

21 April 2023

Senate Finance and Public Administration Committees
PO Box 6100
Parliament House
CANBERRA ACT 2600

By email: fpa.sen@aph.gov.au

Dear Committee Members,

RE: Inquiry into management and assurance of integrity by consulting services

Accounting Professional & Ethical Standards Board Limited (APESB) welcomes the opportunity to make a Submission to the inquiry into the management and assurance of integrity by consulting services provided for the Australian Government (Consulting Services Inquiry).

The role and mandate of APESB

APESB was created as an independent body in 2006 by the Australian professional accounting bodies with a primary purpose to develop, issue and maintain high-quality professional and ethical pronouncements for the Australian accounting profession (including firms) in an independent manner with a public interest focus. APESB's structure is unique as it is a circumstance where one National Standard Setter issues professional and ethical standards for three professional accounting bodies, all members of the International Federation of Accountants (IFAC).

APESB's pronouncements apply to the members of the three major Australian professional accounting bodies, Chartered Accountants Australia and New Zealand (CA ANZ), CPA Australia and the Institute of Public Accountants (IPA). This requirement to apply APESB pronouncements is extended to accounting firms established by members and all professional services they provide to clients, which include the public sector.

Co-regulatory environment

The Australian accounting profession exists in a co-regulatory environment, which involves APESB, other standard setters comprising the Auditing and Assurance Standards Board (AUASB) and the Australian Accounting Standards Board (AASB), the three Australian professional accounting bodies and applicable regulatory authorities (for example, the Australian Securities and Investments Commission (ASIC), and the Australian Taxation Office (ATO)).

The importance of professional and ethical standards

Professional and ethical standards are the cornerstone of the accounting profession. We believe that a strong framework of professional and ethical standards assists accountants in addressing ethical issues when they arise, and when adhered to, it also establishes robust professional conduct, and contributes to confidence in capital markets and the outputs produced for clients.

The Australian Code ([APES 110](#)) is based on the [International Code](#) issued by the [IESBA](#) that has been adopted and used in over 130 jurisdictions in the world. We believe that APES 110 and APESB's other professional and ethical standards represent global best practice.

APESB also plays an important role in enhancing the International Code of Ethics through involvement with the IESBA National Standard Setters (IESBA NSS) group. Since the group was formed in 2009, APESB has actively provided jurisdictional input to the global standard development process. Also, APESB's CEO Channa Wijesinghe, is currently a public interest Board Member of the IESBA and provides an Australian perspective on international standards development processes.

It should be noted that consulting services are provided by many disciplines other than accounting, and some of those will have their own codes of conduct. However, in the absence of a professional code of conduct for consultants of a particular discipline, there may not be a generally recognised framework to manage a conflict of interest.

Monitoring, enforcement, and collaboration with regulators

Similar to the AASB and AUASB, as a national standards setter, APESB's mandate does not include monitoring and enforcement. The three professional accounting bodies and regulatory authorities (i.e., ASIC, ATO) are responsible for monitoring and enforcing compliance of professional accountants, including conducting disciplinary actions for breaches of APESB standards.

Overall comments

APESB supports this inquiry and believes it is a welcome step towards ensuring that high-quality professional services are provided to the Australian Government that upholds the public interest and avoids perceived or actual conflicts of interest. APESB is pleased to have the opportunity to comment on the terms of reference for this inquiry.

APESB believes that the Senate Finance and Public Administration Committee should take into account the following matters as part of their inquiry:

- the Australian Code (APES 110), Quality Management Framework for Non-Assurance Services ([APES 320](#)) and other APESB Standards (refer to Appendix A) include specific requirements to address conflicts of interest and, where applicable, align with equivalent international standards, which facilitates global commerce;
- from a standards perspective, the mandatory professional obligations in APES 110, APES 320 and other [applicable APESB pronouncements](#) represent global best practice;
- APESB is not aware of empirical evidence to suggest that there are significant weaknesses concerning the mandatory requirements in our pronouncements;

- any amendments to strengthen the measures to prevent conflicts of interest, breach of contract or any other unethical behaviour by consultants should carefully consider the existing professional standards framework in place;
- Where consultants may not have a code of conduct or a framework to refer to manage conflicts of interest, we recommend that a code of conduct for consultants, akin to APES 110 (and other applicable APESB pronouncements), could provide an appropriate framework to assess integrity, promote transparency and manage conflict of interests.
- we acknowledge that non-compliance with existing legislative, regulatory and professional standards obligations do occur from time to time. In these instances, we strongly support the regulators and monitoring bodies taking appropriate enforcement and disciplinary action.

APESB's specific responses to the terms of reference of the inquiry into the management and assurance of integrity by consulting services provided for the Australian Government are included in Appendix A for your consideration.

Concluding comments

We welcome the opportunity to discuss with the Committee the existing accounting professional and ethical standards issued by APESB and how these standards deal with conflicts of interest, community expectations and serve the public interest.

If, during the inquiry, a gap is identified in the professional standards framework that falls within APESB's mandate, then we look forward to working with you to develop an appropriate solution.

Please note that APESB's submissions are public documents, and we request that this Submission be shared publicly on your website.

We trust that you find these comments useful in your deliberations. If you wish to discuss this further or should you require any additional information, please contact APESB's Chief Executive Officer, Channa Wijesinghe, at channa.wijesinghe@apesb.org.au.

Yours sincerely



Nancy Milne OAM

Chairman

Appendix A

Specific comments on the Inquiry's Terms of Reference

APESB has only considered the terms of reference that relate specifically to its role and mandate as the National Standards Setter of accounting professional and ethical standards in Australia. Accordingly, APESB's responses to the specific terms of reference of the inquiry are as follows:

Terms of Reference a): The management of conflicts of interest by consultants

Considering conflicts of interest is a key requirement for professional accountants in public practice, such as consultants, when providing professional services to clients, such as the Federal Government.

Refer below to a summary of the applicable APESB pronouncements that address conflicts of interest and provide a professional standards framework that enables accountants who act as consultants to deliver quality services that comply with the fundamental principles of integrity and objectivity in the Code.

APESB pronouncements

APESB has issued 21 professional pronouncements, including APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* (APES 110). APES 110 is based on the *International Code of Ethics for Professional Accountants (including International Independence Standards)* (the IESBA Code) issued by the IESBA.

APES 110 has a broad scope to address the diverse range of professional activities provided by professional accountants. It is a principles-based standard that sets out a conceptual framework to identify, evaluate, and address threats to the fundamental principles of integrity, objectivity, professional competence and due care, confidentiality and professional behaviour. However, APES 110 also includes rules and prohibitions regarding conflicts of interest.

Section 310 *Conflicts of Interest* of APES 110 include requirements and application material relevant to applying the conceptual framework to conflicts of interest for professional accountants in public practice, such as those acting in a consultancy capacity from an accounting firm. These provisions include:

- prohibitions on professional accountants allowing a conflict of interest to compromise professional or business judgement (paragraph R310.4);
- examples of circumstances that might create a conflict of interest (paragraph 310.4 A1);
- requirements for professional accountants to take reasonable steps to identify conflicts of interest and to remain alert to changes that create conflicts (paragraphs R310.5 to 310.7 A1);
- factors relevant in evaluating threats created by conflicts of interest and actions that might address such threats (paragraphs 310.8 A1 to A3); and
- material on disclosure and consent (paragraphs R310.9 to R310.10).

It is also important to consider what a reasonable and informed third party would perceive of the conflict and how it has been addressed.

APES 320 *Quality Management for Firms that provide Non-Assurance Services* requires firms to establish and maintain a system of quality management for non-assurance services, including consulting services, to provide reasonable confidence that the firm complies with professional standards, legal and regulatory requirements and that engagement outputs are appropriate for the relevant circumstance.

APES 320 includes policies and procedures requiring a firm to determine whether it is appropriate to accept or continue an engagement where a potential conflict of interest is identified before accepting or during an engagement (paragraph 4.14(b)). APES 320 addresses monitoring and remediation measures and creates a professional obligation on Firms to establish a monitoring process (Paragraph 4.65) to provide them with reasonable confidence that the system of quality management is operating effectively. The Standard also imposes requirements on Firms to have processes to investigate complaints and allegations (paragraph 4.71) and take appropriate remedial actions when findings of the monitoring process or investigations indicate deficiencies in the Firm's system of quality management (paragraph 4.74).

APESB's other professional and ethical pronouncements are applicable at the firm level and on a range of professional services, including taxation, valuation, forensic accounting, insolvency, financial planning, due diligence committees and outsourced services.

In addition to the above, the following APESB standards on specific professional services also include requirements on conflicts of interest:

Professional Standard	Paragraph Reference
<u>APES 310 Client Monies</u>	paragraphs 3.2 and 8.2
<u>APES 325 Risk Management for Firms</u>	Paragraph 4.2
<u>APES 215 Forensic Accounting Services</u>	paragraphs 3.3, 3.4,3.9, 5.1 and 5.2
<u>APES 220 Taxation Services</u>	paragraph 3.6
<u>APES 225 Valuation Services</u>	paragraph 3.2
<u>APES 230 Financial Planning Services</u>	paragraphs 3.4, 3.5, 5.2 and 11.1
<u>APES 315 Compilation of Financial Information</u>	Paragraph 3.5
<u>APES 330 Insolvency Services</u>	Sections 4,5,10 and paragraph 11.2
<u>APES 345 Reporting on Prospective Financial Information prepared in connection with a Public Document</u>	paragraphs 3.2, 3.7, Section 5 and 6, and paragraphs 9.2 and 11.1
<u>APES 350 Participation by Members in Public Practice in Due Diligence Committees in connection with a Public Document</u>	Section 3

Terms of Reference b): Measures to prevent conflicts of interest, breach of contract or any other unethical behaviour by consultants

Before professional accountants in public practice accept a new client relationship, engagement or business relationship, APES 110 requires them to take reasonable steps to identify circumstances that might create a conflict of interest and, therefore, a threat to compliance with one or more of the fundamental principles (paragraphs R310.5 to 310.5 A3). Professional accountants must also remain alert to changes in the nature of activities or services, interests and relationships that might create a conflict of interest while performing professional activities or engagements (paragraph R310.6 of APES 110).

APES 110 imposes additional requirements on professional accountants in public practice, such as Firms to:

- exercise professional judgement to determine whether the nature and significance of a conflict of interest require disclosure and consent (paragraph R310.9) and if the client refuses to provide such consent, to end or decline the professional services, or end relevant relationships or dispose of relevant interests (paragraph R310.10).
- remain alert to the principle of confidentiality when making disclosures or sharing information within the Firm and seeking guidance from third parties (paragraph R310.11). If such disclosure would result in a breach of confidentiality, the Firm must only accept or continue an engagement if specific criteria are met and to document this circumstance (paragraphs R310.12 and R310.13).

Terms of Reference c): enforcement measures taken in response to integrity breaches, such as the inadequate management of conflicts of interest, breach of contract or any other unethical behaviour by consultants

As noted on pages 1-2 of this Submission, as an independent national standards setter, APESB's role is to set professional and ethical standards in the public interest. APESB's mandate does not include monitoring and enforcement. This demarcation of responsibilities is similar to how the Parliament and the law enforcement authorities operate. The three professional accounting bodies and regulatory authorities (i.e., ASIC, ATO) are responsible for monitoring and enforcing professional accountants' compliance, including conducting disciplinary actions for breaches of APESB standards.

APESB does engage with the quality review functions of the professional accounting bodies and regulators to determine whether the requirements of APESB standards are being complied with in practice and if further enhancements are required to address specific issues. In addition, the Professional Standards Councils of Australia also reviews the accounting professional bodies' processes for monitoring compliance with APESB standards by their members, as part of the approval of the Professional Standards Schemes.

APESB has a history of collaborating with regulators, including ASIC, ATO and APRA, of developing solutions to regulatory concerns regarding the professional and ethical behavior of professional accountants, which assists with monitoring and enforcement activities. This collaborative approach has resulted in developing and refining APESB pronouncements to uphold the public interest.

Terms of Reference d): the management of risks to public sector integrity arising from the engagement of consultants

We note that the Code (APES 110) and the APES 200 Series of professional standards impose requirements on professional accountants who are employed in the public sector to manage conflicts of interest similar to those in public practice, as explained in our response to ToR 1 on pages 4 and 5 of this Submission. In particular, please refer to Section 210 of APES 110.