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

The IESBA received 66 comment letters for the NAS ED and considered a high-level summary of the key issues at its July 2020 meeting, and a comprehensive analysis was considered at its September 2020 meeting.

The IESBA also presented on the NAS project at the October 2020 IESBA National Standards Setters meeting. APESB attended this meeting and provided further input to inform the taskforce's deliberations.

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

Key Considerations

1. *The IESBA Revised Non-Assurance Services Provisions and Final PIOB Approval*

At the November 30-December 9, 2020 IESBA Board meeting, the IESBA considered the [remaining issues](#) and final revisions to the NAS provisions and conforming amendments and approved the final [Revised NAS Provisions](#).

The IESBA Revised NAS Provisions are now subject to final approval from the Public Interest Oversight Board (PIOB) at its next meeting on 22 and 23 April 2021 before the IESBA issues them.

The following summarises the main revisions:

- The prohibition on assuming management responsibility for all audit clients and related material has been relocated from Section 600 (NAS) to Section 400 to increase its prominence and to emphasise it relates to all aspects of Part 4A *Independence for Audit and Review Engagements* and not just NAS.
- Increased requirements to obtain concurrence from those charged with governance (TCWG) about NAS provided to Public Interest Entity (PIE) audit clients enabling TCWG to make an informed assessment about the impact of NAS on independence.
- Emphasis on the type of documentation required about the firm's compliance with independence standards and NAS obligations.
- The materiality qualifier for PIE audit clients has been removed. Some services are now strictly prohibited, including tax calculations of current and deferred liabilities (or assets) and tax advisory and tax planning services or corporate finance advisory services where the effectiveness of the advice requires a particular accounting treatment or presentation and there is doubt as to its appropriateness.
- The inclusion of a strict prohibition of providing NAS to a PIE audit client if it might create a self-review threat in relation to the audit.
- Specific prohibitions for NAS to PIE audit clients which were previously based on materiality are now prohibited if it might create a self-review threat including, valuation services, acting as an advocate on a tax dispute, internal audit services, designing or implement IT systems services, litigation support services, legal advice, acting as an advocate for dispute or litigation.
- New prohibitions relating to tax advisory and tax planning services, valuation for tax purposes, assisting in the resolution of a tax dispute, legal advice, or corporate finance services that might create a self-review threat.
- New prohibition for tax services or recommending transactions relating to marketing, planning, or opining in favour of tax treatment initially recommended by the firm with a significant purpose of tax avoidance unless the firm is confident the treatment has a basis in applicable tax law or regulation that is likely to prevail.
- Consequential amendments to reflect changes to Section 600 detailed above in relation to Part 4B, Section 950 *Provision of Non-Assurance Services to Assurance Clients other than Audit and Review Engagements*.
- Conforming amendments to reflect changes to Section 400 detailed above in relation to Part 4B, Section 900 *Applying the Conceptual Framework to Independence for Assurance Engagements other than Audit and Review Engagements*.

- Conforming amendments to the prohibition on loaning personnel to an audit client to conform with changes highlighted above.

2. PJC Inquiry

APESB Technical Staff have considered the PJC Inquiry recommendations 3 and 5, which fall within APESB's remit (recommendation 5 is addressed Agenda Item 11). Recommendation 3 of the PJC Inquiry states:

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

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

Agenda Paper 11 also considers the first tranche of recommendation 3 regarding fee disclosures. The second tranche's recommendations and proposed treatment relating to the non-audit services prohibited list is set out below for the Board's consideration.

Agenda Item 10(a) is a draft version of the APES 110 Code Prohibitions publication providing a high-level representation of prohibitions that would result from the IESBA Revised NAS Provisions. Technical Staff believe this to be significant movement towards an appropriate list of NAS that is explicitly prohibited from being provided to an audit client. However, we believe improvements are required.

Based on the high-level summary, there are many prohibited NAS services, particularly for a Public Interest Entity (PIE). The Federal Government has not yet responded to the PJC Inquiry's recommendations and clarity is required on whether the list is intended for all audit clients or PIE audit clients.

Technical Staff are concerned the provisions relating to self-review threats may require strengthening (refer to Section 4). A key Australian stakeholder has raised considerations relevant to the NAS and Fee proposals. Some of the issues raised also impact the PJC Inquiry recommendations (refer to Section 5).

3. New Zealand Auditing and Assurance Standards Board (NZAuASB)

The NZAuASB, in its submission to the IESBA, advocated that all NAS Services should be prohibited due to the perception issue it creates when the auditor provides these services. The NZAuASB considered the IESBA's NAS proposed standard at the 10 February 2021 Board meeting, and as per [issues paper 3.2 on NAS proposals](#), direction was sought from the NZAuASB on the following options:

(a) No compelling reason changes, i.e., the Board considers that the IESBA proposals are sufficiently robust to effectively prohibit the provision of NAS to audit clients that are PIEs.

(b) Prohibition of all NAS to audit clients that are PIEs. This position would be consistent with our submission to the IESBA. However, it is likely to be inconsistent with the APESB and goes further than the Auditor-General requirements.

(c) Provision of "audit-related services" (to be defined), e.g., in addition to audit and review engagements, permits the provision of AUP engagements, other assurance engagements, and any other services required to be performed by the auditor by law or regulation.

The NZAuASB has discussed the options noted above at its February 2021 meeting and determined to undertake further consultation with its stakeholders and determine its approach at its April 2021 Board meeting.

4. Technical Staff Views on Self-Review Threat

A major concern and recommendations in [APESB's submission](#) to the IESBA on the NAS proposals was that the provisions about creating a self-review threat were too subjective and created quasi-materiality considerations. Whilst the drafting has improved, Technical Staff are still concerned that paragraph R600.14 creates too much subjectivity. We believe this should be made clear in the Australian Exposure Draft that a self-review threat is created when NAS affects the accounting records, internal financial controls or financial statements for a PIE audit client.

Technical Staff believe the self-review prohibition in paragraph R600.16 of the IESBA Revised NAS Provisions should be strengthened to make it clear that if there is a self-review threat from the provision of NAS to a PIE audit client, the NAS is prohibited. Specific prohibitions throughout Section 600 based on self-review threat would also require amendment to reflect the above.

Technical Staff recommend the Board consider including an AUST provision and consequential editorial amendments to the IESBA Revised NAS Provisions relating to self-review threats for stakeholder consultation during the ED process.

Technical Staff's preliminary drafting suggestions are included in Agenda Item 10(b).

5. Key Stakeholder Concerns

A key stakeholder wrote to the APESB on 23 February 2021, raising matters for APESB to consider relating to the IESBA Revised NAS and the PJC Inquiry (Agenda Item 10(c)).

Technical Staff have performed a preliminary analysis and note below matters that the Board should consider developing proposals for further consultation with stakeholders during the Exposure Draft process. The remainder of the key stakeholder's concerns are analysed in Agenda Item 10(d) for the Board's consideration.

5.1 Advocacy Threat

The key stakeholder supports treating advocacy threats in the same way as self-review threats for PIE audit clients, which would prohibit services such as tax planning and advisory services where there is an advocacy threat to the audit engagement.

APESB also recommended in its [submission to the IESBA](#) on the NAS proposals that there should be explicit prohibitions on NAS to PIE audit clients that create a self-review or advocacy threats.

The IESBA did not adopt this recommendation. However, such an approach would be consistent with APESB's submission, the key stakeholder's comments, and make the Code align to the US Securities Exchange Commission's rules' overarching principles:

- *Auditors cannot function in the role of management.*
- *An auditor cannot audit their own work.*
- *Auditors cannot serve in an advocacy role for their client.*

Technical Staff support developing proposals to address the key stakeholder's concerns for the Board's consideration and, after that, broader stakeholder consultation.

Technical Staff's preliminary drafting suggestions are included in Agenda Paper 10(b).

5.2 Taxation Services

The key stakeholder believes the proposed provisions on tax advisory and tax planning services should be strengthened for all audit clients, and in particular that paragraph 604.12 A2(c) "Have a basis in tax law that is likely to prevail" is too subjective and should be removed or amended to reduce subjectivity.

This proposal is consistent with the [APESB Submission](#) to the IESBA on the NAS proposals, which raised concerns that this paragraph created a subjective list of incidences that may not create a threat, potentially creating confusion and inconsistent application. APESB was also of the view that this paragraph could be combined with paragraph 604.12 A3 as factors relevant in identifying and evaluating self-review and advocacy threats.

Technical Staff also note that paragraphs R604.4 and 604.4 A1 of the IESBA Revised NAS Provisions use the terminology 'likely to prevail'.

Technical Staff support developing proposals to address the key stakeholder's concerns for the Board's consideration and, after that, broader stakeholder consultation.

5.3 Internal Audit and Similar Services

The key stakeholder believes APESB should consider making the Code clearer that internal audit services provisions apply to other similar services even if not labelled 'internal audit services.'

Technical Staff support developing an AUST guidance paragraph to clarify other similar services not labelled 'internal audit services' are also captured.

5.4 Advice on Financial Products

The key stakeholder believes APESB should consider prohibiting advice on financial products to audited entities.

The Code does not include specific provisions about financial/product advice. Technical Staff believe providing advice on financial products to audit clients would likely create significant threats to independence which would be identified through the application of general principles and the conceptual framework in the Code.

Financial advice is covered in [Scenario 8 of the Independence Guide](#), and although in an SMSF context, most of the issues would be similar with other audit clients, including threats created from fee structures (e.g., asset-based fees or commissions) and likely high level of professional judgement in service provision.

Technical Staff support developing an AUST provision to address this concern for the Board's consideration and, after that, broader stakeholder consultation.

APESB NAS Exposure Draft

Technical Staff have prepared a draft Exposure Draft for proposed amendments to APES 110 NAS provisions which currently only includes the IESBA Revised NAS Provisions (Agenda Item 10(e) marked-up ED and Agenda Item 10(f) clean ED).

Technical Staff recommend the Board support developing proposals to address the following matters to the IESBA Revised NAS Provisions for stakeholder consultation:

- strengthen self-review threat provisions;
- include similar provisions as self-review threats for advocacy threats for some NAS services;
- develop proposals to reduce the subjectivity created by paragraphs R604.4, 604.4 A1, and 604.12 A2(c);
- include additional guidance to make it clear other similar services not labelled 'internal audit services' are also captured; and
- include a prohibition on NAS relating to financial/product advice.

Way forward

As noted above, the IESBA is yet to release the final pronouncements in relation to the NAS provisions in the International Code. Subject to the Board's views and feedback on the options in this paper, Technical Staff propose the following way forward:

- review the final IESBA pronouncement in May 2021 for any further revisions to text;
- undertake further analysis to redraft provisions and include additional provisions as recommended herein; and
- Technical Staff will prepare a table mapping extant APES 110 NAS provisions to the proposed NAS provisions to assist stakeholders;
- present the final proposed Exposure Draft for Board approval out of session in May 2021; and
- issue the Proposed NAS Exposure Draft ED 04/21 in May 2021 with a 90-day exposure period.

Staff Recommendations

That the Board consider the draft exposure draft which proposes revisions to the NAS provisions of the Code and provide the Board's views and feedback on the:

- revisions to align with the international developments;
- the development of proposals to address the matters identified above; and
- whether any of the other issues identified by the key stakeholder in Agenda Item 10(d) require further consideration.

Materials Presented

- Agenda Item 10(a) Draft APES 110 Prohibitions Audit Clients 2021 for IESBA NAS Changes only
- Agenda Item 10(b) Technical Staff preliminary drafting suggestions
- Agenda Item 10(c) Key Stakeholder Letter (Confidential)
- Agenda Item 10(d) Technical Staff Preliminary Assessment of Key Stakeholder's other Concerns (Confidential)
- Agenda Item 10(e) Proposed NAS Exposure Draft ED 03/21 (mark-up)
- Agenda Item 10(f) Proposed NAS Exposure Draft ED 03/21 (clean)

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Date: 25 February 2021