

30 July 2024

COI & Confidentiality Review Taskforce  
The Department of Finance  
Risk and Insurance Branch  
Commercial Group  
One Canberra Avenue  
FORREST ACT 2600  
By Email: [COIandConfidentialityReview@finance.gov.au](mailto:COIandConfidentialityReview@finance.gov.au)

Dear Sir/Madam,

## **Conflict of Interest and Confidentiality Review – Consultation Paper July 2024**

Accounting Professional & Ethical Standards Board Limited (APESB) welcomes the opportunity to make a submission on the COI & Confidentiality Review Taskforce (Taskforce)'s *Conflict of Interest and Confidentiality Review – Consultation Paper July 2024* (the Consultation Paper).

APESB is an independent entity 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 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).

In Australia, APESB has issued APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* ([APES 110](#)) and other pronouncements that address non-assurance services for the accounting profession. APES 110 is based on the [International Code of Ethics](#) issued by the International Ethics Standards Board for Accountants (the [IESBA](#)).

APESB believe that a strong framework of professional and ethical standards assists professional accountants in addressing ethical issues when they arise. When adhered to, these standards establish robust professional conduct and contribute to the stakeholders' confidence in the work performed by accountants, including those accountants who work in the public sector.

APESB is supportive of the Department of Finance's confidentiality and conflicts of interest review. APESB agrees it is important to establish robust and consistent policies to address confidentiality and conflicts of interest arrangements and is supportive of the Department's proposed approach to ensure clarity regarding confidentiality and conflicts of interest.

APESB agrees that the proposed definition of a conflict of interest (COI) should refer to a person having multiple interests or duties and serving one impedes others. This is consistent with the circumstances that might create a conflict of interest in APES 110.

We agree that the proposed definition involves situations where an individual or organisation gains a benefit while the Australian Government suffers a detriment as a result of the activity. However, we are concerned about the inclusion of the word “material” in the proposed definition. APESB is of the view that the term “material” could be interpreted differently by individuals, potentially impacting their decision to make a necessary disclosure. Our concern is that whether a COI is “material” is a matter of judgement and circumstances are likely to arise where a person will conclude that a COI will not be material and need not be disclosed when an objective consideration of all relevant circumstances might lead to the opposite conclusion. Removing the term “material” from the proposed definition will ensure that all matters are appropriately disclosed and can be considered by an independent and impartial party or organisation for resolution.

APESB agrees that the proposed definition of COI distinguishes a real, potential and perceived conflict of interest. It is important to consider what a reasonable and informed third party would perceive of the conflict and how it has been addressed.

It is appropriate that the definition considers conflicts of interest in relation to the Australian Government. However, the definition of COI would be more robust if it considered the public interest. We acknowledge that the Australian Government and the public interest are closely related, but including the public interest could capture situations where a government policy may conflict with the public interest, such as the Robodebt Scheme. As such, APESB would encourage the inclusion of public interest as an additional component in the definition of COI.

The Consultation Paper has identified that circumstances will arise where an unavoidable COI will arise and will need to be carefully managed. In such circumstances it is imperative that confidentiality be maintained. This is recognised in subsection 114 of APES 110. We suggest that in developing materials directed at managing COI, it will be desirable to include appropriate policies and procedures that deal with the maintenance of confidentiality.

APESB notes that while the PwC issue was labelled a conflicts of interest issue, other aspects of expected ethical conduct were not observed. The expected ethical behaviours could be included in the list of matters that will be addressed in the proposed guidance material.

APESB pronouncements set out fundamental ethical obligations, including independence and maintaining confidentiality, and provide material on identifying and addressing conflicts of interest. These pronouncements may be of use to the Taskforce in considering the application of their proposed definition and the related training requirements. Brief information on relevant provisions is set out in Appendix A for the Taskforce’s information purposes.

Section 210, *Conflicts of Interest* of APES 110, includes requirements and application material relevant to applying the conceptual framework to conflicts of interest for professional accountants employed in the public service. Paragraph 210.4 A1 offers examples that the Taskforce could consider when considering examples for their guidance materials, such as serving in a management or governance position for two employing organisations or selecting a vendor when an immediate family member might benefit financially from that transaction.

APESB supports the proposed principles and risk assessment approach to strengthen the management of conflicts of interest.

APESB have considered the proposed approach against relevant provisions in APES 110, APES 320 *Quality Management for Firms that provide Non-Assurance Services* and APES 325 *Risk Management for Firms*. We note there is alignment with many of the elements outlined in APESB pronouncements, including procedures for identifying potential risks, safeguards or mitigation strategies, disclosure and communication, as well as monitoring and documentation. The Taskforce could also consider the inclusion of guidance on the risk tolerance parameters, the meaning of materiality and the scope of the provisions (e.g., which family members are captured by the policies).

We trust you find these comments useful in your deliberations. If you wish to discuss this further or require additional information, please get in touch with APESB's Chief Executive Officer, Channa Wijesinghe, at [channa.wijesinghe@apesb.org.au](mailto: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

### APES 110 and APES 320 regarding Conflict of Interest and Confidentiality

This Appendix provides a summary of the applicable provisions in APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* (APES 110) and APES 320 *Quality Management for Firms that provide Non-Assurance Services* (APES 320) that address conflicts of interest and confidentiality for professional accountants.

APES 110 is a principles-based standard that sets out a conceptual framework to identify, evaluate and address threats to the fundamental principles, including confidentiality.

Subsection 114 *Confidentiality* of [APES 110](#) sets out the requirements for professional accountants to comply with the principle of confidentiality. These provisions include:

- be alert and maintain confidentiality of information acquired as a result of professional and business relationships (paragraph R114.1);
- examples of circumstances that might be required or appropriate to disclose confidential information (paragraph 114.1 A1);
- factors in considering the disclosure of confidential information (paragraph 114.1 A2); and
- remain to comply with the principle of confidentiality even after the end of the professional or business relationship. (paragraph R144.2).

Section 210 *Conflicts of Interest* of [APES 110](#) includes requirements and application material relevant to applying the conceptual framework to conflict of interest for professional accountants who are employed in the public sector.<sup>1</sup> These provisions include:

- prohibitions on professional accountants allowing a conflict of interest to compromise professional or business judgments (paragraph R210.4);
- examples of circumstances that might create a conflict of interest (paragraph 210.4 A1);
- requirements for professional accountants to take reasonable steps to identify conflicts of interest and to remain alert to changes that create conflicts (paragraphs R210.5 to R210.6);
- factors relevant in evaluating threats created by conflicts of interest and actions that might address such threats (paragraphs 210.7A1 to 210.7 A3); and
- material on disclosure and consent (paragraphs 210.8 A1 to 210.8 A3).

[APES 320](#) requires firms to establish and maintain a system of quality management for non-assurance services, including consulting services, to provide reasonable confidence that the firms comply with professional standards. This includes the establishment of policies and procedures in relation to:

- acceptance and continuance of client relationships and specific engagements that consider the identification of conflicts of interest and the impact on accepting or continuing an engagement (paragraph 4.14);
- monitoring process to provide reasonable confidence that the system of quality management is operating effectively (paragraph 4.65);
- processes to investigate complaints and allegations (paragraph 4.71); and
- remedial actions to take when findings of monitoring process or investigations indicate deficiencies in the firm's system of quality management (paragraph 4.74).

---

<sup>1</sup> Note that professional accountants in public practice are also required to manage conflicts of interest by applying the requirements in Section 310 *Conflicts of Interest* of APES 110.