

## AGENDA PAPER

**Item Number:** 5  
**Date of Meeting:** 17 November 2023  
**Subject:** The proposed amendment to APES 110 on reporting breaches

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Action Required     For Discussion     For Noting     For Information

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### Purpose

To seek the Board's views on undertaking a project to include a requirement in APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* (the Code) for a member who belongs to a professional accounting body to report to the relevant professional body breaches of professional and ethical standards by other accountants.

### Background

In July 2022, Chartered Accountants Australia and New Zealand (CA ANZ) announced a comprehensive review of the CA ANZ By-Laws and related regulatory and administrative arrangements relating to the Professional Conduct Framework (PCF review). The former Federal Court Justice, the Honourable Dennis Cowdroy AO KC, was appointed to independently assess and provide feedback on the recommendations arising from the Professional Conduct Review.

The PCF review concluded in May 2023, with the [final report](#) released alongside the Independent Review of the recommendations and the Committee's Response to the Independent Review. While overall, the review was positive about the PCF, a few opportunities were identified for enhancing the disciplinary framework. The review noted that some of the matters could be addressed through revisions to CA ANZ's By-Laws and some matters through other means.

On 26 October 2023, CA ANZ [announced](#) that their members had voted in favour of resolutions to further strengthen the Professional Conduct Framework at their 2023 Annual General Meeting. The changes include increased fines at the Professional Conduct Committee level and disciplinary tribunal level, alignment with the NZICA Rules for serious misconduct of former members, the introduction of optional firm membership in New Zealand, heightened investigative power and an aligned set of conduct and discipline rules. The amended CA ANZ By-Laws will take effect after receiving Royal Assent of the Governor General in Australia, and the amended NZICA Rules will take effect at around the same time when the CA ANZ Chair countersigns the NZICA Rules resolutions.

## Matters for Consideration

### Request from CA ANZ

In July 2023, CA ANZ wrote to APESB about the PCF review and a recommendation relating to the alignment of disclosure obligations for Australian and New Zealand members. The independent reviewer, Mr Cowdroy, recommended the introduction of a requirement in the By-Laws for Australian members to report wrongdoing committed by other members to align with current requirements imposed on New Zealand members.

The letter noted the obligation in New Zealand is established by the NZICA Code of Ethics (NZICA Code) rather than NZICA Rules or By-Laws. Therefore, CA ANZ have requested the APESB to consider whether a like provision should be included in the Australian Code (APES 110).

### Requirements in the NZICA Code

Technical Staff have researched the relevant provisions and noted the requirement to disclose unethical behaviour by others has been in the NZICA Code for several years (e.g., it was included in the July 2013 version at paragraph NZ140.9).

The current [NZICA Code of Ethics \(2022\)](#) includes the following New Zealand-specific paragraphs:

#### **Duty to Disclose Unethical Behaviour**

**NZ R100.9 Subject to R100.7, members have a professional duty to report unethical behaviour of other members to NZICA. Any member who encounters or becomes aware of a matter which provides reasonable grounds for suspecting defalcation, fraud, dishonesty or other unethical behaviour by any other member shall make a report immediately to the most senior executive of NZICA.**

NZ100.9 A1 In circumstances where a member has made a report to NZICA, the member should be aware that:

- (a) The information disclosed might form the basis of a complaint by NZICA, and in certain circumstances the member who made the report might be requested and/or required to participate in any disciplinary proceedings;
- (b) The information disclosed, including the name and other information which might enable identification of the member who has made the report, could be made available to the member about whom the report relates pursuant to the Privacy Act 2020;
- (c) In all situations where the member considers disclosing confidential information, the member must consider:
  - (i) The interests of all parties who might be affected; and
  - (ii) The need to obtain legal advice and consult NZICA.

**NZ R100.10 The duty to report shall extend to the member's own conduct. In the event of disciplinary proceedings, the fact that a member has made such a report will count in the member's favour.**

### APESB Due Process for Amendments to the Code

In considering this request, Technical Staff have reviewed APESB's processes for revising the Code and the options for the Board to make amendments to APESB pronouncements that are based on international pronouncements.

Under section 3.3 of APESB's [Due process and working procedures for the development and review of APESB pronouncements](#) document, APESB can "...develop additional requirements or guidance to the international pronouncement to take into consideration the Australian environment (for example, legislation and regulations, public interest issues, current practice and Australian terminology and references), developments in other comparable jurisdictions and stakeholder feedback."

The amendment proposed by CA ANZ may address public interest issues in the Australian environment, and, as such, Technical Staff are of the view that APESB should commence a project to consider this matter.

Technical Staff are therefore seeking the Board's views on the request from CA ANZ to include a requirement in the Code obliging members who belong to a professional accounting body to report to the relevant professional body the unethical behaviour of other members.

### **Recommendation**

That the Board provide their views and feedback on whether APESB should commence a project to incorporate a new obligation in the Code, which requires members to report to the relevant professional body the unethical behaviour of other professional accountants.

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