

3 May 2021

Mr Ken Siong
Senior Technical Director
International Ethics Standards Board for Accountants (IESBA)
International Federation of Accountants (IFAC)
529 Fifth Avenue, 6th Floor
New York, New York 10017 USA

By email: kensiong@ethicsboard.org

Dear Mr Siong,

IESBA's Exposure Draft *Proposed Revisions to the Definitions of Listed Entity and Public Interest Entity in the Code*

Accounting Professional & Ethical Standards Board Limited (APESB) welcomes the opportunity to make a submission on the IESBA's Exposure Draft *Proposed Revisions to the Definitions of Listed Entity and Public Interest Entity in the Code* (PIE Exposure Draft).

APESB is governed by an independent board of directors whose primary objective is to develop and issue, in the public interest, high-quality professional and ethical pronouncements. These pronouncements apply to the membership of the three major Australian professional accounting bodies (Chartered Accountants Australia and New Zealand, CPA Australia and the Institute of Public Accountants). In Australia, APESB issues APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* (APES 110) and a range of professional and ethical standards that address non-assurance services.

Overall comments

APESB is supportive of the IESBA's project to revise the definitions and related provisions of Public Interest Entity (PIE) and listed entity in the IESBA's *International Code of Ethics for Professional Accountants (including International Independence Standards)* (the IESBA Code).

APESB notes that the categorisation of PIEs in the proposed paragraph R400.14 is consistent with the existing Australian definition of entities likely to be PIEs in Australia. In particular, we are supportive of the elevation to a requirement for firms to determine whether additional entities must be treated as PIEs in the IESBA Code. These professional obligations have existed in Australia since 2013, and it has been effective and well supported by Australian stakeholders.

An important aspect of the proposed PIE provisions is the tiered approach and defined roles for the IESBA Code, relevant local bodies, such as national standard setters, and firms to determine which entities should be treated as PIEs. While APESB supports this overall approach, we are concerned that the proposed drafting in the PIE Exposure Draft does not adequately support the intention of the revisions and may impact the integrity of the IESBA Code.

APESB is also concerned about the unintended consequences if the IESBA Code requires auditors to disclose that an entity is treated as a PIE. Without the inclusion of appropriate disclosures about what this means for an entity and its audit, the public will likely interpret this as if there are different levels of auditor independence further contributing to the audit expectation gap.

In developing APESB's response to the PIE Exposure Draft, we have considered local submissions to the APESB on this exposure draft and Australian stakeholders' feedback from a roundtable event conducted by APESB in April 2021. The stakeholders who attended the roundtables included standard setters, regulators, professional accounting bodies, accounting firms, investors and academics.

APESB's key recommendations are noted below. Appendix A provides APESB's responses to the IESBA's specific and general questions. Appendix B sets out the complete set of drafting recommendations made by APESB.

Recommendations

APESB's key recommendations in relation to the PIE Exposure Draft for the IESBA's consideration are:

- Maintain the integrity of the IESBA Code by ensuring that structural guidelines are adhered to; requirements cannot be amended to a lower level by relevant local bodies, and clarity that professional accountants must always comply with applicable laws and regulations even in the circumstances it is inconsistent with an objective of the Code;
- Revise the proposed objective in the PIE Exposure Draft to enhance its clarity and application;
- Provide an avenue for relevant local bodies to add to or refine the entities considered to be PIEs by amending the definition of PIE to include a reference to entities identified as such by laws, regulations or professional standards;
- To ensure that the definition of PIE does not inadvertently capture entities that are not PIEs, amend the reference to entities that provide post-employment benefits to entities that *administer* those benefits and incorporate a reference to *a wide range of stakeholders*;
- Remove the category of those entities that meet the proposed objective of the public interest provisions from the definition of PIE, as the objective in proposed paragraph 400.9 is not clear enough to distinguish it from the purpose of audit engagements performed for non-PIE entities;
- Provide further clarity on critical aspects of the PIE proposals, including defining or explaining the meaning of 'financial condition' and 'publicly traded' (especially the impact of trading halts);
- Due to the significant concerns about the capacity to impact the public perceptions of auditor independence, remove the requirement for firms to disclose that an entity is a PIE. If a disclosure about the independence of the auditor is required, relevant local bodies such as national standard setters or the regulator should be responsible for determining the appropriate auditor independence disclosures, if any, within their jurisdiction;
- Ensure that factors for determining public interest represent a clear and consistent purpose and that they are treated appropriately as application material when a professional accountant or firm uses the factors to determine the applicability of a requirement set out in the Code;
- Clarify the approach or mechanism that will allow relevant local bodies that set ethical standards, such as regulators, national standard setters and professional bodies, to refine the definition of PIE in the Code; and

- Ensure any requirements and application material within the Code apply to professional accountants and firms rather than creating obligations on relevant local bodies (i.e., regulatory body, national standards setter or professional body). Guidance for local bodies should be included in introductory paragraphs of the Code.

Concluding comments

We trust you find these comments helpful in your final deliberations. Should you require additional information, please contact APESB's Chief Executive Officer, Mr. Channa Wijesinghe, at channa.wijesinghe@apesb.org.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Nancy Milne', written in a cursive style.

Nancy Milne OAM
Chairman

APPENDIX A

APESB's Specific Comments

APESB's responses to the request for specific comments by the IESBA on the proposals in the PIE Exposure Draft are as follows:

Overarching Objective

- 1. Do you support the overarching objective set out in proposed paragraphs 400.8 and 400.9 as the objective for defining entities as PIEs for which the audits are subject to additional requirements under the Code?**

APESB agrees with the inclusion of an objective for the provisions related to Public Interest Entities (PIEs). However, APESB is not supportive of the proposed paragraphs 400.8 and 400.9 as drafted due to the reasons outlined below:

Issue: Specificity of the Purpose of an Audit of PIEs

The proposed purpose in paragraph 400.9 in the PIE Exposure Draft is not specific to PIEs - it could apply to the audit performed for any entity. If an external audit is performed, users expect to have enhanced confidence in those financial statements regardless of whether the entity is treated as a PIE.

APESB believes the intent behind proposed paragraph 400.9 could be addressed in paragraph 400.8 by including a reference to the public's interest in the conduct of the audit of certain entities. Proposed paragraph 400.9 would then become redundant, as well as any cross-references back to this paragraph.

Issue: Factors not consistent with introductory material

APESB has noted that the factors in proposed paragraph 400.8 are within the introduction paragraphs of Section 400 of the Code.

As per paragraph 5 of the *Guide to the Code*, the introduction paragraphs '*...provide information, including an explanation of terms used, which is important to the understanding and application of ...its sections.*'

However, as firms are required to refer to these factors to assist them in determining which entities are to be treated as a PIE (refer to proposed paragraph R400.16), the factors are more significant than introductory material and, at a minimum, must be application material.

Application material, as per the *Guide to the Code*, '*...provides context, explanations, suggestions for action or matters to consider, illustrations and other guidance to assist in complying with the requirements.*'

APESB strongly believes that these factors should be included as application material within the requirements and application sections relating to PIEs.

Refer to APESB's response to question 2 below for further comments about the specific factors included in proposed paragraph 400.8.

Issue: The use of the undefined term - financial condition

Based on Australian stakeholder feedback, APESB strongly recommends that the IESBA define or explain the term *'financial condition'*. By leaving this term undefined, it is not clear if the term *'financial condition'* refers to the *going concern* of the entity or whether it also encompasses the *true and fair view* of the financial statements of the entity or the stability of the *financial management* of the entity concerning its liquidity, assets and investment returns.

APESB notes that the IESBA Staff Publication *Proposed IESBA Definition of Public Interest Entity: Supplementary Guidance to Exposure Draft to Aid Local Body Considerations Regarding Adoption and Implementation* provides some context to the term financial condition of an entity by referring to *'...how its financial success or failure may impact the public.'*¹ This context should be included in the proposed introductory paragraph 400.8 to clarify the meaning of *financial condition* to the users. The IESBA could also consider using these words to create an explanation within the Glossary of the Code for the term *'financial condition'*.

Recommendation

To address the issues noted above, APESB is of the view that:

- proposed paragraph 400.8 could be drafted as follows:
'Some of the requirements and application material set out in this Part are applicable only to the audit of financial statements of public interest entities, reflecting significant public interest in the financial condition of these entities (i.e., how the financial success or failure of these entities may impact the public) and the conduct of the audit of these entities.'
- The factors in proposed paragraph 400.8 should be moved to the requirements and application material section with the purpose of these factors clarified as assisting in the identification of PIEs; and
- proposed paragraph 400.9 should be deleted.

To facilitate the IESBA's review of APESB's proposed amendments, Appendix B of this submission contains a marked-up draft incorporating APESB's suggestions and recommendations.

¹ IESBA (2021) IESBA Staff Publication *Proposed IESBA Definition of Public Interest Entity: Supplementary Guidance to Exposure Draft to Aid Local Body Considerations Regarding Adoption and Implementation*, Page 4.

2. Do you agree with the proposed list of factors set out in paragraph 400.8 for determining the level of public interest in an entity? Accepting that this is a non-exhaustive list, are there key factors which you believe should be added?

APESB is not supportive of the list of factors set out in proposed paragraph 400.8 in its current form as a means of determining the level or extent of public interest in an entity due to the reasons outlined below.

Issue: Mixed purpose and use of factors to determine PIEs

APESB is of the view that the factors in proposed paragraph 400.8 are indicative of or are prevalent in entities that are PIEs. Rather than being used as a means of determining the extent of public interest, the factors should be repurposed to be a mechanism to assist in identifying PIEs, consistent with the operation of the extant Code over the last decade.

APESB has noted that within the PIE Exposure Draft, the purpose of these factors is different between proposed paragraph 400.8 (where they indicate the extent of public interest) and proposed paragraph 400.16 A1 (where the factors are to be used to help firms identify PIEs). The use of these factors for two different purposes will create confusion and inconsistencies in practice.

In addition, APESB has significant concerns about the treatment of these factors as introductory paragraphs. As firms are required to refer to these factors to assist them in determining which entities are to be treated as a PIE (refer to proposed paragraph R400.16), the factors are more significant than introductory material and, at a minimum, must be treated as application material. Refer to APESB's response to question 1 for further details on this issue.

Issue: Use of the term financial obligations

APESB is concerned about using the phrase 'taking on financial obligations to the public' in the first factor in proposed paragraph 400.8. The use of this phrase lacks clarity and could be subject to different interpretations in different jurisdictions. APESB would prefer to see the extant phrase 'holding of assets in a fiduciary capacity for a large number of stakeholders' being retained.

We believe this term is well understood in practice and fits in well with the primary intention to capture financial institutions, insurance providers and entities that administer pension funds.

Recommendation

To highlight these factors' importance and clarify their purpose, APESB recommends that these factors be moved into the requirements and application material relating to PIEs and should be considered application material that supports proposed paragraph R400.14. The reference to the extent of public interest should be replaced with guidance that the factors are indicative of an entity being a public interest entity.

APESB also suggests retaining the extant reference to holding assets in a fiduciary capacity within the factors.

APESB's recommended approach to drafting these factors is set out below:

400.14 A1 In recognising the entities in paragraph R400.14 as public interest entities, the following are important factors that indicate public interest in an entity:

- *The nature of the business or activities, such as holding assets in a fiduciary capacity for a large number of stakeholders.*
- *Whether the entity is subject to regulatory supervision designed to provide confidence that the entity will meet its financial obligations.*
- *Size of the entity.*
- *The importance of the entity to the sector in which it operates including how easily replaceable it is in the event of financial failure.*
- *Number and nature of stakeholders including investors, customers, creditors and employees.*
- *The potential systemic impact on other sectors and the economy as a whole in the event of financial failure of the entity.*

APESB does not have any further suggestions about additional factors that are relevant for identifying PIEs.

Approach to Revising the PIE Definition

3. Do you support the broad approach adopted by the IESBA in developing its proposals for the PIE definition, including:

- **Replacing the extant PIE definition with a list of high-level categories of PIEs?**
- **Refinement of the IESBA definition by the relevant local bodies as part of the adoption and implementation process?**

APESB supports the broad approach adopted by the IESBA in developing its proposals for the PIE definition, which can be refined by relevant local bodies to ensure the provisions align with local laws and regulations and professional standards. However, we are concerned about how this approach will impact the integrity of the IESBA Code and ensure consistent application of a global definition across jurisdictions due to the reasons outlined below.

Issue: Impact on the integrity of the IESBA Code

While APESB appreciates the complexity of implementing reforms to the definition of a PIE that is suitable at both a global and local level, it is important to ensure that the approach to be applied does not alter or diminish the integrity of the IESBA Code.

The proposed flexibility to allow local bodies, such as national standard setters and regulators, to exclude or significantly amend aspects of a global requirement, and the implication that laws and regulations can be considered but not necessarily complied with if they do not meet the objectives in the IESBA Code, could undermine the integrity of the IESBA Code and its provisions.

While the broad approach suggested by the IESBA may be the most effective way to implement a global solution to the definition of PIE, it does not follow that the drafting of the provisions should mimic the levels within this approach. In particular, proposed paragraph 400.15 A1 appears to introduce application material providing direction for local bodies (regulators, NSS and professional bodies) rather than generally creating a professional obligation for professional accountants or firms.

Issue: Categories of PIEs and their consistent application across jurisdictions

APESB strongly supports the introduction of broad categories of entities into the definition of a PIE. We note that broad categorisation is consistent with existing Australian guidance on entities likely to be PIEs. However, APESB has some concerns about specific proposed categories of entities. These concerns are outlined in APESB's response to question 5 below.

Feedback received from Australian stakeholders indicated significant concerns about the approach adopted by the IESBA, creating inconsistencies across jurisdictions. The stakeholders noted that the propensity of local bodies to change or reduce the categories included in the definition of PIEs was a significant area of concern. However, it was also acknowledged that different regulatory frameworks in various jurisdictions will always mean some inconsistencies will occur.

APESB believes that it is essential that the broad definition set out in the IESBA Code is applicable across all jurisdictions.

Recommendation:

APESB suggests the IESBA reconsider how the mechanism for allowing local bodies to adapt the global definition to be applicable in their jurisdiction be reviewed and revised. Refer to APESB's response to question 7 for further comments on the specific drafting recommendations relating to the refinement of the IESBA provisions by the relevant local bodies.

The IESBA should also review its proposed references to laws and regulations to clarify that professional accountants and firms must follow laws and regulations regardless of whether it meets an objective of the Code.

PIE Definition

- 4. Do you support the proposals for the new term “publicly traded entity” as set out in subparagraph R400.14(a) and the Glossary, replacing the term “listed entity”? Please provide explanatory comments on the definition and its description in this ED.**

APESB is supportive of the proposed change to replace the term 'listed entity' with 'publicly traded entity.' However, we note that the definition is relatively brief and believe that further guidance or explanation is required to clarify what is meant by publicly traded.

Australian stakeholders queried the implications of an entity being placed on a trading halt on a securities exchange and whether this will mean an entity should no longer be treated as a PIE. APESB believes this is not the intention but acknowledges that further guidance may address this situation which would be common across most securities exchanges.

5. Do you agree with the proposals for the remaining PIE categories set out in subparagraphs R400.14 (b) to (f)?

While APESB is supportive of including broad categories within the definition of PIE, APESB does not agree with some of the PIE categories set out in the proposed subparagraphs R400.14 (b) to (f), in particular, subparagraphs (d) and (f) as explained below.

Issue: Provision of post-employment benefits

In relation to subparagraph (d), APESB is concerned about the reference to the provision of post-employment benefits.

In Australia, all employers are legally required to provide a superannuation guarantee (i.e., retirement benefits) to their employees, with exceptions applying in limited circumstances (such as the employee being under the pay eligibility threshold). While the IESBA proposals refer to the entity's function, we are concerned that this drafting may inadvertently capture entities in Australia that provide payroll services to other entities, including entities that provide superannuation clearing house facilities. APESB believes the reference to these types of entities should be refined to refer to the holding or management of post-employment benefits.

In Australia, a family can establish a self-managed superannuation fund (SMSF) which administers the superannuation for up to five family members. These SMSFs are not considered PIEs, as there would not be public interest in these entities and their operations. However, based on the IESBA proposals, these entities provide post-employment benefits and would be a PIE under the IESBA definition.

Issue: Application of laws and regulations

APESB is concerned that the drafting of subparagraph (f), in conjunction with the associated application material in proposed paragraph 400.14 A1, could be read in a manner that it is not necessary for professional accountants to comply with laws and regulations if they do not believe the laws and regulations are consistent with the objectives of the provisions of the IESBA Code. While we do not think this is the intent of this subparagraph and application material, APESB believes that this application material should be deleted (refer to Appendix B).

The application paragraph appears to create the ability for professional accountants and firms to apply their judgement as to whether entities defined under the law as PIEs should be treated as such under the IESBA Code.

Besides, rather than referring to the objective of the PIE provisions in this subparagraph, APESB is of the view that subparagraph (f) could be used as the mechanism to ensure that requirements in relation to PIEs that are set by relevant local bodies, such as national standard setters, regulators, or professional bodies, can be included within the definition of a PIE set by the IESBA.

Recommendation:

APESB believes the following changes should be implemented in subparagraphs (d) and (f) of the definition of PIE:

- Within subparagraph (d), replace the word ‘provide’ with the word ‘administer’ (which covers both the investment management and disbursement functions of post-employment benefit entities). Also, include a reference to a wide range of stakeholders to avoid inadvertently capturing a retirement structure with a few stakeholders (i.e., a family) with no public interest in their operations.

Subparagraph (d) would then read as follows:

(d) An entity whose function is to ~~provide~~ administer post-employment benefits for a wide range of stakeholders;

- Within subparagraph (f), remove the reference to the objective in proposed paragraph 400.9 (as noted in our response to question 1) and replace it with a reference to professional standards to enable local requirements to be captured within the definition of a PIE.

Subparagraph (f) would then read as follows:

(f) An entity specified as such by law, regulation or professional standards ~~to meet the objective set out in paragraph 400.9.~~

APESB also recommends that the proposed application material in paragraph 400.14 A1 is deleted (refer to Appendix B).

- 6. Please provide your views on whether, bearing in mind the overarching objective, entities raising funds through less conventional forms of capital raising such as an initial coin offering (ICO) should be captured as a further PIE category in the IESBA Code. Please provide your views on how these could be defined for the purposes of the Code recognising that local bodies would be expected to further refine the definition as appropriate.**

APESB is not supportive of including an additional PIE category for entities that use less conventional capital raising methods. The key aspect of an entity being recognised as a PIE would be that they are raising capital from the public and not necessarily how they do so.

An Australian stakeholder believed that an entity raising ‘capital’ would usually be caught within the definition of a publicly traded entity or by a factor where the entity holds assets as a fiduciary for a range of stakeholders. However, the IESBA might need to consider refinements to the definition of publicly traded to include financial instruments “that are used as currency in a public transaction.”

Role of Local Bodies

7. Do you support proposed paragraph 400.15 A1 which explains the high-level nature of the list of PIE categories and the role of the relevant local bodies?

APESB does not support the current location of the proposed paragraph 400.15 A1 due to concerns with the treatment of the paragraph as application material and the reference to the ability of local bodies to exclude entities from the global definition of PIEs.

Issue: Classification as application material

In considering the structural elements of sections within the Code, APESB does not believe that proposed paragraph 400.15 A1 is application material for professional accountants or firms. Additionally, it explains what the IESBA is trying to achieve in the proposals but does not assist professional accountants and firms understand how to apply the requirement in paragraph R400.15.

The requirement in proposed paragraph R400.15 assumes that legislation exists that refines the categories of entities captured within the definition of PIE and does not clearly state that firms need to comply with local requirements captured in either laws and regulations or relevant professional standards.

Issue: Ability to exclude entities to create requirements lower than the global standard

APESB does not support the suggestion that relevant local bodies should be allowed to exclude entities from the IESBA definition of PIEs. APESB is of the view that the relevant local bodies can clarify how the broad categories are to be interpreted within their jurisdiction but should not exclude entities.

Recommendation

APESB is of the view that proposed paragraph 400.15 A1 should be modified and relocated as an introduction paragraph at paragraph 400.9 to explain the role of the IESBA Code and the relevant local body in determining entities to be treated as PIEs. The paragraph could be drafted as follows:

‘The provisions in the Code set out broad categories of entities that should be treated as a public interest entity. Within local jurisdictions, the bodies responsible for setting ethics standards for professional accountants, such as regulators, National Standards Setters or professional bodies, may refine these categories by, for example, making reference to local laws and regulations governing certain types of entities or by including criteria relating to size or particular organisational structures.’

APESB also believes proposed paragraph R400.15 should be amended to require firms to comply with requirements set by local bodies as follows:

R400.15 A firm shall ~~have regard to~~ comply with laws and or regulations and requirements in relevant professional standards that specify or relate to the determination of which entities shall be treated as public interest entities ~~which provides more explicit definitions of the categories noted in paragraph R400.14 (a) to (e), for example by reference to the legislation under which such functions are performed.~~

While APESB appreciates that the IESBA recognises the need for local jurisdictions to refine the definition of PIE, we also think it would be useful for the IESBA to leave space

for relevant local bodies to insert this information into the IESBA Code in the appropriate places. We note that some paragraphs are left blank at the end of the section, but it would be helpful to have blank paragraphs after the proposed paragraph R400.15.

8. Please provide any feedback to the IESBA's proposed outreach and education support to relevant local bodies. In particular, what content and perspectives do you believe would be helpful from outreach and education perspectives?

Australian stakeholders believed that additional guidance materials that provided further examples of entities classified as PIEs would be useful when considering how the provisions are to be implemented.

Role of Firms

9. Do you support the proposal to introduce a requirement for firms to determine if any additional entities should be treated as PIEs?

APESB strongly supports the proposed requirement for Firms to determine if any additional entities should be treated as a PIE. APESB has required Australian firms to make this determination in relation to the treatment of entities as PIEs since 1 January 2013.

At the APESB roundtable, Australian stakeholders noted that this requirement had provided a consistent basis on which PIEs could be determined and that there is no evidence that the requirement has not worked effectively in Australia.

APESB is supportive of the inclusion of the reasonable and informed third party test as a means of determining whether an entity should be treated as a PIE.

10. Please provide any comments to the proposed list of factors for consideration by firms in paragraph 400.16 A1.

Overall, APESB supports the additional proposed list of factors for consideration by firms in proposed paragraph 400.16 A1. However, APESB believes amendments are required to:

- Clarify the link to laws and regulations in the first bullet point and removing the assumption that laws and regulations will state entities are not PIEs;
- Remove the reference to reasons in the second last bullet point as it is the consideration of the request that is important. If the IESBA believe the disclosure of the reasons is important, that should be a separate obligation; and
- Amend the last bullet point to be consistent with the drafting of the other bullet points.

Considering APESB's suggestions, proposed paragraph 400.16 A1 could be drafted as follows:

400.16 A1 In addition to the factors listed in paragraph 400.14 A18, factors to consider when determining whether additional entities or certain categories of entities should be treated as public interest entities include:

- Whether the entity ~~has been specified as not being~~ is considered to be a public interest entity by law or regulation.
- Whether the entity is likely to become a public interest entity in the near future.
- Whether in similar circumstances, the firm or a predecessor firm has treated the entity as a public interest entity.
- Whether in similar circumstances, the firm has treated other entities as a public interest entity.
- Whether the entity or other stakeholders requested the firm to treat the entity as a public interest entity ~~and, if so, whether there are any reasons for not meeting this request.~~
- Whether tThe entity's corporate governance arrangements indicate there may be public interest in the entity, for example, whether those charged with governance are distinct from the owners or management.

Transparency Requirement for Firms

11. Do you support the proposal for firms to disclose if they treated an audit client as a PIE?

APESB is not supportive of the proposal for firms to disclose whether they have treated an audit client as a PIE. We are concerned that the public may not understand the concept without sufficient disclosure of what a PIE is and the impact of being treated as a PIE. APESB believes disclosing this information is likely to lead to the unintended consequence whereby the public interprets the disclosure to mean that there are different levels of independence and that audits for entities that are not PIEs are of lesser quality or provide lower quality assurance than audits of PIEs.

Most Australian stakeholders who attended the APESB roundtables expressed significant concern concerning this proposed requirement. Stakeholders could not see the benefit of the disclosure and the issue that IESBA was trying to address. One stakeholder thought the disclosure would increase transparency but acknowledged the need to provide significantly more details than just disclosing an entity is a PIE.

Stakeholders also noted that in some instances, it is the entity (or the client) who requests that they be treated as a PIE, and therefore there was some doubt over whether it should always be the firm who is required to make such a disclosure.

In Australia, due to the existence of the Auditor Independence Declaration (refer to the response to Q12) and due to the significant concerns raised by Australian stakeholders, the APESB is of the view that the IESBA Code should not mandate this disclosure and therefore proposed paragraph R400.17 should be deleted.

12. Please share any views on possible mechanisms (including whether the auditor's report is an appropriate mechanism) to achieve such disclosure, including the advantages and disadvantages of each. Also see question 15(c) below.

As per APESB's response to question 11, APESB does not support the disclosure of whether an entity is a PIE. However, if this disclosure is deemed necessary by the IESBA, APESB would prefer to see the disclosure made in conjunction with other disclosures

about an auditor's independence. For example, in Australia, there is a requirement set out in law requiring an auditor to make a declaration in relation to their independence and compliance with the applicable Code (i.e., APES 110). This auditor independence declaration is required to be included in the financial statements of companies, registered schemes and disclosing entities regulated by the *Corporations Act 2001*.

While other jurisdictions may not have the same requirement to make disclosures about an auditor's independence, other mechanisms such as transparency reports could be an appropriate place for this type of disclosure. As such, if the IESBA believes the disclosure of whether an entity is a PIE is necessary, the IESBA should allow relevant local bodies to determine the appropriate place for this disclosure.

APESB is not supportive of the IESBA mandating the disclosure of this matter in the auditor's report. We are concerned about the perception this would create two different levels of independence that apply to entities and further contribute to the audit expectation gap. We also believe it is the purview of the IAASB to determine the information that should be disclosed in the audit report.

Other Matters

13. For the purposes of this project, do you support the IESBA's conclusions not to:

- (a) Review extant paragraph R400.20 with respect to extending the definition of "audit client" for listed entities to all PIEs and to review the issue through a separate future workstream?**

APESB is supportive of the IESBA's conclusions not to amend the definition of audit client apart from the updates to change the term listed entity to publicly traded entity.

- (b) Propose any amendments to Part 4B of the Code?**

APESB agrees with the IESBA's approach to not amend Part 4B of the IESBA Code. However, we are concerned with the comments in the explanatory memorandum in paragraph 79 that '*...not all assurance engagements for a PIE (as defined by Part 4A) would be of significant public interest...*' and therefore developing a different definition of PIE in Part 4A would not have direct implications for Part 4B.

APESB believes this is not consistent with paragraph 900.13 of the Code, which states that the independence requirements of Part 4A apply to assurance engagements if the firm also performs an audit or review engagement for the same client. Therefore, any changes to the definition of PIE in Part 4A may impact assurance engagements if the firm is also providing an audit or review engagement to that client.

14. Do you support the proposed effective date of December 15, 2024?

APESB is supportive of the proposed effective date of December 15, 2024.

Matters for IAASB Consideration

15. To assist the IAASB in its deliberations, please provide your views on the following:

- (a) **Do you support the overarching objective set out in proposed paragraphs 400.8 and 400.9 for use by both the IESBA and IAASB in establishing differential requirements for certain entities (i.e., to introduce requirements that apply only to audits of financial statements of these entities)? Please also provide your views on how this might be approached in relation to the ISAs and ISQMs.**

As APESB is not supportive of the proposed objective in paragraphs 400.8 and 400.9 in its current form in the PIE Exposure Draft, we are not supportive of the IAASB using these objectives to establish differential requirements for certain entities. Refer to APESB's response to Question 1 for the details of the specific issues identified.

- (b) **The proposed case-by-case approach for determining whether differential requirements already established within the IAASB Standards should be applied only to listed entities or might be more broadly applied to other categories of PIEs.**

As this matter is not within APESB's mandate, please refer to the submission of the Australian Auditing and Assurance Standards Board.

- (c) **Considering IESBA's proposals relating to transparency as addressed by questions 11 and 12 above, and the further work to be undertaken as part of the IAASB's Auditor Reporting PIR, do you believe it would be appropriate to disclose within the auditor's report that the firm has treated an entity as a PIE? If so, how might this be approached in the auditor's report?**

As per the response to question 12 above, APESB is not supportive of disclosing within the audit report whether an entity has been treated as a PIE. If this disclosure is considered necessary, APESB believes it should be made with other relevant disclosures concerning the auditor's independence or within transparency reports issued by the firms. APESB believes the appropriate place for this type of disclosure should be determined by the relevant local body (e.g., national standard setter, regulator or professional body) to suit the requirements and expectations within the relevant jurisdiction.

APESB's General Comments

APESB's general comments on the revisions to the definitions of listed entity and public interest entities for the IESBA's consideration are as follows:

(a) *Small- and Medium-Sized Entities (SMEs) and Small and Medium Practices (SMPs)*

APESB supports the proposed transition timeline as it is likely to assist SMPs.

(b) *Regulators and Audit Oversight Bodies*

APESB notes that the Australian guidance of entities likely to be PIEs was developed in consultation with the Australian regulators in 2011/12.

(c) *Developing Nations*

Not applicable.

(d) *Translations*

Not applicable.

APPENDIX B

APESB's preferred alternative drafting of the PIE provisions

As part of APESB's responses to the IESBA's PIE Exposure Draft, APESB has recommended several revisions to the proposed drafting of the proposed provisions. To assist the IESBA's review and analysis of APESB's recommendations in their entirety, APESB has set out its preferred alternative drafting of the PIE provisions below in markup from the PIE Exposure Draft proposals.

Public Interest Entities

400.8 Some of the requirements and application material set out in this Part are applicable only to the audit of financial statements of public interest entities, reflecting significant public interest in the financial condition of these entities ([i.e., how the financial success or failure of these entities may impact the public](#)) and [the conduct of the audit of these entities](#). ~~The extent of public interest will depend on factors including:~~

- ~~• The nature of the business or activities, such as taking on financial obligations to the public as part of an entity's primary business.~~
- ~~• Whether the entity is subject to regulatory supervision designed to provide confidence that the entity will meet its financial obligations.~~
- ~~• Size of the entity.~~
- ~~• The importance of the entity to the sector in which it operates including how easily replaceable it is in the event of financial failure.~~
- ~~• Number and nature of stakeholders including investors, customers, creditors and employees.~~
- ~~• The potential systemic impact on other sectors and the economy as a whole in the event of financial failure of the entity.~~

400.9 ~~The purpose of these requirements and application material for public interest entities is to enhance confidence in their financial statements through enhancing confidence in the audit of those financial statements.~~ [The provisions in the Code set out broad categories of entities that should be treated as a public interest entity. Within local jurisdictions, the bodies responsible for setting ethics standards for professional accountants, such as regulators, National Standards Setters or professional bodies, may refine these categories by, for example, making reference to local laws and regulations governing certain types of entities or by including criteria relating to size or particular organisational structures.](#)

Reports that Include a Restriction on Use and Distribution

400.10 An audit report might include a restriction on use and distribution. If it does and the conditions set out in Section 800 are met, then the independence requirements in this Part may be modified as provided in Section 800.

Assurance Engagements other than Audit and Review Engagements

400.11 Independence standards for assurance engagements that are not audit or review engagements are set out in Part 4B – *Independence for Assurance Engagements Other than Audit and Review Engagements*.

Requirements and Application Material

General

- R400.12** A firm performing an audit engagement shall be independent.
- R400.13** A firm shall apply the conceptual framework set out in Section 120 to identify, evaluate and address threats to independence in relation to an audit engagement.

Public Interest Entities

- R400.14** For the purposes of this Part, a firm shall treat an entity as a public interest entity when it falls within any of the following categories:
- (a) A publicly traded entity;
 - (b) An entity one of whose main functions is to take deposits from the public;
 - (c) An entity one of whose main functions is to provide insurance to the public;
 - (d) An entity whose function is to ~~provide~~ administer post-employment benefits for a wide range of stakeholders;
 - (e) An entity whose function is to act as a collective investment vehicle and which issues redeemable financial instruments to the public; or
 - (f) An entity specified as such by law, or regulation or professional standards ~~to meet the objective set out in paragraph 400.9~~.

400.14 A1 In recognising the entities in paragraph R400.14 as public interest entities, the following are important factors that indicate public interest in an entity:

- The nature of the business or activities, such as ~~taking on financial obligations to the public as part of an entity's primary business~~ holding assets in a fiduciary capacity for a large number of stakeholders.
- Whether the entity is subject to regulatory supervision designed to provide confidence that the entity will meet its financial obligations.
- Size of the entity.
- The importance of the entity to the sector in which it operates including how easily replaceable it is in the event of financial failure.
- Number and nature of stakeholders including investors, customers, creditors and employees.
- The potential systemic impact on other sectors and the economy as a whole in the event of financial failure of the entity.

~~When terms other than public interest entity (such as listed entity) are applied to entities by law or regulation to meet the objective set out in paragraph 400.9, such terms are regarded as equivalent terms. However, if law or regulation designates entities as "public interest entities" for reasons unrelated to the objective set out in paragraph 400.9, that designation does not mean that such entities are public interest entities for the purposes of the Code.~~

R400.15 A firm shall ~~have regard to~~ comply with laws and or regulations and requirements in relevant professional standards that specify or relate to the determination of which entities shall be treated as public interest entities ~~which provides more explicit definitions of the categories noted in paragraph R400.14 (a) to (e), for example by reference to the legislation under which such functions are performed.~~

~~400.15 A1—The categories set out in paragraph R400.14 are broadly defined and no recognition is given to any size or other criteria that can be relevant in a specific jurisdiction. The Code therefore provides for those bodies responsible for setting ethics standards for professional accountants to refine these categories by, for example, making reference to local law and regulation governing certain types of entities. Similarly, the Code also provides for such bodies to exclude entities that would otherwise be regarded as falling within one of the broad categories in paragraph R400.14 for reasons relating to, for example, size or particular organizational structure.~~

R400.16 A firm shall determine whether to treat additional entities, or certain categories of entities, as public interest entities. When making this determination, the firm shall take into account whether a reasonable and informed third party would be likely to conclude such entities should be treated as public interest entities.

400.16 A1 In addition to the factors listed in paragraph 400.14 A18, factors to consider when determining whether additional entities or certain categories of entities should be treated as public interest entities include:

- Whether the entity ~~has been specified as not being~~ is considered to be a public interest entity by law or regulation.
- Whether the entity is likely to become a public interest entity in the near future.
- Whether in similar circumstances, the firm or a predecessor firm has treated the entity as a public interest entity.
- Whether in similar circumstances, the firm has treated other entities as a public interest entity.
- Whether the entity or other stakeholders requested the firm to treat the entity as a public interest entity ~~and, if so, whether there are any reasons for not meeting this request.~~
- Whether the entity's corporate governance arrangements indicate there may be public interest in the entity, for example, whether those charged with governance are distinct from the owners or management.

~~**R400.17**—A firm shall publicly disclose if an audit client has been treated as a public interest entity.~~

[Paragraphs 400.178 to 400.19 are intentionally left blank]

R400.20 As defined, an audit client that is a publicly traded entity (including any modifications made by law or regulation) includes all of its related entities. For all other entities, references to an audit client in this Part include related entities over which the client has direct or indirect control. When the audit team knows, or has reason to believe, that a relationship or circumstance involving any other related entity of the client is relevant to the evaluation of the firm's independence from the client, the audit team shall include that related entity when identifying, evaluating and addressing threats to independence.