

2 November 2018

Warren Allen FCA
Chief Executive
External Reporting Board
PO Box 11250
Manners Street Central
Wellington 6142

By email: submissions@xrb.govt.nz

Dear Warren

Submission on ED NZAuASB 2018-1: PES 1 International Code of Ethics for Assurance Practitioners (including International Independence Standards) (New Zealand)

We appreciate the opportunity to provide feedback on the above exposure draft ("the ED"). We support international convergence to the extent practicable, but we support modifications where there is a compelling jurisdiction specific reason.

As an overall comment, we recommend bolding the text of each requirement paragraph (those designated with the letter "R") to make the mandatory obligations clearer. We are proposing to do this in our restructured New Zealand Code of Ethics, and we believe the APESB is doing the same in APES 110.

Appendix A contains our responses to the specific questions raised in the ED. Appendix B provides information about Chartered Accountants Australia and New Zealand (CA ANZ). If you have any questions about the matters raised in this submission, or wish to discuss them in further detail, please contact Zowie Pateman, Deputy Reporting and Assurance Leader, at Zowie.Pateman@charteredaccountantsanz.com.

Yours sincerely



Simon Grant FCA ACCA
Group Executive, Advocacy and Professional Standing
Chartered Accountants Australia and New Zealand

Responses to specific questions

- 1. Do you agree with the proposal to follow the International Code in relation to breaches of independence relating to other assurance engagements? If not, please explain why not.**

We agree with the proposal to follow the International Code in relation to breaches of independence relating to other assurance engagements. Although see our comment below in relation to paragraph NZ 400.2.1 in terms of the scope of Parts 4A and 4B and what constitutes an 'other assurance engagement'.

- 2. More specifically, do you consider that the International Code's requirements to use professional judgement when communicating breaches of independence for other assurance engagements are appropriate, given the varying nature of other assurance engagements? If not, please explain why not.**

We consider it is appropriate for assurance practitioners to use their professional judgement in determining with whom to communicate a breach of independence when conducting an other assurance engagement.

- 3. Do you agree that the requirements of the International Code to communicate NOCLAR for other assurance engagements, as proposed in the ED, is appropriate? If not, please explain why not.**

We believe the requirements of the International Code are appropriate in this regard on the basis that they are consistent with the principles for reporting breaches of independence relating to other assurance engagements. Similarly we consider it is appropriate for an assurance practitioner to use their professional judgement in determining with whom to communicate NOCLAR for other assurance engagements.

- 4. Do you agree that the International Code's application of the threats and safeguards approach is sufficient to achieve independence for other assurance engagements? If not, please explain why not.**

We are concerned that the requirement to consider both independence of mind and independence in appearance (paragraph 900.4 and equivalent paragraphs elsewhere) is just implicit through paragraph R900.14. In our view it is important that this is explicit as it is linked to the additional requirement to look at threats in the aggregate (NZ R900.15.1 and equivalent paragraphs elsewhere) and the interpretation of the 'spirit' of the Code (paragraph NZ1.4).

- 5. Do you agree that aligning the proposed effective date with the effective date of the International Code? If not, please explain why not.**

We agree that it is desirable for the effective date to be aligned with the effective date of the International Code.

6. Do you consider that any of the new requirements which align with the International Code requirements pose specific challenges or are not appropriate in the New Zealand context? If so, please provide details.

We note the International Independence Standards contain some overly specific exemptions that appear to contradict the conceptual framework, which requires consideration of all the circumstances rather than just a simplistic rule. For example the exemptions from paragraphs R524.6 and R524.7 in paragraph R524.8. We are concerned that it may be overlooked that these are still subject to the fundamental principles and the conceptual framework still needs to be applied.

7. Do you agree with the addition of the New Zealand paragraphs and the differences to the International Code? If not, please provide details on the specific provisions and reasons why you disagree with the addition.

We commend the NZAuASB for taking this opportunity to re-examine whether the extant New Zealand paragraphs continue to meet the compelling reason test. The following table sets out our comments on each of the proposed NZ paragraphs.

Paragraph	Text	Comments
NZ 114.1 A1.1	The circumstances in paragraph 114.1 A1 do not take into account New Zealand legal and regulatory requirements. An assurance practitioner considering disclosing confidential information about a client without their consent is advised to first obtain legal advice.	We recommend removing the first sentence which is confusing and not entirely accurate. We also recommend amending the wording of the end of the second sentence to; "An assurance practitioner considering disclosing confidential information about a client without their consent <i>may consider first obtaining legal advice</i> ".
NZR 120.4	When dealing with an ethics issue, the assurance practitioner shall consider the context in which the issue has arisen or might arise. Where an individual who is an assurance practitioner is performing assurance services pursuant to the assurance practitioner's relationship with the firm, whether as a contractor, employee or owner, the individual shall comply with any other ethical standards that apply to these circumstances.	If there is a compelling reason to include this paragraph, we believe it would assist application if some examples of 'other ethical standards' were provided. For instance; the Code of Ethics promulgated under section 7 of the New Zealand Institute of Chartered Accountants Act 1996, or APES 110 <i>Code of Ethics for Professional Accountants</i> issued by the APESB. Also we note that the reference drafting is inconsistent, it should be NZ R120.4.

NZ R300.5	When dealing with an ethics issue, the assurance practitioner shall consider the context in which the issue has arisen or might arise. Where an individual who is an assurance practitioner is performing assurance services pursuant to the assurance practitioner's relationship with the firm, whether as a contractor, employee or owner, the individual shall comply with any other ethical provisions that apply to these circumstances.	We note this duplicates paragraph NZR 120.4, and we refer to our comments on that paragraph.
NZ R310.9.1	Where an assurance practitioner has a conflict of interest but can apply safeguards to eliminate the threat or reduce it to an acceptable level, the assurance practitioner shall disclose the nature of the conflict of interest and related safeguards, if any, to all clients or potential clients affected by the conflict.	If there is a compelling reason to include these paragraphs we suggest that reference be made to " <i>measures or safeguards</i> " to reflect that paragraph 310.8 A2 talks about 'measures' and paragraph 310.8 A3 refers to 'safeguards'.
NZ R310.9.2	When safeguards are required to reduce the threat to an acceptable level, the assurance practitioner shall obtain the client's consent to the assurance practitioner performing the assurance services.	
NZ R310.12	In those circumstances where adequate disclosure is not possible by reason of constraints of confidentiality the assurance practitioner shall end or decline the relevant assurance engagement.	No specific comments

NZ R330.5	An assurance practitioner shall not accept or pay referral fees, commissions or other similar benefits in connection with an assurance engagement.	We note these paragraphs differ to those in proposed restructured APES 110 (paragraphs AUST R330.5.2 and AUST 330.5.2 A1 respectively). We support trans-Tasman harmonisation to the extent practicable.
NZ 330.5 A1.1	The receipt or payment of referral fees, commissions or other similar benefits in connection with an assurance engagement creates a threat to independence that no safeguards could reduce to an acceptable level.	
NZ R360.10.1 NZ R360.15.1 NZ R360.16.1 NZ 360.16 A1 NZ R360.17.1 NZ R360.18.1 NZ 360.28 A1.1	NOCLAR – to expand the requirements for audit engagements to also apply to review engagements.	The New Zealand legislative environment only allows for “medium” ¹ registered charities to have their financial statements reviewed rather than audited. We are not aware of any other such legislation. On this basis we are unconvinced that this alone is compelling enough to justify modification to the International Code.
NZ R360.29.1 NZ R360.31.1 NZ R360.32.1 NZ R360.33.1	NOCLAR – to change from ‘Professional Services Other than Audits of Financial Statements’ to ‘Assurance Services Other than Audits and Reviews of Financial Statements’	As mentioned above – we do not support a modification to the International Code in this regard.
NZ 400.2	This Part applies to both audit and review engagements.	No specific comments

¹ As defined in [section 42D\(1\)\(b\) of the Charities Act 2005](#)

NZ 400.2.1	This Part also applies to engagements where assurance is provided in relation to an offer document of a FMC reporting entity considered to have a higher level of public accountability in respect of historical financial information, prospective or pro-forma financial information, or a combination of these.	<p>The FMC Act and Regulations introduced a number of assurance engagements which are intended to assist with regulation of financial markets and have a public interest element. By way of example:</p> <ul style="list-style-type: none"> • s218 / reg 108 – audit / review of registers • reg 87 / reg 248 – assurance engagements of custodians / derivative issuers • s402 – engagements around standard conditions of market services licences (in some cases these are agreed-upon procedures engagements rather than assurance engagements). <p>It is likely the public would expect that these engagements are subject to the same independence requirements as an FMC audit. We recommend the scope of this Part be expanded to encompass such engagements – perhaps any assurance engagement required by law or regulation to be performed by a qualified auditor within the meaning of s461E of the FMC Act. In our view this is a NZ-specific situation which would meet the compelling reason test to modify the International Code.</p>
NZ R400.12.1	Where an assurance practitioner identifies multiple threats to independence, which individually may not be significant, the assurance practitioner shall evaluate the significance of those threats in aggregate and apply safeguards to eliminate or reduce them to an acceptable level in aggregate.	If there is a compelling reason to include this paragraph, it could be argued that this is application material since the framework does already require it, albeit implicitly.
NZ R410.3	As required by R120.10, where the threat cannot be eliminated or safeguards, where available and capable of being applied, cannot reduce the threat to an acceptable level, the firm shall end or decline the engagement.	We note this duplicates paragraph R120.10, therefore we are unsure whether this needs to be repeated.

NZ R523.3	A partner or employee of the firm or a network firm shall not serve as a director, officer, liquidator or receiver of an audit or review client of the firm.	We support the inclusion of this paragraph as it provides assistance with applying the legal framework in New Zealand ² .
NZ 900.13.1	Part 4A also addresses the independence requirements for assurance engagements where assurance is provided in relation to an offer document of a FMC reporting entity considered to have a higher level of public accountability in respect of historical financial information, prospective or pro-forma financial information, or a combination of these.	We refer to our comments on paragraph NZ 400.2.1.
NZ R900.15.1	Where an assurance practitioner identifies multiple threats to independence, which individually may not be significant, the assurance practitioner shall evaluate the significance of those threats in aggregate and apply safeguards to eliminate or reduce them to an acceptable level in aggregate.	We refer to our comments on paragraph NZ R400.12.1.
NZ R905.3.1	As required by R120.10, where the threat cannot be eliminated or safeguards, where available and capable of being applied, cannot reduce the threat to an acceptable level, the firm shall end or decline the engagement.	We note this duplicates paragraph NZ R410.3, and we refer to our comments on that paragraph.

² [Section 36\(4\)\(c\) of the Financial Reporting Act 2013](#)

8. Do you consider there are any weaknesses or gaps in the proposals that need to be addressed in the New Zealand context? If so, please provide details.

We do not believe it is appropriate for paragraph R310.13 on documentation to be referred to a paragraph which does not address documentation. We believe it is better addressed as a NZ paragraph that reads along the lines of *“The assurance practitioner is encouraged to document all matters set out in this section.”*

Proposed paragraphs R310.12, 310.12 A1 and R310.13 are deleted by the NZAuASB and refer to NZ R310.12.1 – which does not exist. We assume this should be NZ R310.12.

In the contents page (first page of the ED) there is a spelling error in ‘independence’.

The definition of “assurance team” is the same as the International Code, therefore should not be prefixed with [NZ].

9. Are you aware of any regulatory or other issues in the New Zealand environment that may affect the implementation of the proposals? If so, please provide details.

Section 3.6.3(f) of the extant [NZX Listing Rules](#) (and section 2.13.3(f) of the revised [NZX Listing Rules](#) effective 1 January 2019) require the audit engagement partner (key audit partner in revised rules) to be *“changed at least every five years”* (a cooling-off period is not specified). The cooling-off period requirements in proposed paragraphs R540.11-13 all assume a time-on period of seven years which may be taken to mean there is no cooling-off period after a five year time-on period for listed issuers. We recommend these paragraphs be amended to *“seven cumulative years or a shorter rotation period where required in regulations”* or by the addition of a footnote similar to that in paragraph 290.149 of extant PES 1.

10. Are there any issues arising from the proposed Code that you consider the NZAuASB should raise with the IESBA when the International Code is next updated? If so, please provide details.

We acknowledge and support the improvements the IESBA has made in relation to enforceability of the International Code. We also consider use of the “reasonable and informed third party test” to be generally positive for enforceability. However, we consider it important that the test be applied consistently with the use of objective wording. Subjective wording such as “knowingly” or “the professional accountant considers” tends to weaken enforceability and should be avoided.

Appendix B

About Chartered Accountants Australia and New Zealand

Chartered Accountants Australia and New Zealand is a professional body comprised of over 120,000 diverse, talented and financially astute members who utilise their skills every day to make a difference for businesses the world over.

Members are known for their professional integrity, principled judgment, financial discipline and a forward-looking approach to business which contributes to the prosperity of our nations.

We focus on the education and lifelong learning of our members, and engage in advocacy and thought leadership in areas of public interest that impact the economy and domestic and international markets.

We are a member of the International Federation of Accountants, and are connected globally through the 800,000-strong Global Accounting Alliance and Chartered Accountants Worldwide which brings together leading Institutes in Australia, England and Wales, Ireland, New Zealand, Scotland and South Africa to support and promote over 320,000 Chartered Accountants in more than 180 countries.

We also have a strategic alliance with the Association of Chartered Certified Accountants. The alliance represents 788,000 current and next generation professional accountants across 181 countries and is one of the largest accounting alliances in the world providing the full range of accounting qualifications to students and business.