



## Project proposal on APES 110 and reporting breaches

### Introduction

APESB has been requested to consider whether a new requirement should be included in APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* (APES 110), which would require members of a professional accounting body to report unethical behaviour of other members to the applicable professional body.

### 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 Honorable 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 a CA ANZ Committee's Response to the Independent Review. The review noted that some of the matters could be addressed through revisions to CA ANZ's By-Laws and some issues through other means.

On 26 October 2023, CA ANZ [announced](#) that their members had voted in favour of resolutions to 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 New Zealand Institute of Chartered Accountants (NZICA)'s 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 from 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.

### 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 that 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 APES 110.

At the November 2023 Board Meeting ([Agenda Item 5](#)), the Board considered the request from CA ANZ and agreed to consider a project proposal to determine whether APES 110 should be updated for reporting breaches by members.

## **Key Considerations**

In undertaking this project, APESB will need to consider:

### 1) Existing requirements and guidance

Analysis will need to be performed to consider whether extant requirements and application material in the Code (for example, NOCLAR) would cover the reporting of unethical behaviour by other accountants.

APESB will also need to consider:

- whether jurisdictions other than New Zealand have similar requirements; and
- Any relevant requirements in law and regulations.

### 2) Scope and extent of any proposed change

In considering any change to the Code, APESB will need to consider:

- The form of any change, i.e., either a requirement or application material in the Code or as guidance material external to the Code;
- What should be classified as 'unethical behaviour', including determining what needs to be reported (i.e. all breaches or only breaches of the Code that would be considered significant, and is it only breaches of the Code or broader wrongdoings);
- What are the expectations on the members to provide evidence to support (or dispute) the reports made to the relevant professional bodies and
- What other thresholds or scoping guidance will be required to enable Members to implement and comply with the provisions (for example, the responsibility to report when multiple members of a firm are aware of a breach)?

### 3) Ability to monitor and enforce such a requirement

APESB will need to discuss with regulators and the Professional Bodies to determine whether such a requirement would create any challenges with monitoring and enforcement in practice.

### 4) Consequences of the change

Australian whistleblower protections are narrower than in other countries, and consideration will need to be given to whether the member who advises the professional bodies of the unethical behaviour would fall under the current legislated whistleblower protections. Complying with the proposed requirement should not impact an individual's career, and hence, the ability to utilise appropriate whistleblower disclosure protections is an important consideration.

Consideration also needs to be given to the potential impacts of a false or incorrect report being made against another member.

## **Proposed Project Plan**

Appendix A outlines the proposed project plan and key stages for this project.

The project will focus on engaging with stakeholders and identifying any potential issues and consequences of putting the requirement in place.

Stakeholder engagement (with the Professional Bodies, firms, regulators and other relevant stakeholders) will also be a key component of the project. It will be used to ascertain the views and concerns of Members as well as other stakeholders.

## **Other Matters to Consider**

### *Impact on other APESB pronouncements*

If a requirement is to be included in APES 110, all other APESB pronouncements will need to be reviewed to determine the impact, if any, on each pronouncement. APESB may also need to consider updating its guidance publications, such as *Whistleblowing & Confidentiality – APESB Technical Staff Publication*.

### *Impact on accounting, auditing, or other relevant standards*

APESB will need to engage with the AUASB and AASB for any potential impact on Auditing and Assurance Standards and Accounting Standards.

### *Related legislative developments*

The Government have recently made legislative changes that are of interest to this project. The changes, which were approved in November 2023 and become effective from 1 July 2024 include:

- New provisions introduced into the Tax Agents Service Act require tax agents to notify the Tax Practitioners Board (TPB) if they have reasonable grounds to believe that another registered agent has breached the TPB Code and that breach is significant.
- The Treasury has considered the Treasury Law Amendment to the Taxation Administration Act to extend whistleblower protections to eligible whistleblowers who make disclosures to the Tax Practitioner Board.

The media have [reported](#) that tax practitioners have concerns about the application of the 'dob in' provisions and how it is to be complied with. These concerns may be of relevance to this proposed project.

*Related international developments*

None noted.

## Appendix A

<b>Project Plan on Reporting Breaches of APES 110</b>	
<b>Objective</b>	To determine whether the APES 110 Code of Ethics for Professional Accountants (including Independence Standards) (APES 110) should require members of a professional accounting body to report the unethical behaviour of other members to the applicable professional body.
<b>Activities (in phases)</b>	<p>The activities for this project have been grouped into three key phases.</p> <p><b>Phase 1: Initial research/ desktop review</b></p> <p>This stage of the project will focus on:</p> <ul style="list-style-type: none"> <li>• performing a risk assessment for the project;</li> <li>• conducting a desktop review to determine whether there are similar requirements in other jurisdictions;</li> <li>• obtaining an understanding of the issues that arise when members report unethical behaviour of other members (including whistleblower protections); and</li> <li>• Identify key stakeholders to engage with during the consultation process.</li> </ul> <p>The research will be undertaken internally by Technical Staff.</p> <p>Timing: March – April 2024</p> <p><b>Phase 2: Initial Stakeholder Engagement</b></p> <p>At this stage, the project will focus on conducting interviews with a cross-section of key stakeholders to discuss the proposal and identify current practices and key issues around reporting breaches.</p> <p>Technical Staff will undertake discussions across all categories of stakeholders (e.g., Regulators, professional bodies, other standard setters, Firms, Members in Public Practice, Members in Business, SMPs, etc.).</p> <p>Timing: May – June 2024</p> <p><b>Phase 3: Identification and analysis of issues and other matters</b></p> <p>In Stage 3, Technical Staff will:</p> <ul style="list-style-type: none"> <li>• Analyse the information gathered from Stage 1 and 2 of the project;</li> <li>• Determine the key issues that may require further study or feedback;</li> <li>• Consider if other matters need to be considered for the requirement to be enforceable; and</li> </ul>

## Project Plan on Reporting Breaches of APES 110

- develop options that the APESB Board could consider to address the request.

Timing: June 2024

### **Phase 4: Stakeholder consultation and feedback**

Key steps at this stage include:

- Develop a consultation paper or Exposure Draft that outlines options and addresses key issues and matters identified in Stage 3;
- Conduct consultation with stakeholders; and
- Consider respondents' comments and views.

Timing: July – October 2024

### **Phase 5: Board's decision on inclusion of the requirement**

Once the stakeholder process is complete, Technical Staff will make a recommendation to the Board at a Board Meeting in November 2024.

Timing: November 2024 – December 2024

### **Project Risk Assessment (key risks)**

#### **Risks**

##### **Risk 1**

Proposed revisions are not acceptable to Members, Professional Bodies and other stakeholders.

Assessment:

- Probability: Medium
- Impact: Low to medium
- Risk rating: Medium

Mitigating Controls: Undertake stakeholder engagement as required.

##### **Risk 2**

Professional Bodies are unable to take action/enforce standards over Members who fail to comply with the requirements.

Assessment:

- Probability: High
- Impact: Medium
- Risk rating: High

## Project Plan on Reporting Breaches of APES 110

	<p>Mitigating Controls: APESB has no control over the monitoring and enforcement performed by professional bodies and regulators. APESB will seek feedback from professional bodies and regulators on monitoring and enforcement processes.</p> <p><b><u>Risk 3</u></b></p> <p>Reputation damage due to APESB's views on a standard different to another standard setter (i.e., NZICA)</p> <p>Assessment:</p> <ul style="list-style-type: none"><li>- Probability: Medium</li><li>- Impact: High</li><li>- Risk rating: Medium</li></ul> <p>Mitigating Controls: APESB consults with NZICA and their experience with this provision as part of the due process.</p>
<b>Resource Requirements</b>	<ul style="list-style-type: none"><li>• The estimated time spent by the Technical Staff over the life of this project is approximately two to three months.</li><li>• Other sundry costs include printing and stationery.</li></ul>