

# APES GN 40 Ethical Conflicts in the Workplace – Considerations for Members in Business

[Supersedes APES GN 40 Ethical Conflicts in the Workplace – Considerations for Members in Business issued in October 2015]

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## 1. Scope and application

- 1.1 The objectives of APES GN 40 *Ethical Conflicts in the Workplace – Considerations for Members in Business* are to provide guidance to a **Member in Business** in respect of:
- fundamental responsibilities of the **Member in Business** when dealing with ethical conflicts in the workplace;
  - the application of the conceptual framework in the **Code** to identify, evaluate and address ethical issues;
  - specific circumstances such as dealing with conflicts of interest, reporting of information, acting with sufficient expertise, financial interests, **Inducements**, responding to non-compliance with laws and regulations and pressure to breach the fundamental principles; and
  - the disclosure of confidential information of an **Employer** to a third party and whistleblowing.
- 1.2 Accounting Professional & Ethical Standards Board Limited (APESB) has revised professional guidance note APES GN 40 *Ethical Conflicts in the Workplace – Considerations for Members in Business* (the Guidance Note). This Guidance Note is effective from the date of issue and supersedes APES GN 40 issued in October 2015.
- 1.3 APES GN 40 provides guidance to **Members in Business** on the application of the fundamental principles contained within Part 1 *Complying with the Code, Fundamental Principles and Conceptual Framework* and Part 2 *Members in Business (including employment relationships of Members in Public Practice)* of the **Code**. The Guidance Note provides examples for **Members in Business** of situations that require professional judgement in the application of the principles of the **Code**.
- 1.4 **Members in Business** using this Guidance Note should refer to APESB's *Due process and working procedures for the development and review of APESB pronouncements* (APESB's Due Process document). The APESB's Due Process document provides the meaning of the term 'should' used in this Guidance Note.<sup>1</sup>
- 1.5 **Members in Business** working in Australia should follow the guidance in APES GN 40 when they provide **Professional Activities** to their **Employer**.
- 1.6 **Members in Business** outside of Australia should follow the guidance in APES GN 40 to the extent to which they are not prevented from so doing by specific requirements of local laws and/or regulations.
- 1.7 The Guidance Note is not intended to detract from any responsibilities which may be imposed by law or regulation.
- 1.8 All references to **Professional Standards**, guidance notes and legislation are references to those provisions as amended from time to time.
- 1.9 **Members in Business** are required to comply with other applicable **Professional Standards** and be familiar with relevant guidance notes when performing **Professional Activities** for **Employers**. All **Members** are required to comply with the fundamental principles outlined in the **Code**.
- 1.10 In applying the guidance outlined in APES GN 40, **Members in Business** should be guided not merely by the words but also by the spirit of this Guidance Note and the **Member's** professional obligation to comply with the requirements of the **Code**.

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1 Refer to APESB's Due Process document, Section 5, Paragraph 5.2(e).

1.11 In this Guidance Note, unless otherwise specified, words in the singular include the plural and vice versa, words of one gender include another gender, and words referring to persons include corporations or organisations, whether incorporated or not.

## 2. Definitions

Defined terms are shown in the body of the Guidance Note in title case.

For the purpose of this Guidance Note:

**Acceptable Level** means a level at which a **Member** using the reasonable and informed third party test would likely conclude that the **Member** complies with the fundamental principles.

**Close Family** means a parent, child or sibling who is not an **Immediate Family** member.

**Code** means APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)*.

**Employer** means an entity or person that employs, engages or contracts a **Member in Business**.

**Immediate Family** means a spouse (or equivalent) or dependant.

**Inducement** means an object, situation, or action that is used as a means to influence another individual's behaviour, but not necessarily with the intent to improperly influence that individual's behaviour.

**Member** means a member of a **Professional Body** that has adopted this Guidance Note as applicable to their membership, as defined by that **Professional Body**.

**Member in Business** means a **Member** working in areas such as commerce, industry, service, the public sector, education, the not-for-profit sector, or in regulatory or professional bodies, who might be an employee, contractor, partner, director (executive or non-executive), owner-manager or volunteer.

**Professional Activity** means an activity requiring accountancy or related skills undertaken by a **Member**, including accounting, auditing, tax, management consulting, and financial management.

**Professional Bodies** means Chartered Accountants Australia and New Zealand, CPA Australia and the Institute of Public Accountants.

**Professional Standards** means all standards issued by Accounting Professional & Ethical Standards Board Limited and all professional and ethical requirements of the applicable **Professional Body**.

**Those Charged with Governance** means the person(s) or organisation(s) (for example, a corporate trustee) with responsibility for overseeing the strategic direction of the entity and obligations related to the accountability of the entity. This includes overseeing the financial reporting process. For some entities in some jurisdictions, Those Charged with Governance might include management personnel, for example, executive members of a governance board of a private or public sector entity, or an owner-manager.

## 3. Fundamental responsibilities of Members in Business

3.1 The **Code** is the conceptual framework and foundation on which all APESB pronouncements are based. Compliance with, and application of, the **Code** is fundamental to the ethical behaviour of **Members in Business**. Non-compliance with the **Code** can lead to disciplinary proceedings being initiated by the **Professional Body** to which the **Member** belongs.

- 3.2 Professional obligations and ethical requirements that **Members in Business** are required to comply with are based on the five fundamental principles of integrity, objectivity, professional competence and due care, confidentiality and professional behaviour in the **Code**.
- 3.3 The term **Professional Activity** is defined as an activity requiring accountancy or related skills performed by a **Member** including accounting, auditing, tax, management consulting and financial management. Activities performed by **Members in Business** for an **Employer** are captured by the definition of **Professional Activity**. Typically, this includes activities performed by financial accountants, tax accountants, financial analysts, financial planners, management accountants, internal auditors and financial controllers.
- 3.4 A **Member in Business** who performs a **Professional Activity** is required to comply with:
- (a) Part 1 *Complying with the Code, Fundamental Principles and Conceptual Framework* of the **Code**;
  - (b) Part 2 *Members in Business (including employment relationships of Members in Public Practice)* of the **Code**; and
  - (c) any applicable laws or regulations.

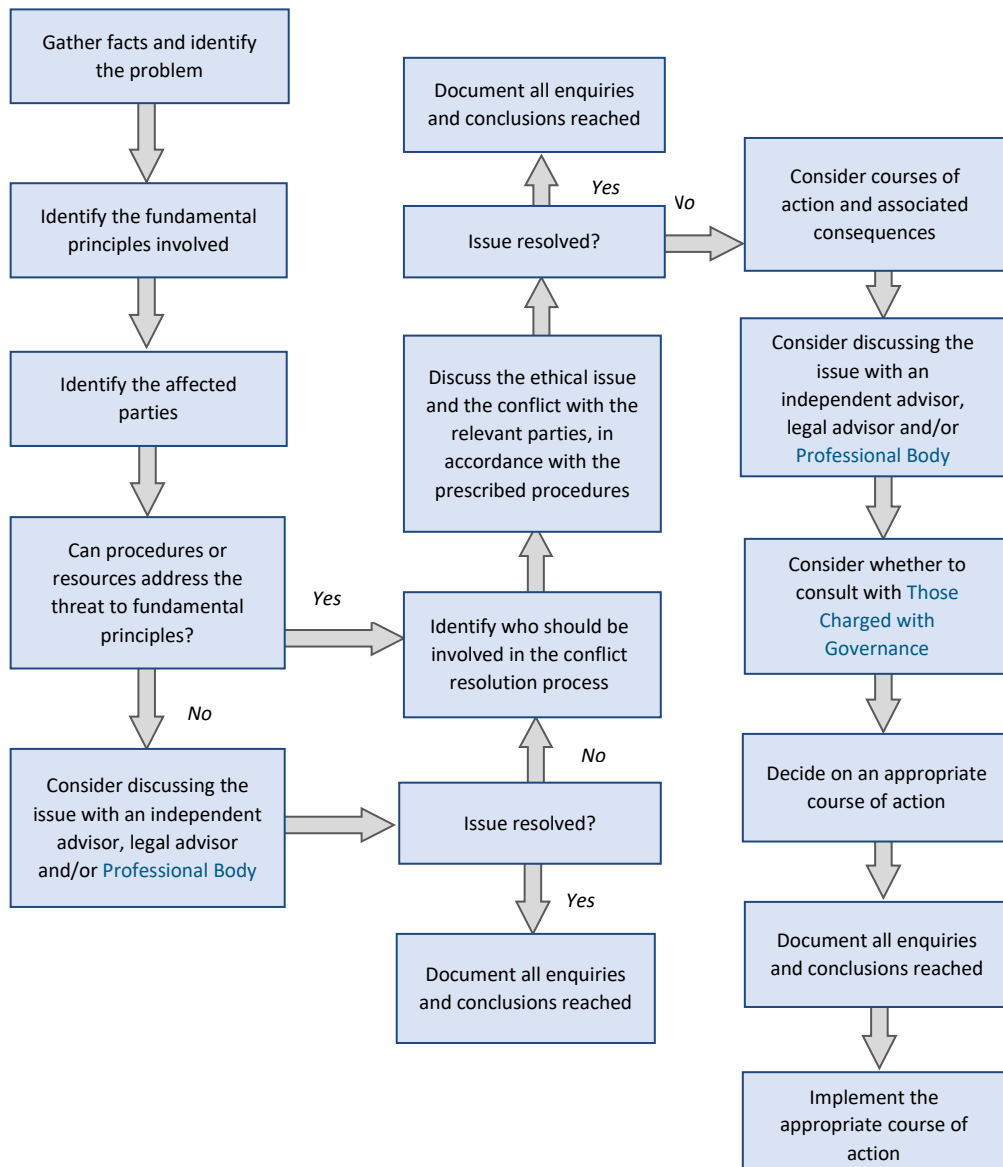
Part 2 of the **Code** is specific to **Members in Business** and describes the application of the fundamental principles to some of the more commonly encountered situations that may create threats to compliance with the fundamental principles.

## 4. Conceptual framework approach

- 4.1 **Members in Business** may encounter situations that give rise to threats to compliance with the fundamental principles. This Guidance Note uses the framework in the **Code** to assist **Members** to identify, evaluate and respond to threats to compliance with the fundamental principles. **Members** are required to address threats to compliance with the fundamental principles by either eliminating the threats or reducing them to an **Acceptable Level** so that compliance with the fundamental principles is not compromised. The Guidance Note provides a range of examples dealing with a variety of circumstances in which threats may arise and provides guidance on how these threats may be addressed. **Members** should use the framework to address ethical issues arising from their work at an early stage to enable them to adopt appropriate methods which are suitable to the circumstance and address the relevant threats.
- 4.2 When considering situations that threaten compliance with the fundamental principles, **Members in Business** need to retain their objectivity and should use the following structured approach to ethical decision-making:
- (a) Gather the facts and identify the problem or threat;
  - (b) Identify the fundamental principles involved;
  - (c) Identify the affected parties;
  - (d) Determine whether established organisational procedures and conflict resolution resources exist to address the threat to compliance with the fundamental principles;
  - (e) Identify the relevant parties who should be involved in the conflict resolution process;
  - (f) Discuss the ethical issue and the conflict with the relevant parties, and in accordance with the prescribed procedures evaluate the significance of the threats identified and actions available to address these threats;
  - (g) Consider courses of action and associated consequences;
  - (h) Consider whether to consult confidentially with external advisers such as an independent adviser, legal advisor and/or the **Professional Body** to which the **Member** belongs;
  - (i) Consider whether to consult **Those Charged with Governance**;

- (j) Decide on an appropriate course of action;
- (k) Document all enquiries and conclusions reached; and
- (l) Implement the appropriate course of action. In the event that the **Member** believes that the threat to compliance with the fundamental principles has not been satisfactorily resolved, the **Member** should determine whether it is appropriate to resign.

The process to be followed as indicated above may vary with each particular circumstance and a flow diagram is set out below to provide guidance to a **Member** on how to arrive at an appropriate course of action:



4.3 When resolving an ethical issue, a **Member in Business** should document the substance of the issue and details of any discussions held and conclusions reached concerning that issue. The **Member** should take qualitative as well as quantitative factors into account when evaluating the significance of an ethical issue and be alert to the fact that reassessment of the issue may need to occur on an ongoing basis. If, after exhausting all relevant possibilities, the ethical issue remains unresolved, the **Member** should, where possible, refuse to remain associated with the matter creating the conflict. The **Member** should determine whether, in the circumstances, it is appropriate to refuse to perform the duties in question or be associated with information the **Member** knows is misleading, or whether it is appropriate to resign altogether from the employing organisation.

- 4.4 The case studies in Section 14 illustrate the application of the fundamental principles and how threats to the fundamental principles can be addressed. The case studies follow the structured approach noted above in analysing the relevant ethical considerations. These case studies are not intended to be, nor should they be interpreted as, an exhaustive list of all circumstances likely to be experienced by **Members in Business** that create threats to compliance with the fundamental principles of the **Code**. Consequently, it is not sufficient for **Members** to seek compliance in situations corresponding with these case studies. **Members** need to apply the principles of the **Code** to all situations facing them in which compliance with the fundamental principles of the **Code** are at risk.

## 5. Threats to the fundamental principles

### Threats

- 5.1 Compliance with the **Code** may be threatened by a broad range of circumstances and relationships. Any given circumstance may create more than one threat, and the threats that arise may affect compliance with more than one fundamental principle. A **Member in Business** is required to address threats not at an **Acceptable Level** by eliminating the threats or reducing them to an **Acceptable Level** so that compliance with the fundamental principles is not compromised.
- 5.2 Threats to the fundamental principles are discussed in Part 1 *Complying with the Code, Fundamental Principles and Conceptual Framework* of the **Code**. Threats fall into one or more of the following categories:
- (a) Self-interest – the threat that a financial or other interest will inappropriately influence a **Member in Business**' judgement or behaviour;
  - (b) Self-review – the threat that a **Member in Business** will not appropriately evaluate the results of a previous judgement made, or a **Professional Activity** performed by the **Member**, or by another individual within the employing organisation, on which the **Member** will rely when forming a judgement as part of providing a current **Professional Activity**;
  - (c) Advocacy – the threat that a **Member in Business** will promote the **Employer's** position to the point that the **Member's** objectivity is compromised;
  - (d) Familiarity – the threat that due to a long or close relationship with the **Employer**, a **Member in Business** will be too sympathetic to the **Employer's** interests or will accept the **Employer's** view on certain matters without sufficient scrutiny; and
  - (e) Intimidation – the threat that a **Member in Business** will be deterred from acting objectively because of actual or perceived pressures, including attempts to exercise undue influence over the **Member**.

### Addressing threats

- 5.3 The **Code** requires **Members in Business** to address threats that are not at an **Acceptable Level** by eliminating or reducing threats faced by **Members in Business** to an **Acceptable Level**. This may be done by:
- eliminating the circumstances, including interests and relationships, that are creating the threats;
  - applying safeguards, where available and capable of being applied, to reduce threats to an **Acceptable Level**; or
  - declining or ending the specific **Professional Activity**.
- 5.4 Examples of actions that might address threats (including eliminating circumstances and applying relevant safeguards) are outlined in Sections 210 to 270 of the **Code**.

- 5.5 In extreme situations where threats cannot be eliminated or safeguards are not available or cannot be applied to reduce the threats to an [Acceptable Level](#), it might be appropriate for a [Member in Business](#) to resign from the employing organisation.
- 5.6 Discussion of ethical issues with the [Professional Body](#) to which the [Member in Business](#) belongs is strongly encouraged as the [Professional Bodies](#) are able to provide valuable advice in line with the behaviour expected of their [Members](#) and within the limits of acceptable practice and the law.

### Disclosure of information

- 5.7 In accordance with Subsection 114 *Confidentiality* of the [Code](#), a [Member in Business](#) who acquires confidential information in the course of performing a [Professional Activity](#) is prohibited from disclosing that information without proper and specific authority or unless there is a legal, regulatory or professional duty or right to disclose it.
- 5.8 The *Privacy Act 1988* (the Privacy Act) prohibits the disclosure of personal information about an individual, other than in certain limited circumstances including circumstances where the individual has consented to the disclosure or the disclosure is required or authorised by or under law.<sup>2</sup>
- 5.9 Whistleblower laws at Federal, State and Territory levels prohibit the disclosure of certain information obtained from and about a whistleblower unless such disclosure is required or authorised by such laws.
- 5.10 Examples of the disclosure of information that may in certain circumstances be required or authorised by the law include:
- reporting of suspected money laundering activities to AUSTRAC<sup>3</sup> in accordance with the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*; and
  - where a [Member in Business](#) is authorised by the [Member's Employer](#) to receive whistleblower information, disclosure by the [Member](#) of such information to an eligible recipient under the *Corporations Act 2001* (the Corporations Act).

## 6. Overview of Part 2 of the Code

- 6.1 Part 2 *Members in Business (including employment relationships of Members in Public Practice)* (Part 2) of the [Code](#) illustrates how the conceptual framework in *Part 1 Complying with the Code, Fundamental Principles and Conceptual Framework* of the [Code](#) is to be applied by [Members in Business](#).
- 6.2 Section 200 of Part 2 provides an overview of the various types of threats encountered by [Members in Business](#) in their work environment and how to address threats that are not at an [Acceptable Level](#). In certain circumstances, there may be no actions or available safeguards to reduce the threats to an [Acceptable Level](#) and the [Member](#) may need to consider refusing to perform the duties in question or resigning from the employing organisation (e.g. paragraphs 200.8 A2, R220.8 and R230.4 of the [Code](#)).

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2 [Members in Business](#) may be subject to other prohibitions under the Privacy Act, including prohibitions in relation to the collection, use and storage of personal information.

3 AUSTRAC is Australia's anti-money laundering and counter-terrorism financing regulator and specialist financial intelligence unit.



- 6.3 Sections 210 - 270 of Part 2 specifies professional obligations of **Members in Business** in the following circumstances:
- (a) Section 210 – *Conflicts of Interest*;
  - (b) Section 220 – *Preparation and Presentation of Information*;
  - (c) Section 230 – *Acting with Sufficient Expertise*;
  - (d) Section 240 – *Financial Interests, Compensation and Incentives Linked to Financial Reporting and Decision Making*;
  - (e) Section 250 – *Inducements, Including Gifts and Hospitality*;
  - (f) Section 260 – *Responding to Non-Compliance with Laws and Regulations*; and
  - (g) Section 270 – *Pressure to Breach the Fundamental Principles*.

## 7. Potential conflicts arising from responsibilities to the Employer

- 7.1 Potential conflicts may arise from the obligation of a **Member in Business** to comply with the fundamental principles of the **Code** whilst fulfilling responsibilities to the **Employer**. Ordinarily the **Member** is required to support the legitimate and ethical objectives established by the **Employer** and rules and procedures in support of those objectives. However, as a consequence of responsibilities to the **Employer**, the **Member** may be under pressure to act or behave in ways that could directly or indirectly threaten compliance with the fundamental principles of the **Code**.
- 7.2 Where potential conflicts arise, a **Member in Business** is required to comply with Section 210 *Conflicts of Interest* of the **Code**. Examples and the potential approaches to resolving such conflicts are shown in Case Studies 1 – 4.

## 8. Preparation and presentation of information to be used by internal and external parties

- 8.1 **Members in Business** are often involved in the preparation and presentation of information that may either be made public or used by others inside or outside the **Employer**. When preparing and presenting such information, **Members** are required to comply with Section 220 *Preparation and Presentation of Information* of the **Code**.
- 8.2 A **Member in Business** is required to prepare or present information fairly, honestly and in accordance with relevant **Professional Standards** so that the information will be understood in its context. Threats to the **Member's** ability to do so may arise from pressure (intimidation or self-interest) to become associated with misleading information. Where the threats have been evaluated, appropriate actions such as those discussed in Section 220 *Preparation and Presentation of Information* of the **Code** should be undertaken. Examples addressing the analysis of threats and appropriate actions are shown in Case Studies 5 - 9 and 20 - 21.

## 9. Member in Business's responsibility to act with sufficient expertise

- 9.1 The fundamental principle of professional competence and due care requires that a **Member in Business** should only undertake tasks for which the **Member** has, or can obtain, sufficient specific training or experience. **Members** should not intentionally mislead **Employers** as to how much expertise or experience they have, nor should they fail to seek appropriate expert advice and assistance when required.

9.2 Where the ability of a **Member in Business** to perform duties with the appropriate degree of professional competence and due care is threatened by factors such as insufficient time, inadequate information, inadequate resources or insufficient knowledge, appropriate actions such as those in Section 230 *Acting with Sufficient Expertise* of the **Code** should be undertaken. The appropriate actions include the application of safeguards or declining to perform the duties in question. Examples addressing the need to act with sufficient expertise are provided in Case Studies 10 and 19.

## 10. Financial interests of a Member in Business

10.1 Financial interests of a **Member in Business** or their **Immediate** or **Close Family** members may give rise to threats to compliance with the fundamental principles of the **Code**. In such circumstances, the **Member** is required to comply with Section 240 *Financial Interests, Compensation and Incentives Linked to Financial Reporting and Decision Making* of the **Code**, and to evaluate the significance of any identified threat and undertake appropriate actions to reduce the threat to an **Acceptable Level**.

10.2 The **Member** should examine the nature of the financial interest which includes considerations such as the significance of the interest and whether it is direct or indirect, as well as the value of the interest. An example showing considerations which may be applied by **Members** where financial interests threaten compliance with the fundamental principles of the **Code** is provided in Case Study 11. Additional examples of personal financial gain for a **Member** is provided in Case Studies 9 and 13.

## 11. Inducements offered by or to a Member in Business

11.1 **Inducements** refer to both the acceptance of offers and the making of offers. **Inducements** may take many different forms, for example:

- Gifts.
- Hospitality.
- Entertainment.
- Political or charitable donations.
- Appeals to friendship and loyalty.
- Employment or other commercial opportunities.
- Preferential treatment, rights or privileges.

11.2 A **Member in Business** or an **Immediate** or **Close Family** member may be offered an **Inducement** to influence their behaviour. Alternatively, a **Member** may experience pressure to offer **Inducements** to subordinate the judgement of another individual or organisation, influence a decision-making process or obtain confidential information.

11.3 In addition to complying with relevant laws and regulations, a **Member in Business** is required to assess whether the offering or acceptance of an **Inducement** is made with the intent to improperly influence the behaviour of the **Member** or another individual. This includes the consideration of how others would perceive the offering or acceptance of an **Inducement** (i.e. what would a reasonable and informed third party think is the intent of the **Inducement**).

11.4 Where threats to the fundamental principles arise from **Inducements**, the **Member in Business** is required to comply with the requirements and guidance in Section 250 *Inducements, Including Gifts and Hospitality* of the **Code**. Examples showing approaches that can be adopted by the **Member** where **Inducements** threaten compliance with the fundamental principles of the **Code** are provided in Case Studies 12 - 14 and 18.

## 12. Member in Business's responsibility to respond to non-compliance with laws and regulations

12.1 **Members in Business** may suspect or be aware that their **Employer** has done something illegal and is not complying with laws and regulations. This could be in relation to laws and regulations specific to financial statements or those that would affect the continued operation of the **Employer**. Examples of relevant laws and regulations include:

- Fraud, corruption and bribery.
- Money laundering, terrorist financing and proceeds of crime.
- Securities markets and trading.
- Banking and other financial products and services.
- Data protection.
- Tax and pension liabilities and payments.
- Environmental protection.
- Public health and safety.

12.2 In the circumstances when a **Member** suspects or is aware of non-compliance with laws and regulations (NOCLAR), the **Member** is required to comply with Section 260 *Responding to Non-Compliance with Laws and Regulations* of the **Code**. Section 260 sets out a framework to assist **Members** to respond to the suspected or actual NOCLAR, including considering relevant laws and regulations, reporting to management or the board, and disclosing to an appropriate authority if it is appropriate.

### Protection of whistleblowers

12.3 Whistleblower laws in Australia provide whistleblowers with certain legal protection against liability for making certain disclosures and a specific process to follow when disclosing such information which may include, for example, information about a breach of the law by the business or persons in the business for or in which the whistleblower works. For example, under the Corporations Act whistleblowers will generally qualify for the protection if:

- (a) the whistleblower is (or was) an officer, employee, associate, contractor or employee of a contractor of the company, suppliers and their employees, as well as relatives or dependents of these parties;
- (b) the report is made by the whistleblower to a prescribed entity (such as the Australian Securities and Investments Commission or the Australian Prudential Regulation Authority), an eligible recipient, legal practitioner, a company auditor or member of an audit team conducting an audit of the company, a director, secretary or senior manager of the company or other person authorised by the company to receive such disclosure. Disclosures to Members of Parliament and journalists are permissible under limited circumstances. **Members in Business** are strongly advised to obtain legal advice before making such a disclosure;
- (c) the whistleblower had reasonable grounds to suspect that the information indicates that the company or an officer or employee of the company has or may have contravened a provision of the Corporations Act; and
- (d) the report is not related to a personal work-related grievance.

- 12.4 A **Member in Business** who is considering disclosing information about the **Member's Employer** or persons in the **Employer's** business in circumstances which would otherwise be a breach of the **Member's** professional obligation of confidentiality or statutory obligations is strongly advised to first obtain legal advice. Whistleblower laws establish the scope of the protection offered to the **Member** and the process which the **Member** is required to follow to obtain that protection. Where the **Member** needs further clarification or guidance concerning the **Member's** obligations under the **Code**, the **Member** should consult with the **Member's Professional Body** without disclosing confidential information.

### Decision-making process

- 12.5 Sometimes confidentiality, privacy and whistleblowing are the subject of internal business policies and procedures.<sup>4</sup> In circumstances where a **Member in Business** is considering disclosing information, the **Member** should follow any relevant internal policies and procedures of the business which employs the **Member**. In addition to these requirements, where the **Member** is employed by a government entity or in the public sector, the **Member** is required to consider any public sector rules to which the **Member** is bound prior to disclosing confidential information.
- 12.6 If the **Employer** does not have internal policies, procedures or rules that deal with the matter, a **Member in Business** should, amongst other things, consider the following when considering disclosing information about the **Member's Employer** or persons in the **Employer's** business in circumstances which would otherwise be a breach of their professional obligation of confidentiality:
- (a) Statutory constraints and obligations on disclosure including those contained in Federal, State and Territory privacy and whistleblower laws;
  - (b) Statutory protection for whistleblowers contained in Federal, State and Territory whistleblower laws;
  - (c) Whether the information relates to conduct which constitutes a breach of, or an offence under, any laws;
  - (d) Whether members of the public are likely to be adversely affected by the disclosure or non-disclosure of the information;
  - (e) The gravity of the matter, such as the size and extent of likely financial loss;
  - (f) The possibility or likelihood of repetition;
  - (g) The reliability and quality of the information available;
  - (h) The reasons for the **Employer's** unwillingness to disclose matters to the relevant authority;
  - (i) When the **Employer** gives authorisation to disclose information, whether or not the interests of all parties, including third parties whose interests might be affected, could be harmed;
  - (j) Whether or not all the relevant information is known and has been substantiated. Where the situation involves unsubstantiated or incomplete information and conclusions, professional judgement should be applied to determine the appropriate type of disclosure to be made, if any. The **Member** requires a reasonable belief that wrongdoing has occurred, before disclosure can be made;
  - (k) The type of communication that is expected and to whom it is addressed. In particular, the **Member** should be satisfied that the parties to whom the communication is addressed are authorised recipients; and
  - (l) The possible implications of disclosure for the **Member** and the **Member's** reputation.
- 12.7 Examples that address NOCLAR and whistleblowing are included in Case Studies 15 - 17.

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4 From 1 January 2020, all public companies, large proprietary companies and other specified entities are required under law to have a whistleblower policy.

## Prohibited dealing with information

12.8 A **Member in Business** should be aware that there are laws which make it an offence for a person to take certain actions in respect of documents or related material that are, or are reasonably likely to be, required in evidence in legal proceedings (whether in progress or to be commenced in the future). These actions include for example, destroying, concealing or rendering the documents or material illegible, undecipherable or unidentifiable or authorising or permitting another to do so.<sup>5</sup> The **Member** is strongly advised to take care to ensure that the **Member** does not take any prohibited action in respect of such information.

## 13. Pressure to breach the fundamental principles

13.1 At times, a **Member in Business** may be under pressure to act or behave in ways that could directly or indirectly threaten compliance with the fundamental principles of the **Code**. The pressure might be explicit or implicit and might come from:

- Within the employing organisation, for example, from a colleague or supervisor.
- An external individual or organisation such as a vendor, customer or lender.
- Internal or external targets and expectations.

13.2 Where threats to the fundamental principles arise from pressure, the **Member in Business** is required to comply with the requirements and guidance in Section 270 *Pressure to Breach the Fundamental Principles* of the **Code**, and also in Sections 210 to 260 of the **Code**. Examples showing approaches that can be adopted by the **Member** to address pressure to breach the fundamental principles of the **Code** are provided in Case Studies 2, 5, 7, 9, 13, 14, 20 and 21.

## 14. Case Studies

### Introduction

Case Studies have been presented to illustrate the application of a structured approach to the resolution of ethical issues. **Members in Business** should read the Case Studies whilst referring to the conceptual framework approach in Section 4 of this Guidance Note, to gain an understanding of the process that should be adopted when faced with ethical issues in the workplace. The Case Studies are not intended to be conclusive but rather provide a framework that leads **Members** to a course of action that is consistent with the principles and requirements of the **Code** and this Guidance Note.

These Case Studies are fictitious and any similarities to actual events or circumstances are merely coincidental.

No.	Title	Issues Discussed
1	Significant personal expenses claimed as company expenses	Potential conflicts
2	Council rates	Potential conflicts/Pressure to breach the fundamental principles
3	Inappropriate small expense claim	Potential conflicts
4	Unlicensed software	Potential conflicts
5	Incorrect reporting of financial information	Preparation and presentation of information/Pressure to breach the fundamental principles
6	Inappropriate capitalisation of research and development costs	Preparation and presentation of information

<sup>5</sup> See for example the *Crimes Act 1958 (Vic)*.

No.	Title	Issues Discussed
7	Inappropriate contractor claims	Preparation and presentation of information/Pressure to breach the fundamental principles
8	Loss leaders or divisional failure?	Preparation and presentation of information
9	Satisfying the bank's lending criteria	Preparation and presentation of information/ Financial interests of a <a href="#">Member</a> /Pressure to breach the fundamental principles
10	Valuing share options	Acting with sufficient expertise
11	Personal financial interest in a proposal	Financial interests of a <a href="#">Member</a>
12	Inducements for non-disclosure of information	<a href="#">Inducement</a>
13	Earnings management	Financial interests of a <a href="#">Member</a> / <a href="#">Inducement</a> / Pressure to breach the fundamental principles
14	Tender bids	<a href="#">Inducement</a> /Pressure to breach the fundamental principles
15	Non-disclosure to auditors and corrupt business practices	NOCLAR/Whistleblowing
16	Inappropriate expense claims lodged by the Chief Executive	NOCLAR/Whistleblowing
17	Inappropriate recording of patient attendance at a doctors' medical practice	Whistleblowing
18	Insider information	Public Sector - <a href="#">Inducement</a>
19	Demonstrating due diligence in a voluntary position	Public Sector - Acting with sufficient expertise
20	Potential breach of not-for-profit status	Charitable organisation - Preparation and presentation of information/Pressure to breach the fundamental principles
21	Ignorance is no excuse	Preparation and presentation of information/ Acting with sufficient expertise/Pressure to breach the fundamental principles

The presentation of each Case Study follows the following pattern:

1. Case outline: basic facts are described;
2. Fundamental principles of the [Code](#): those identified as the key principles in the Case Study; and
3. Ethical decision-making approach: selected steps from the conceptual framework approach in the [Code](#) including the consideration of possible courses of action.

## Case Study 1 – Significant personal expenses claimed as company expenses

*Issues discussed:* Potential conflicts

*Case outline:* Alex (**Member in Business**) is the finance manager of an organisation. Alex is concerned that the Chief Executive has been making frequent interstate trips to Perth and charging expenses to the company. The trips and the activities undertaken appear to have only partial relevance to the company's activities. Alex is aware of the fact that the Chief Executive recently moved from Perth and still has a number of **Close Family** members residing there.

Alex discusses the issue with the Chief Executive who explains that there is a verbal understanding with the Chairman of the company who is aware of the nature and purpose of the visits.

Fundamental principles of the Code	
Integrity	Would processing the payments without an adequate explanation or supporting documentation be seen as being honest and fair?
Objectivity	How will the <b>Member in Business</b> demonstrate his objectivity, actual or perceived, in his dealings with the Chief Executive?
Professional competence and due care	How can allowing the expense payments to be processed without adequate explanation and supporting documentation be seen as acting with due skill, care and diligence?
Professional behaviour	How should the <b>Member in Business</b> proceed so as not to discredit himself? Would it be considered legal and acceptable to taxation authorities?

Ethical decision-making approach	
Identify relevant facts	Has the <b>Member in Business</b> discussed the matter adequately to ensure the facts are correct? If so, is it possible to obtain support for the Chief Executive's understanding with the Chairman? Consider the company's policies and procedures, applicable accounting standards, best practice and applicable laws and regulations.
Identify affected parties	Key affected parties are the <b>Member in Business</b> , the Chief Executive, the Chairman and the Board. Other possible affected parties are the accounts payable department, human resources, internal audit, the Australian Taxation Office, the audit committee, employees, shareholders and financial backers.
Determine whether a procedure of conflict resolution exists within the organisation	Consider the company's policies and procedures.
Consider who should be involved in the conflict resolution process	Who should be involved in the resolution of this matter and for what reason? What is the appropriate timing of their involvement? Are there trusted colleagues with whom the <b>Member in Business</b> can discuss his position? When do the Board and audit committee need to become involved?
Discuss the ethical dilemma with relevant parties	Does further discussion need to take place with the Chief Executive? Do the discussions need to extend to the Chairman?

Ethical decision-making approach	
Consider possible course of action	<p>The <b>Member in Business</b> can discuss the issue further with his direct manager who may be in a position such as the Chief Financial Officer (CFO). Discussion could focus on the <b>Member in Business</b> obtaining clarity on the arrangement which may lead to documentary evidence supporting the understanding with the Chairman.</p> <p>If the issue is not resolved, the direct manager and <b>Member in Business</b> may consider requesting evidence from the Chief Executive together and can explain that it is required to conform to the company's policies and procedures. If an appropriate response is not received, the <b>Member in Business</b> and direct manager can request a meeting with the Chief Executive and the Chairman to clarify the issue. Where this is not successful, additional discussions with the Board, internal audit, the audit committee or the external auditors may be required. All enquiries and conclusions reached should be documented by the <b>Member in Business</b>. Where such documentation is maintained, the <b>Member in Business</b> needs to consider the legal ramifications of doing so.</p> <p>The <b>Member in Business</b> may also consider the ethical conflict resolution processes of his <b>Professional Body</b>.</p>

## Case Study 2 – Council rates

*Issues:* Potential conflicts; Pressure to breach the fundamental principles

*Case outline:* Jane (**Member in Business**) has just been appointed as the new financial controller of XYZ Ltd after 12 months of job hunting. Her first task is to prepare the annual financial report for the year ended 30 June 20X1.

Although XYZ Ltd appears solvent, when reviewing the figures, Jane notes that the company is in quite a weak cash position. She also notices that, based on her limited understanding of the business, there appears to be an unusually high accruals figure. On discussion with the Managing Director, Jane finds that the balance relates to four years of unpaid council rates. Further discussions reveal that the company has not received a rates notice since the breakup of the council and rezoning of the company premises four years ago.

Jane is concerned about this matter and discusses it further with the Managing Director who becomes annoyed. He does not consider this to be a significant issue due to the fact that it is the council's mistake and not the company's. The company has been recording the amount in accordance with accounting standards and he believes that is the extent of the company's obligation. He then goes on to make it clear that the company's interests should be put first, particularly when the issue impacts the business's cash flow. Further, if the company were to pay four years of back rates, its cash flow position would be severely weakened which may lead to potential job losses.

Fundamental principles of the Code	
Integrity	How does the <b>Member in Business</b> maintain her integrity when she is being asked to undertake a course of action which she clearly has doubts about?
Objectivity	How would the <b>Member in Business</b> maintain her objectivity given that her <b>Employer</b> is operating under difficult economic conditions and has the added pressure of possibly disagreeing with her boss whom she hardly knows?
Confidentiality	Is there any basis on which the <b>Member in Business</b> could make disclosures given the <b>Employer</b> obviously believes that the company's non-payment of rates is confidential information?
Professional behaviour	How does the <b>Member in Business</b> proceed in order to not discredit herself?



<b>Ethical decision-making approach</b>	
Identify relevant facts	Are there any other reasons why the company has not received a bill for rates? Can the <b>Member in Business</b> continue to merely accrue an estimate for the rates bill for the year? If not, does she go back to the Managing Director and advise that the company should contact the local council and inform them of the situation? Is there a supportive environment for open discussion of practical dilemmas without a recriminatory or 'blame' culture?
Identify affected parties	Key affected parties are the <b>Member in Business</b> , the Managing Director, the other directors, the company's employees, the shareholders (if different from the directors), the local council and the general public.
Determine whether a procedure of conflict resolution exists within the organisation	Consider the company's policies and procedures and applicable accounting standards.
Consider who should be involved in the conflict resolution process	Who should be involved in the resolution of this matter and for what reason? What is the appropriate timing of their involvement? Does the <b>Member in Business</b> have trusted colleagues with whom she can discuss her position? Is there anyone else within the company that the <b>Member in Business</b> should speak to regarding this matter? Are the other directors aware of this issue? Has the <b>Member in Business</b> discussed the matter with the Board?
Discuss the ethical dilemma with relevant parties	Do further discussions need to be held with the Managing Director or extend to other members of the Board?
Consider possible course of action	<p>The <b>Member in Business</b> could try to speak to the Managing Director in a non-confrontational way to offer to find a solution to the underlying problem. She may consider explaining the potential consequences if the error is discovered by the council. There may be interest or penalties imposed on the company which may impact on the company's good reputation. If at some future date there are plans to sell the company, any due diligence is likely to discover this non-payment of rates which could easily impact on a potential sale. Given all of this, the <b>Member in Business</b> could also highlight the need for the company to get legal advice on its obligations. The <b>Member in Business</b> could also ask the Managing Director to consider the company's moral obligation to the local community. All enquiries and conclusions reached should be documented by the <b>Member in Business</b>. Where such documentation is maintained, the <b>Member in Business</b> needs to consider the legal ramifications of doing so.</p> <p>To resolve the problem, the <b>Member in Business</b> could suggest to the Managing Director that they ask the local council to agree to a payment plan. It is unlikely that the council would want XYZ Ltd to go out of business potentially resulting in unemployment for a number of members of the community.</p>

### Case Study 3 – Inappropriate small expense claim

*Issues:* Potential conflicts

*Case outline:* After several months of job searching, Jeremy (**Member in Business**) secured a position as a financial accountant with a sales company. The company is very small with only 12 employees, most of whom work in the sales area. Given the size of the company, there are very few formally documented policies and procedures in place. Two days before the completion of Jeremy's three-month probationary period and formal performance review, Jeremy's supervisor, who is also a senior sales person, tells him that he incurred expenses of \$175 entertaining a client the previous evening. He requests a cheque reimbursement and submits receipts from a restaurant and bar to support the amount. At the end of the day, the supervisor's wife comes to the office to meet her husband and drive him home. Jeremy overhears the wife talking to another employee about what a wonderful night she had last evening with her husband at dinner and at the bar.

Fundamental principles of the Code	
Integrity	Can the <b>Member in Business</b> overlook the information he overheard and maintain his integrity?
Objectivity	How will the <b>Member in Business</b> manage the conflict between integrity and his desire to secure his job at the company at the completion of his probationary period?
Professional behaviour	Can the <b>Member in Business</b> ignore the information acquired and still satisfy the principle of professional behaviour?

Ethical decision-making approach	
Identify relevant facts	Does the <b>Member in Business</b> have all of the facts? Can he discuss the nature of the expense further with the supervisor? What is the <b>Member in Business's</b> specific role in relation to expense claims and reimbursement? Is there an internal process for querying and reviewing expense claims?
Identify affected parties	The key affected parties are the <b>Member in Business</b> and the supervisor. Other possible affected parties are the supervisor's wife, the Australian Taxation Office, and other employees and stakeholders of the company.
Determine whether a procedure of conflict resolution exists within the organisation	Consider the company's policies and procedures, applicable accounting standards, best practice and applicable laws and regulations.
Consider who should be involved in the conflict resolution process	Who should be involved in the resolution of this matter and for what reason? What is the appropriate timing of their involvement? Does the <b>Member in Business</b> have trusted colleagues with whom he can discuss his position?
Discuss the ethical dilemma with relevant parties	Can further discussions be held with the supervisor to clarify the <b>Member in Business's</b> understanding? Does the <b>Member in Business</b> need to discuss the issue with anyone else in the company?
Consider possible course of action	The <b>Member in Business</b> may consider further discussions with the supervisor to clarify his understanding of the evening. He may approach such discussions in a non-confrontational manner and explain that he needs a complete understanding of the expense in order to appropriately classify it for financial reporting and taxation purposes. What client was entertained? Which account/product or service does this expense pertain to? If the <b>Member in Business</b> is unable to corroborate the expense claim, he could highlight the implications of allowing inappropriate expense claims to continue such as Australian Taxation Office investigations and potentially fines. Where this approach is unsuccessful the <b>Member in Business</b> may need to initiate discussions with another manager within the company to assist in resolution of the problem.

## Case Study 4 – Unlicensed software

*Issues:* Potential conflicts

*Case outline:* Jamie (**Member in Business**) is a young accountant with qualifications in accounting as well as in information technology. Jamie has recently been hired as an accounting assistant by a medium-sized retail company and is looking forward to the challenges the work force presents. On his first day at work, the financial controller hands Jamie a copy of accounting software and asks him to install the software on five computers around the office. The financial controller states that the new software is required in order for Jamie to perform his accounting role. Jamie is about to commence the installation when he asks the financial controller if the company holds the licence for the software. The financial controller laughs and says Jamie has a lot to learn. He explains that the purchase of a licence would result in unnecessary expenditure with no added benefit to the company.

Fundamental principles of the Code	
Integrity	Can the <b>Member in Business</b> overlook the fact that the company does not have the appropriate licences to use the software and maintain his integrity?
Objectivity	How will the <b>Member in Business</b> manage the conflict between integrity and his desire to secure his job at the company at the completion of his probationary period?
Professional behaviour	How should the <b>Member in Business</b> proceed in order to comply with relevant laws and avoid any action that discredits the profession?

Ethical decision-making approach	
Identify relevant facts	Can the <b>Member in Business</b> discuss the matter further with the financial controller?
Identify affected parties	The key affected parties are the <b>Member in Business</b> , the software provider, the financial controller and the company.
Determine whether a procedure of conflict resolution exists within the organisation	Consider the company's policies and procedures and applicable laws and regulations.
Consider who should be involved in the conflict resolution process	Who should be involved in the resolution of this matter and for what reason? What is the appropriate timing of their involvement? Is there someone else within the organisation with whom the <b>Member in Business</b> can discuss his position?
Discuss the ethical dilemma with relevant parties	Can further discussions be held with the financial controller to explain the risks of breaching copyright? Does the <b>Member in Business</b> need to discuss the issue with anyone else in the company?
Consider possible course of action	The <b>Member in Business</b> may consider further discussions with the financial controller to highlight the importance of obtaining a licence for use of the product. The <b>Member in Business</b> could highlight advantages such as support from the software provider and the tax-deductible nature of the expense.

## Case Study 5 – Incorrect reporting of financial information

*Issues:* Preparation and presentation of information/Pressure to breach the fundamental principles

*Case outline:* Robyn ([Member in Business](#)) is the financial accountant in a company and is preparing the quarterly accounts. Robyn's immediate manager is a very forceful, domineering individual and Robyn has accepted his views over the last two years on the level of work in progress. The manager has instructed Robyn to report a 100% increase in work in progress during the current quarter. The year-end draft financial statements show that the company has only just met its business plan financial targets.

New evidence subsequently becomes available to suggest that something is clearly wrong and the work in progress had not increased at anywhere near the rate advised by Robyn's manager.

Fundamental principles of the Code	
Integrity	Can the <a href="#">Member in Business</a> show that the accounts are true and fair without amending them?
Objectivity	Given the manager is a forceful and intimidating individual, how would the <a href="#">Member in Business</a> maintain her objectivity?
Professional competence and due care	Have the draft accounts been prepared in accordance with reporting requirements including applicable accounting standards, laws and regulations, and <a href="#">Professional Standards</a> ?
Professional behaviour	How should the <a href="#">Member in Business</a> proceed so as not to discredit herself or the company?

Ethical decision-making approach	
Identify relevant facts	Do other balances and analyses provide evidence that work in progress is incorrectly stated? For example, cost of sales analytical review, margin analysis and cash flows.
Identify affected parties	The <a href="#">Member in Business</a> and her immediate manager are the key affected parties. Others that may be affected include other levels of management, recipient of the management accounts, users of the financial accounts, finance, purchasing, accounts payable, human resources, internal audit, audit committee, board, external auditors, shareholders, financial backers and the Australian Taxation Office.
Determine whether a procedure of conflict resolution exists within the organisation	Consider the company's policies and procedures, applicable accounting standards, best practice and applicable laws and regulations.
Consider who should be involved in the conflict resolution process	Who should be involved in the resolution of this matter and for what reason? What is the appropriate timing of their involvement? The <a href="#">Member in Business</a> may discuss the matter with her immediate line manager given the available evidence and possible consequences. Can the <a href="#">Member in Business</a> discuss the matter with other affected parties such as the recipients of the management and financial accounts? What is the appropriate timing for such discussions?
Discuss the ethical dilemma with relevant parties	Does further discussion need to take place with the immediate manager? Do discussions need to extend to more senior levels of management?
Consider possible course of action	The <a href="#">Member in Business</a> may corroborate the facts with other available documentation such as cost of sales calculations, previous stock counts and other financial information. The appropriate course of action such as undertaking a stock count can then be discussed with the <a href="#">Member in Business's</a> immediate line manager. If the manager's response is not what the <a href="#">Member in Business</a> considers appropriate, the matter may then be discussed with recipients of the management and financial accounts and

Ethical decision-making approach	
	<p>the next level of management. Other steps could include, where appropriate, discussion with the senior management, internal audit, audit committee, the Board and external auditors.</p> <p>In the case of a small business, the <b>Member in Business</b> may not have the ability to hold the detailed discussions suggested above. In this case, the main course of action would be to corroborate the facts and report in line with statutory requirements. The <b>Member in Business</b> may discuss the requirements with the line manager using facts as the basis for this discussion.</p> <p>The <b>Member in Business</b> can also consider the ethical conflict resolution resources of her <b>Professional Body</b>. The <b>Member in Business</b> should also consider her employment options.</p>

### Case Study 6 – Inappropriate capitalisation of research and development costs

*Issues:* Preparation and presentation of information

*Case outline:* Nathan (**Member in Business**), the finance director of ABC Ltd, has become aware of a \$1.5 million investment in relation to a research and development (R&D) project. This project has not been properly assessed and therefore its chances of success are unknown. The company’s policy on R&D clearly states that such costs are capitalised and deferred only where it is reasonable to expect a successful outcome and an associated revenue stream — a policy that is consistent with the *Income Tax Assessment Act 1997* research and development provisions.

Nathan approaches his long-time good friend, Doug, the project leader, about the costs incurred and receives a response that there is no problem because he will provide some numbers that will keep the auditors happy.

It is only one week before the financial year-end and writing off the \$1.5 million at such a late stage would result in significant difficulties with the Board for Nathan. His relationship with Doug will also be impacted and he would be placed in a very precarious position with the Board.

Fundamental principles of the Code	
Integrity	How does the <b>Member in Business</b> maintain his integrity with the project leader, the Board and the auditors? Can the <b>Member in Business</b> retain his integrity without bringing the matter to the Board’s attention?
Objectivity	How does the <b>Member in Business</b> remain objective as to the true nature of the research and development expenditure and their appropriate accounting treatment considering the long term friendship with the project leader?
Professional competence and due care	Have the accounts been prepared in accordance with applicable accounting standards, laws and regulations, and <b>Professional Standards</b> ?
Professional behaviour	How does the <b>Member in Business</b> proceed in order to not discredit himself?

Ethical decision-making approach	
Identify relevant facts	<p>Should the <b>Member in Business</b> discuss the matter further with the project leader prior to taking the matter to the Board? What information will the <b>Member in Business</b> disclose to the auditors?</p> <p>Other points to consider include whether there is a supportive environment for open discussion of practical dilemmas or is there a recriminatory or</p>

Ethical decision-making approach	
	'blame' culture in the company? Is there a problem with the company's internal controls in relation to the correct treatment of expenditure on R&D? Have similar incidences occurred in the past? Is there any commercial pressure on the project leader to defer expenditure items inappropriately?
Identify affected parties	The main affected parties are the <b>Member in Business</b> , the project leader, the directors, the company's employees and the shareholders (if different from the directors), and the Australian Taxation Office.
Determine whether a procedure of conflict resolution exists within the organisation	Consider the company's policies and procedures, applicable accounting standards, best practice, and applicable laws and regulations.
Consider who should be involved in the conflict resolution process	Who should be involved in the resolution of this matter and for what reason? What is the appropriate timing of their involvement? Are there trusted colleagues with whom the <b>Member in Business</b> can discuss his position?
Discuss the ethical dilemma with relevant parties	Does further discussion need to take place with Doug? Do discussions need to be held with other levels of management and the Board?
Consider possible course of action	Commercial pressures on Doug may be forcing him to defer this expenditure. However, transparent reporting may require write-off of the \$1.5 million. Initially, the <b>Member in Business</b> may need to have further discussions with Doug to obtain a more comprehensive understanding of the project and its current status. The <b>Member in Business</b> should explain to Doug the potential implications of inappropriate treatment of the \$1.5 million. Such implications would include a qualified audit report and its impact on the company. In addition, capitalisation of the costs is inconsistent with the requirements of the <i>Income Tax Assessment Act 1997</i> research and development provisions. This may lead to penalties and other negative consequences under the Act. If this approach fails, then the <b>Member in Business</b> will have to approach senior management, the Chief Executive or the Board and explain the situation and work through how this issue can be resolved. The <b>Member in Business</b> could consider highlighting the expense as an exceptional item in order to provide a true and fair view.

## Case Study 7 – Inappropriate contractor claims

### *Preparation and presentation of information/Pressure to breach the fundamental principles*

#### **Case outline**

William (**Member in Business**) is employed as the financial accountant in a medium-sized engineering firm. The firm specialises in the development and design of steel frames and pumps used to purify oil. Due to the fluctuation in demand, the company maintains only a small permanent workforce with, at times, up to 65% of the labour provided by external contractors.

William developed an innovative accounting system that analysed project costs against the work done and, in doing so, found a significant fraud in contractor claims at the company. He incorporated the variances into his monthly report and approached the engineering manager with his findings. The engineering manager was clearly agitated by William's findings. He stated that William's job was to pay employees and creditors, meet statutory requirements and that project reporting was the responsibility of project cost engineers.

Fundamental principles of the Code	
Integrity	Can the <b>Member in Business</b> overlook his findings and maintain his integrity?
Objectivity	Knowing that something may be wrong, how can the <b>Member in Business</b> maintain his objectivity?
Professional competence and due care	Is the <b>Member in Business</b> able to check that his findings are correct?
Confidentiality	Does the <b>Member in Business</b> have a legal, regulatory or professional right or duty to disclose the information acquired? What whistleblowing obligations and protection does the <b>Member in Business</b> have?
Professional behaviour	How should the <b>Member in Business</b> proceed in order to comply with relevant laws and regulations and avoid any action that discredits the profession?

Ethical decision-making approach	
Identify relevant facts	Does the <b>Member in Business</b> have all of the facts? Is the new accounting system he developed performing a correct analysis? Can the results of the system be substantiated in an alternative way? Are there other costs associated with employing contractors that may not have been taken into consideration (costs such as relocation costs)? Can the <b>Member in Business</b> discuss the matter further with the engineering manager or other recipients of his monthly report? What are the potential factors that would influence the engineering manager to conceal fraud in contractor claims?
Identify affected parties	The key affected parties are the <b>Member in Business</b> , the contractors, the engineering manager and the company itself. Other possible affected parties include the Australian Taxation Office.
Determine whether a procedure of conflict resolution exists within the organisation	Consider the company's policies and procedures.
Consider who should be involved in the conflict resolution process	Who should be involved in the resolution of this matter and for what reason? What is the appropriate timing of their involvement? Does the <b>Member in Business</b> have trusted colleagues with whom the <b>Member</b> can discuss his position?
Discuss the ethical dilemma with relevant parties	Can further discussions be held with the engineering manager? Do discussions need to be held directly with the contractors in question?
Consider possible course of action	The <b>Member in Business</b> should explain to the engineering manager the requirement to substantiate the alleged fraudulent claim and that the matter is to be investigated. The <b>Member in Business</b> may consider approaching the contractor in question with his findings and request supporting documentation for excess money paid. He would also then need to approach the relevant project cost engineer with the outcome so that the project can be appropriately costed. The <b>Member in Business</b> would also need to consider the fraudulent implications that arise from deceitful billing practices and determine whether any further legal or other action is required. All enquiries and conclusions reached should be documented by the <b>Member in Business</b> . Where such documentation is maintained, the <b>Member in Business</b> needs to consider the legal ramifications of doing so. The <b>Member in Business</b> should consider reporting the outcomes to <b>Those Charged with Governance</b> .

## Case Study 8 – Loss leaders or divisional failure?

*Issues:* Preparation and presentation of information

*Case outline:* Rebecca ([Member in Business](#)) is the accountant for the processed foods division of a manufacturing company. Rebecca's role involves the preparation of financial reports determined by corporate management to assist in the assessment of the team's performance. When preparing the regular financial reports, Rebecca noticed some products appeared to have experienced lower sales in the last quarter. With further analysis she found that there were a significant number of products that had been sold at a net financial loss with some sold at below prime cost.

The company structure means that Rebecca reports to the divisional manager as opposed to the head office Chief Financial Officer (CFO). On reporting her results to the divisional manager, he was agitated and advised Rebecca that her financial reports are not acceptable and inconsistent with general commercial practice. The manager then performed his own analysis of the division's products and concluded that all products were sold at positive margins. He did not provide Rebecca with any details of his study.

Fundamental principles of the Code	
Integrity	Can the <a href="#">Member in Business</a> overlook her findings and maintain her integrity?
Objectivity	Knowing that something may be wrong, how can the <a href="#">Member in Business</a> maintain her objectivity?
Professional competence and due care	Is the <a href="#">Member in Business</a> able to check that her findings are correct?
Professional behaviour	How should the <a href="#">Member in Business</a> proceed?

Ethical decision-making approach	
Identify relevant facts	Does the <a href="#">Member in Business</a> have all of the facts? Does she need to consider other issues such as the overall profitability of the division and the necessity to produce complementary items to support profit leaders? Can the <a href="#">Member in Business</a> discuss the matter further with the divisional manager?
Identify affected parties	The key affected parties are the <a href="#">Member in Business</a> , the divisional manager, the head office CFO and the company itself.
Determine whether a procedure of conflict resolution exists within the organisation	Consider the company's policies and procedures.
Consider who should be involved in the conflict resolution process	Who should be involved in the resolution of this matter and for what reason? What is the appropriate timing of their involvement? Does the <a href="#">Member in Business</a> have trusted colleagues with whom she can discuss her position?
Discuss the ethical dilemma with relevant parties	Can further discussions be held with the divisional manager? Do discussions need to be held with the head office CFO?
Consider possible course of action	The <a href="#">Member in Business</a> may consider discussing the matter further with the divisional manager. She may approach the issue in a non-confrontational way by requesting that the manager provide her with feedback on what she did not consider as part of her analysis. Alternatively, the <a href="#">Member in Business</a> may approach the head office CFO directly to discuss the issue. All enquiries and conclusions reached should be documented by the <a href="#">Member in Business</a> . The <a href="#">Member in Business</a> should also ensure that she maintains a copy of her analysis.



## Case Study 9 – Satisfying the bank’s lending criteria

*Issues:* Preparation and presentation of information/Financial interests of a Member/Pressure to breach the fundamental principles

*Case outline:* Sandra ([Member in Business](#)) is the Chief Financial Officer (CFO) of a large manufacturing company. It is November and the Chief Executive has just returned from a meeting with the company’s bankers and calls Sandra into her office to discuss the results of negotiations. The Chief Executive explains that the company requires a significant capital injection in order to modernise its manufacturing equipment. This will enable the company to secure a large ongoing order from China which will result in all employees of the company receiving sizeable Christmas bonuses.

The Chief Executive explains to Sandra that the lending criteria of the bank require that the company demonstrate an adequate current and strong projected cash flow, as well as a profitability level that will enable repayments of the loan to be made from an early date. The Chief Executive has told the bank that the company is in a strong position. However, Sandra knows that the company will not satisfy the bank’s criteria. The Chief Executive has promised that Sandra (CFO) will deliver a financial report to the bank within three business days. The Chief Executive tells Sandra that it is up to her to decide the contents of the report.

Fundamental principles of the Code	
Integrity	How does the <a href="#">Member in Business</a> maintain her integrity with the Chief Executive and the bank?
Objectivity	How does the <a href="#">Member in Business</a> remain objective as to the reporting on the company’s financial status considering the pressure to misstate the accounts?
Professional behaviour	How does the <a href="#">Member in Business</a> proceed in order to not discredit herself?

Ethical decision-making approach	
Identify relevant facts	Can the <a href="#">Member in Business</a> retain her integrity without reporting false information to the bank? Should the <a href="#">Member in Business</a> discuss the matter further with the Chief Executive prior to presenting her report? What information will the <a href="#">Member in Business</a> disclose to the bank?
Identify affected parties	The main affected parties are the <a href="#">Member in Business</a> , the bank, the Chief Executive and the company’s employees and shareholders.
Determine whether a procedure of conflict resolution exists within the organisation	Consider the company’s policies and procedures, applicable accounting standards, best practice and applicable laws and regulations.
Consider who should be involved in the conflict resolution process	Who should be involved in the resolution of this matter and for what reason? What is the appropriate timing of their involvement? Are there trusted colleagues with whom the <a href="#">Member in Business</a> can discuss her position? The <a href="#">Member in Business</a> should consider whether to consult confidentially with external advisers such as the <a href="#">Professional Body</a> to which she belongs and whether to consult <a href="#">Those Charged with Governance</a> .
Discuss the ethical dilemma with relevant parties	Does further discussion need to take place with the Chief Executive? Do discussions need to be held directly with the bank?
Consider possible course of action	Commercial pressures and the potential for personal financial gain by the <a href="#">Member in Business</a> may encourage her to produce a report that satisfies the bank’s criteria; however, this would be materially misrepresenting the company’s position, which would mean that she would be in breach of the <a href="#">Code</a> if the <a href="#">Member in Business</a> prepared or was associated with it. To produce such a report may actually jeopardise future borrowing activities of the company with this and other banks. The <a href="#">Member in Business</a> may

Ethical decision-making approach	
	have additional discussions with the Chief Executive to explain the future implications of providing a report to the bank which misrepresents the company's position.

### Case Study 10 – Valuing share options

*Issues:* Acting with sufficient expertise

*Case outline:* Olivia's **Employer** has requested that she perform a valuation of share options. Olivia (**Member in Business**) is not comfortable with the work as she does not have the required expertise to value options and is uncertain about what to say to her **Employer**.

Fundamental principles of the Code	
Professional competence and due care	Does the <b>Member in Business</b> have the necessary skills and experience to undertake the work?
Professional behaviour	How should the <b>Member in Business</b> proceed so as not to discredit herself or the company?

Ethical decision-making approach	
Identify relevant facts	Can the <b>Member in Business</b> demonstrate her lack of expertise in this area and the potential impact on the company and offer alternatives? Consider the objective and time scale for the valuation in planning the next steps.
Identify affected parties	The <b>Member in Business</b> and the <b>Employer</b> are the key affected parties. Other parties that may be affected include the auditors, employees, human resources, shareholders and financial backers.
Determine whether a procedure of conflict resolution exists within the organisation	Consider the company's policies, procedures and guidelines, accounting standards, best practices, applicable laws and regulations.
Consider who should be involved in the conflict resolution process	Who should be involved in the resolution of this matter and for what reason? What is the appropriate timing of their involvement? Are there trusted colleagues with whom the <b>Member in Business</b> can discuss her position?
Discuss the ethical dilemma with relevant parties	Does further discussion need to take place with the <b>Member in Business's</b> manager? At what point will the <b>Member in Business</b> consider involving the next level of management?
Consider possible course of action	The <b>Member in Business</b> may consider discussing her concern about the lack of knowledge to value share options with her immediate manager. The <b>Member in Business</b> could suggest clearly defining the scope of the project and a course of action for addressing issues such as lack of knowledge or expertise. An appropriate course may be, for example, employing a person with the necessary expertise. The focus during the discussion should be on the potential consequences to the business. The <b>Member in Business</b> could explain that employing a person with the necessary expertise does not affect her own obligation to ensure that the work is conducted in accordance with applicable accounting standards, laws and regulations. If the <b>Member in Business</b> does not consider her manager's reaction to be appropriate, it may be appropriate to discuss the matter with the next level of management. If this response is not satisfactory, the <b>Member in Business</b> may need to involve internal audit, the audit committee and/or investment committee or the Board. Note that the substance of all discussions held, who was involved, what conclusions were reached and

Ethical decision-making approach	
	<p>why, and her involvement, should all be documented by the <b>Member in Business</b>. When doing so, the <b>Member in Business</b> may need to consider whether there are legal implications of maintaining such documentation in compliance with relevant laws and regulations.</p> <p>The <b>Member in Business</b> could also consider the ethical conflict resolution resources of her <b>Professional Body</b>.</p>

### Case Study 11 – Personal financial interest in a proposal

*Issues:* Financial interests of a Member

*Case outline:* Stella (**Member in Business**) has been appointed finance director of a public company which has difficulties attracting and retaining skilled staff. Stella's first task from the Board is to develop a benefits package to assist the company in overcoming this problem. Her own entitlement to benefits will also be in accordance with the new scheme. Based on extensive research and analysis, Stella concludes that in order to achieve the Board's objective, a significant increase in the whole range of benefits is required.

Fundamental principles of the Code	
Integrity	In view of the <b>Member in Business's</b> personal interest, how will she ensure that her honesty remains unquestionable?
Objectivity	How will the <b>Member in Business</b> remain unbiased, and consider only the relevant facts, despite her personal interest in the benefits package?
Professional competence and due care	Does the <b>Member in Business</b> have all the necessary skills to draw up such a package?
Professional behaviour	How should the <b>Member in Business</b> proceed so as not to discredit her behaviour?

Ethical decision-making approach	
Identify relevant facts	Consider the business's policies, procedures and guidelines, accounting standards, best practices and applicable laws and regulations. Is the information used for assessing the potential new benefits package independent? Who else has been involved in the proposal for the new benefits package?
Identify affected parties	The <b>Member in Business</b> and the Board are the key affected parties. Others that may be affected include employees, human resources, shareholders and financial backers.
Determine whether a procedure of conflict resolution exists within the organisation	Consider the company's policies and procedures, applicable accounting standards, best practice and applicable laws and regulations.
Consider who should be involved in the conflict resolution process	Who should be involved in the resolution of this matter and for what reason? What is the appropriate timing of their involvement? Does the <b>Member in Business</b> have trusted colleagues with whom she can discuss her position? Has the <b>Member in Business</b> discussed the matter with the Board and/or human resources?
Discuss the ethical dilemma with relevant parties	Do further discussions need to take place with the Board or the directors individually prior to undertaking the task?

Ethical decision-making approach	
Consider possible course of action	Prior to explaining the findings to the Board, it may be advisable that the <b>Member in Business</b> informs the Board how she approached the project and who else was involved in the process (such as human resources). The <b>Member in Business</b> may find it helpful to document the substance of all discussions held, who was involved, what conclusions were reached and why, including her involvement. When maintaining such documentation, the <b>Member in Business</b> may need to consider the legal implications of doing so. When it is time to propose the new benefits package, the <b>Member in Business</b> may need to declare her conflict of interest. Findings may need to be presented to the Board by human resources or another independent party.

### Case Study 12 – Inducements for non-disclosure of information

*Issues:* Inducement

*Case outline:* John (**Member in Business**) has been with his current **Employer** for eight months. However, things have not turned out well and he is moving on. John has significant concerns about the business conduct of the company and believes there may be issues that require disclosure to the auditors or the regulator. A compromise agreement is currently being negotiated in which John will not receive a settlement if he reports any concerns; whereas, if he agrees to a gagging clause, then there will be a substantial payoff.

Fundamental principles of the Code	
Integrity	What does the <b>Member in Business</b> need to do to demonstrate his integrity? How far does the <b>Member in Business</b> need to go?
Objectivity	How will the <b>Member in Business</b> manage the conflict between financial benefit and integrity?
Confidentiality	Is there any basis on which the <b>Member in Business</b> could make disclosures?

Ethical decision-making approach	
Identify relevant facts	Are the <b>Member in Business's</b> concerns based on fact? Are all the facts available to the <b>Member</b> ? Can the rest be established? Identifying the relevant facts could include understanding any requirements of legislation to make disclosures, and any protection that the <b>Member in Business</b> may seek from relevant legislation. Have any steps already been taken to try to resolve the <b>Member in Business's</b> concerns? Have these steps been documented?
Identify affected parties	The <b>Member in Business</b> and the <b>Employer</b> are the key affected parties. Other parties that may be affected are the regulator, auditor and the public, as well as the <b>Member in Business's</b> family.
Determine whether a procedure of conflict resolution exists within the organisation	Given the nature of the dilemma, there may not be an internal conflict resolution process available. The <b>Member in Business</b> can also consider the ethical conflict resolution resources of his <b>Professional Body</b> .
Consider who should be involved in the conflict resolution process	Who should be involved in the resolution of this matter and for what reason? What is the appropriate timing of their involvement? Does the <b>Member in Business</b> have trusted colleagues with whom he can discuss his position? Can the <b>Member in Business</b> speak with his <b>Employer</b> about his concerns? Has the <b>Member in Business</b> made full disclosures to his solicitor and received advice? Has the <b>Member in Business</b> discussed the

Ethical decision-making approach	
	matter with his family? Are there any external organisations that the <b>Member in Business</b> can contact such as public authorities?
Discuss the ethical dilemma with relevant parties	Do any additional discussions need to be held with the <b>Member in Business's</b> current <b>Employer</b> ?
Consider possible course of action	<p>There are two issues that need to be resolved:</p> <ol style="list-style-type: none"> <li>1. How to address the matters of concern; and</li> <li>2. How to achieve a satisfactory financial settlement.</li> </ol> <p>Given the nature of the dilemma, the <b>Member in Business</b> may need to take advice early and often. The <b>Member in Business</b> may need to establish whether the facts support his concerns. If so, he may need to decide if there is a basis for disclosure and, if so, what the value and consequences of that disclosure might be for the <b>Member in Business</b> and his family, the <b>Employer</b>, the industry and the profession. If the evidence available is considered sufficient, the <b>Member in Business</b> may resist the gagging clause, and argue for the concerns raised to be documented and considered by <b>Those Charged with Governance</b> of the company. The <b>Member in Business</b> should always ensure his family is aware of his concerns and actions, and their implications, without revealing confidential information.</p> <p>The <b>Member in Business</b> may find it helpful to document the substance of all discussions held, who was involved, the conclusions reached and why, including his involvement. When doing so, legal implications of maintaining such documentation in compliance with relevant laws and regulations may need to be considered by the <b>Member in Business</b>.</p>

### Case Study 13 – Earnings management

*Issues:* Financial interests of a Member/Inducement/Pressure to breach the fundamental principles

*Case outline:* Phil (**Member in Business**) has been the accountant for a family business for a few years. The business has recently encountered some operating difficulties and associated financial difficulties. Subsequently, a bank and a venture capitalist have invested and acquired over 35% of the company's shares. However, no board seats have been made available to the purchasers. The ongoing support of the bank and venture capitalist are dependent on the company's performance figures.

The Managing Director tells Phil that if he produces the 'right' figures he will receive a significant Christmas bonus and a 1% share option. The company is secretive and as little information as possible is being given to the auditors and the investors.

Phil is preparing the quarterly management accounts and, on review of the balances, believes that some figures are being 'massaged'. Phil has tentatively raised his concerns with the father and son Chairman and Chief Executive. Phil is then told that if he pursues the matter or fails to produce the 'right' figures, his bonus and share options will be forfeited.

Fundamental principles of the Code	
Integrity	It is possible to support the business without being involved in reporting potentially misleading information?
Objectivity	How can the <b>Member in Business</b> avoid his professional judgement being influenced by the financial interest resulting from the bonus?
Professional behaviour	How will the <b>Member in Business</b> manage relationships with the affected parties?

Ethical decision-making approach	
Identify relevant facts	Consider the business's policies, procedures and guidelines, accounting standards, applicable laws and regulations. The facts need to be double checked with a focus on significant figures in the accounts and their underlying assumptions. The <b>Member in Business</b> should consider whether the nature of the family business and its apparent secrecy means that he is not in possession of material facts.
Identify affected parties	The <b>Member in Business</b> , the family business, professional advisers, bankers and venture capitalists are the key affected parties. Others that may be affected are the <b>Member in Business's</b> own family and the profession.
Determine whether a procedure of conflict resolution exists within the organisation	Consider the company's policies and procedures, applicable accounting standards, best practice and applicable laws and regulations. Given the nature of the dilemma, there may not be internal conflict resolution processes available, The <b>Member in Business</b> can also consider the ethical conflict resolution resources of his <b>Professional Body</b> .
Consider who should be involved in the conflict resolution process	Consider who should be involved in the resolution of this matter and for what reason? What is the appropriate timing of their involvement? Are there trusted colleagues or friends with whom the <b>Member in Business</b> can discuss his position? Can the <b>Member in Business's Professional Body</b> provide advice and provide assistance?
Discuss the ethical dilemma with relevant parties	Do further discussions need to take place with the Chairman and the Chief Executive?
Consider possible course of action	<p>The <b>Member in Business</b> may approach the Chairman and Chief Executive and explain the long term implications of reporting inaccurate figures. He could focus discussions on the need to address the underlying business issues and the best way to address them to increase the long-term value of the company. Prior to having this discussion, the <b>Member in Business</b> may prepare realistic figures for presentation and explain the importance of presenting these for the company and his professional standing.</p> <p>During the resolution process, the <b>Member in Business</b> may find it helpful to document the substance of all discussions held, who was involved, what conclusions were reached and why, and his involvement. Note that the legal implications of maintaining such documentation in compliance with relevant laws and regulations may need to be considered. The <b>Member in Business</b> may also need to consider his employment options.</p>

### Case Study 14 – Tender bids

*Issues:* Inducement/Pressure to breach the fundamental principles

*Case outline:* Paula (**Member in Business**) is a recently qualified professional accountant working in the accounting department of a property investment firm. The company is selling a piece of land and has stipulated that bids have to be submitted via email by 5pm of a specified date. All tender bids are to be considered as confidential and Paula is the initial point of contact for the tender bids. A few tender bids have been received prior to the deadline but not as many as initially anticipated.

At 4:30pm Paula receives a call from an anonymous prospective buyer who informs Paula that he is willing to pay a premium of 20% above the highest bid received by 4:55pm, provided he is informed beforehand of the highest bid received. The caller explains that this way all parties benefit. A higher fee is received for the land, the buyer does not have to make an unnecessarily high bid and Paula will be rewarded by the buyer for her hard work. He continues to explain that this type of activity is common in this industry and implies without naming names that other more senior personnel within the firm have taken advantage of these offers in the past and would expect Paula to do the same.

Fundamental principles of the Code	
Integrity	Can the <b>Member in Business</b> retain her integrity if she distorts the tender process? How does the <b>Member in Business</b> deal with the caller's allegations about more senior personnel within her company?
Objectivity	The <b>Member in Business</b> needs to consider the interest of all of the other parties involved in the tender process.
Confidentiality	How could one justify divulging confidential information to the callers in the interest of maximising the selling price of the land?
Professional behaviour	How does the <b>Member in Business</b> ensure that she handles the client's allegations sensitively and professionally, particularly given the <b>Member in Business</b> has no knowledge of the accuracy of the allegations made by the caller?

Ethical decision-making approach	
Identify relevant facts	Consider any further information the <b>Member in Business</b> may require to make a decision including consulting with relevant stakeholders of the company who may have a perspective on the tender process.
Identify affected parties	Key affected parties are the <b>Member in Business</b> , the caller, the directors and staff at the property investment firm, the bank, other creditors and other prospective buyers.
Determine whether a procedure of conflict resolution exists within the organisation	Consider the company's policies, procedures and guidelines, best practices, and applicable laws and regulations.
Consider who should be involved in the conflict resolution process	Consider who should be involved in the resolution of this matter and for what reason? What is the appropriate timing of their involvement? The first issue is, does the <b>Member in Business</b> immediately raise this with her manager before the caller phones back? Secondly, when the caller does phone back does the <b>Member in Business</b> transfer the call to her manager, or does she get her manager to listen in to the conversation or does she merely deal with the caller?
Discuss the ethical dilemma with relevant parties	Does the <b>Member in Business</b> need to hold discussions with her manager or senior management of the company?
Consider possible course of action	From the given information, the company may benefit financially if the information is divulged. However, this is not certain as a late bid from another prospective buyer may yet be received prior to the deadline. The <b>Member in Business</b> needs to ensure that a fair tender process is held despite the short-term commercial pressure. The <b>Member in Business</b> also needs to ensure that any actions taken are within the confines of the law. The <b>Member in Business</b> may need to disclose the receiving of the call and the content of the discussion to <b>Those Charged with Governance</b> .

**Case Study 15 – Non-disclosure to auditors and corrupt business practices**

*Issues:* NOCLAR/Whistleblowing

*Case outline:* Sarah (**Member in Business**) is newly employed as an accounting systems manager and recently heard a rumour that the company recently paid a bribe to win overseas work. She has also noticed that the company culture appears to be that everyone has an attitude of getting away with as much as possible. Sarah goes to make her morning cup of coffee where she overhears a discussion with a divisional accountant about the fact that certain information had not been disclosed to the auditors. Sarah has not yet developed a strong working relationship with her line manager and as yet is not sure that her line manager will be supportive of her comments and desire to explore the accuracy of statements made.

<b>Fundamental principles of the Code</b>	
Integrity	Can the <b>Member in Business</b> overlook the divisional accountant's comments, her impressions of organisational culture and the bribe allegedly paid to the overseas company and still demonstrate integrity?
Objectivity	Knowing that something may be wrong, how can the <b>Member in Business</b> maintain her objectivity?
Confidentiality	On what basis could or should the <b>Member in Business</b> make disclosures?
Professional behaviour	How should the <b>Member in Business</b> proceed so as not to discredit herself or the company?

<b>Ethical decision-making approach</b>	
Identify relevant facts	Consider the business's policies, procedures and guidelines, accounting standards, best practices, applicable laws and regulations. Can the facts be corroborated with documentation or discussion with relevant parties? If proven would the conduct constitute a breach of any laws and if so, which ones? Is there an internal process for whistleblowing? Has the <b>Member in Business</b> taken the appropriate steps to understand her legal rights and responsibilities?
Identify affected parties	The <b>Member in Business</b> , the divisional accountant, the employee raising allegations about the bribe, the line manager and the auditor are the key affected parties. Other parties that may be affected are the company's other employees and, where present, internal audit, the audit committee, the board, shareholders and financial backers.
Determine whether a procedure of conflict resolution exists within the organisation	Consider the company's policies and procedures and applicable laws and regulations.
Consider who should be involved in the conflict resolution process	Who should be involved in the resolution of this matter and for what reason? Do any confidentiality, privacy or whistleblower constraints prevent or restrict their involvement? What is the appropriate timing of their involvement? Has the <b>Member in Business</b> considered contacting her <b>Professional Body</b> for advice and guidance? Does the <b>Member in Business</b> have trusted colleagues with whom she can discuss her position? At what point will the <b>Member in Business</b> consider involving her line manager, the next level of management, the Board and the audit committee?
Discuss the ethical dilemma with relevant parties	Do further discussions with the divisional accountant need to take place? Similarly, do additional discussions need to be held with the employee raising bribery allegations?
Consider possible course of action	The <b>Member in Business</b> may consider checking the facts and discussing the matter with her immediate line manager. If the <b>Member in Business</b> feels that the response from the line manager is not satisfactory, the next step



Ethical decision-making approach	
	<p>may be to discuss the matter further with the next level of management, internal audit, the audit committee or the Board.</p> <p>The <b>Member in Business's</b> suspicions or rumours of criminal or corrupt activity are not sufficient for her to form a reasonable basis that wrongdoing has occurred. However, if there is evidence of wrongdoing, the <b>Member in Business</b> may contact her <b>Professional Body</b> (subject to confidentiality, privacy and whistleblower obligations) and consider obtaining legal advice. During the resolution process, it may be helpful to document the <b>Member in Business's</b> involvement in the resolution of the matter, the substance of all discussions held, the names of others involved, the decisions made by her and the basis for those decisions. When doing so, the <b>Member in Business</b> always needs to keep legal, regulatory and professional considerations in mind.</p>

### Case Study 16 – Inappropriate expense claims lodged by the Chief Executive

*Issues:* NOCLAR/Whistleblowing

*Case outline:* Crystal (**Member in Business**), the financial controller of the Australian division of an international company, was reviewing the expense claims of senior management when she became aware of a claim from the Chief Executive Officer that was contrary to local tax laws. On further investigation, she found that this was not an isolated incident and claims of a similar nature added up to a significant amount. All claims were approved by the same international manager.

Fundamental principles of the Code	
Integrity	Can the <b>Member in Business</b> overlook the Chief Executive Officer's expense claim and maintain her integrity?
Objectivity	Knowing that something may be wrong, how can the <b>Member in Business</b> maintain her objectivity?
Professional competence and due care	How can allowing the expense payments to be processed when they are contrary to local tax laws be seen as acting with due skill, care and diligence?
Confidentiality	On what basis could or should the <b>Member in Business</b> make disclosures?
Professional behaviour	How should the <b>Member in Business</b> proceed so as not to discredit herself or the company?

Ethical decision-making approach	
Identify relevant facts	Does the <b>Member in Business</b> have all of the facts? Can the <b>Member in Business</b> discuss the matter further with the international manager that approved the expenses? If proven, would the conduct constitute a breach of any laws and if so, which ones? Does the company have an internal process for whistleblowing? What steps has the <b>Member in Business</b> taken to understand her legal rights and responsibilities?
Identify affected parties	The key affected parties are the <b>Member in Business</b> and the Chief Executive Officer. Other possible affected parties are the international manager, the Australian Taxation Office, human resources, the Board and/or audit committee and other employees.
Determine whether a procedure of conflict resolution exists within the organisation	Consider the company's policies and procedures, applicable accounting standards, best practice and applicable laws and regulations.

Ethical decision-making approach	
Consider who should be involved in the conflict resolution process	Who should be involved in the resolution of this matter and for what reason? Do any confidentiality, privacy or whistleblower constraints prevent or restrict their involvement? What is the appropriate timing of their involvement? Does the <b>Member in Business</b> have trusted colleagues with whom she can discuss her position? Has the <b>Member in Business</b> discussed the matter with local management and/or human resources?
Discuss the ethical dilemma with relevant parties	Can further discussions be held with the international manager? Do discussions need to be held with the local senior management?
Consider possible course of action	The <b>Member in Business</b> may consider contacting the international manager who approved the expenses to clarify her understanding of the transactions. The <b>Member in Business</b> may consider quantifying the impact of the claims made by the Chief Executive from a taxation perspective and explain the problem to the international manager using this as a basis. The <b>Member in Business</b> could also then highlight the local implications of allowing such claims to continue. Implications may include fines from the Australian Taxation Office and unfavourable publicity to the company. Depending on the response received, the <b>Member in Business</b> may need to consider the likelihood of further assistance being provided by the international manager in relation to this wrongdoing and the impact that this may have on her actions. Enquiries of this nature, together with the details of the parties involved and reasons for any conclusions reached, should be documented by the <b>Member in Business</b> . The <b>Member in Business</b> may also consider raising the matter with the audit committee, once she has substantiated her belief that wrongdoing has occurred.

### Case Study 17 – Inappropriate recording of patient attendance at a doctors' medical practice

*Issues:* Whistleblowing

*Case outline:* Rita (**Member in Business**) has recently returned to the workforce following maternity leave. She is employed as a part-time accountant for a local medical practice, reporting to a practice manager who is responsible for a number of doctors working together. In her second week on the job Rita noticed that one of the doctors appeared to treat more patients than were recorded in the electronic waiting room system used to manage patient attendance. It is the practice's policy that all doctors contribute to the practice half of their income earned from attending patients. Rita approached the doctor who suggested it was merely an oversight and that he would instruct the practice manager to update the records by the end of the week. At the end of the week Rita noticed that the patient attendance records had not been updated so she proceeded to update them herself. On Rita's return to work the following week, she noticed that the entries she made had been erased. When she approached the doctor about this, he snapped that her job was merely to record payments and expenses and any 'business' matters were best left to those with the understanding of how to run a business. Rita has serious concerns about the doctor's actions in omitting to record patient attendances correctly.

Fundamental principles of the Code	
Integrity	Can the <b>Member in Business</b> overlook the doctor's actions and maintain her integrity?
Objectivity	Knowing that something may be wrong, how can the <b>Member in Business</b> maintain her objectivity?
Professional competence and due care	How can omission of patient attendance and therefore the costs and associated revenue be seen as acting with due skill, care and diligence?
Confidentiality	On what basis could or should the <b>Member in Business</b> make disclosures?
Professional behaviour	How should the <b>Member in Business</b> proceed so as not to discredit herself?

Ethical decision-making approach	
Identify relevant facts	Does the <b>Member in Business</b> have all of the facts? Is this merely a once-off or an ongoing practice by this doctor? Can she discuss the matter further with the doctor? If proven, would the conduct constitute a breach of any laws and if so, which ones? Does the practice have an internal process for whistleblowing? What steps has the <b>Member in Business</b> taken to understand her legal rights and responsibilities? Has the <b>Member in Business</b> considered the application of privacy laws to the handling of sensitive information within the personal health records of these patients and when and how these records can be amended?
Identify affected parties	The key affected parties are the <b>Member in Business</b> , the doctor concerned, other doctors of the practice and the patients whose records are not accurate. Other possible affected parties are the Australian Taxation Office and Medicare.
Determine whether a procedure of conflict resolution exists within the organisation	Given the size of the practice, there may not be formal documented policies available. However, there may be a doctor who has the allocated responsibility for addressing staff issues.
Consider who should be involved in the conflict resolution process	Who should be involved in the resolution of this matter and for what reason? Do any confidentiality, privacy or whistleblower constraints prevent or restrict their involvement? What is the appropriate timing of their involvement? Does the <b>Member in Business</b> have trusted colleagues with whom she can discuss her position? Has the <b>Member in Business</b> discussed the matter with any of the other doctors?
Discuss the ethical dilemma with relevant parties	Can further discussions be held with the deceitful doctor? Do discussions need to be held with other doctors? Should she escalate matters given the doctor's previous brusque behaviour?
Consider possible course of action	The <b>Member in Business</b> may consider further discussions with the doctor concerned to clarify her understanding of the situation. Prior to discussions, the <b>Member in Business</b> may consider quantifying the impact of the doctor's behaviour and the likely impact over time. She may then decide to observe what happens over a longer period of time. All enquiries and conclusions reached may need to be documented by the <b>Member in Business</b> and when doing so, the <b>Member in Business</b> needs to be aware of the associated legal, regulatory and professional implications.

### Case Study 18 – Insider information

*Issues:* Public Sector – Inducement

*Case outline:* Sally (**Member in Business**) is the head of internal audit in a public sector organisation which is about to tender for the contract for the internal audit service. She has been in her position for the duration of a five-year contract. A new member of her team has been recruited in the normal course from the department responsible for reviewing the tender contract. The new team member is employed in internal audit as a support administrator. Although he was not involved with the tender process, his former colleague and friend in the tendering department is responsible for the tender specification document and the evaluation process.

Sally's new employee had sight of some of the requirements and has offered to share with her information that may be of use when preparing the tender. However, this information is confidential and should not be seen by any of the tendering parties.

It will be an open tender process for both external and internal providers. Bids from external providers are being encouraged. The evaluation process has been designed with this in mind.

If the contract is awarded externally, Sally, as the head of internal audit, will be unsure of her personal position in the organisation.

Sally understands the use of any insider knowledge of the tendering process would be inappropriate when preparing the tender proposal, but she feels she would have a better chance of success if she used this confidential information.

Fundamental principles of the Code	
Integrity	How can the <b>Member in Business</b> demonstrate integrity despite the influence of the information available to her?
Objectivity	How can the <b>Member in Business</b> maintain her objectivity?
Professional competence and due care	How can the <b>Member in Business</b> proceed in order to be seen as acting with due skill, care and diligence?
Confidentiality	How should the <b>Member in Business</b> act to maintain confidentiality?
Professional behaviour	How should the <b>Member in Business</b> proceed so as not to discredit herself?

Ethical decision-making approach	
Identify relevant facts	What are the risk factors here? What pressure is the <b>Member in Business</b> feeling to breach confidentiality principles? The <b>Member in Business</b> has a self-interest threat since her employment position with the company is uncertain if the internal audit contract is awarded to an external provider. The opportunity is present as a new member of her team has access to information that may better her chances. Having this information would compromise the probity of the tender process and increase the <b>Member in Business's</b> chances to the detriment of a fair and honest tender process.
Identify affected parties	The <b>Member in Business</b> , <b>Employer</b> and providers involved in the tender bid are the key affected parties.
Determine whether a procedure of conflict resolution exists within the organisation	Consider the company's policies, procedures and guidelines, best practices, applicable laws and regulations.
Consider who should be involved in the conflict resolution process	Who should be involved in the resolution of this matter and for what reason? What is the appropriate timing of their involvement? Are there trusted colleagues with whom the <b>Member in Business</b> can discuss her position?
Discuss the ethical dilemma with relevant parties	Should further discussion take place with the <b>Member in Business's Professional Body</b> ?
Consider possible course of action	The <b>Member in Business</b> may consider disclosing this threat to the tendering department as well as any information she may already have received on the tender. The <b>Member in Business</b> could then discuss with her new team member from the tendering department the principles which would be compromised should she access this confidential information from the tender requirements and how it is her professional duty to follow these principles. She could also prevent the team member or his friend from providing her with any further confidential information on the tender. The <b>Member in Business</b> could consider discussing her concerns with <b>Those Charged with Governance</b> to determine why the contract tender has also gone to external providers and what that could potentially mean for her position with the company should an external party be appointed. The <b>Member in Business</b> could also examine her other employment options as a worst case scenario.

## Case Study 19 – Demonstrating due diligence in an honorary position

*Issues:* Public Sector – Acting with sufficient expertise

*Case outline:* Tammy ([Member in Business](#)) has been appointed as a member of a School Board on a voluntary basis. She has also been appointed to the finance and buildings committee that awards building contracts. The membership of this committee includes a number of individuals with private sector experience and local businessmen. One is a local builder who has been a board member for a number of years and is well respected in the community and by the Board.

At Tammy's first meeting, the committee considers a report from the head teacher about the condition of the school hall and sets out a scheme of remedial building works with estimated costs. After discussion of the scheme, and recognising the need to move quickly if the work is to be carried out during the summer vacation, the board member who is the local builder offers to do the work at a competitive price and the other board members on the committee are minded to accept the offer.

However, although the offer has been made, the board members are not considering the use of a formal tender process or making any reference to governance arrangements that could exist for tenders. Tammy is concerned about the committee being unable to demonstrate reasonable decision making, stewardship of public money and potential reputational risk.

Fundamental principles of the Code	
Integrity	Can the <a href="#">Member in Business</a> maintain her integrity without advising the committee of the need to demonstrate a proper decision-making process that would support any contracts awarded?
Objectivity	The information provided to her could result in the <a href="#">Member in Business</a> saying nothing. How can she avoid the temptation to agree to the apparently easy solution and instead maintain objectivity?
Professional competence and due care	How can the <a href="#">Member in Business</a> demonstrate she is acting with due skill, care and diligence?
Confidentiality	On what basis could or should the <a href="#">Member in Business</a> make disclosures?
Professional behaviour	How should the <a href="#">Member in Business</a> proceed so as not to discredit herself? Does this matter in cases where the employment is voluntary?

Ethical decision-making approach	
Identify relevant facts	Does a voluntary position affect the level of professionalism that one must demonstrate? The <a href="#">Member in Business</a> is new in her role and it can be assumed she is relatively unfamiliar with the policies, procedures and requirements of the School Board. On the surface it appears that the board member who is the builder seems to be the best person to perform the required works. Since the timeframe is short, using the builder board member's company could potentially facilitate the timely completion of the project, but only by bypassing tendering steps that maintain the probity of the process. Can the <a href="#">Member in Business</a> act responsibly knowing that the tendering process would not stand up to outside scrutiny and considering that the project is dealing with public funds?
Identify affected parties	The key affected parties are the <a href="#">Member in Business</a> , the School Board, parents, children, staff and other community stakeholders involved with the school.
Determine whether a procedure of conflict resolution exists within the organisation	Consider the company's policies, procedures and guidelines, best practices, applicable laws and regulations.

Ethical decision-making approach	
Consider who should be involved in the conflict resolution process	Are there trusted colleagues or friends with whom the <b>Member in Business</b> can discuss her position? Can the <b>Member in Business's Professional Body</b> provide advice and provide assistance?
Discuss the ethical dilemma with relevant parties	Since the <b>Member in Business</b> sits on the School Board, would it be appropriate for her to discuss this with the finance and building committee members? Should she also discuss this with the Board? Should she consider consulting outside of the School Board?
Consider possible course of action	The <b>Member in Business</b> could bring the matter up before the finance and buildings committee and explain that, although it appears that the builder board member is the best candidate with a competitive bid, acceptance without following a proper tender process could be inappropriate. She could recommend that they follow a tendering process that is in accordance with good practice guidelines to explicitly demonstrate to the community a proper decision-making process that would support any contracts awarded. She may also need to explain to the board members that following a proper decision-making process would protect the committee members and the School Board from any potential reputational risk that the school did not properly award contracts, especially as it is funded by public money.

### Case Study 20 – Potential breach of not-for-profit status

*Issues:* Charitable Organisation – Preparation and presentation of information/Pressure to breach the fundamental principles

*Case outline:* Robert (**Member in Business**) is the Chief Financial Officer for a charitable organisation and has recently been informed by its auditor that preliminary analysis performed on the accounts indicates the organisation may have surpassed a legislative threshold for income from its commercial activities. It is uncertain how this came about; however, it could potentially affect the organisation's tax exempt status with the Australian Taxation Office (ATO) as a registered charity. Robert has brought this matter to the attention of the Chief Executive who has expressed her fears of potential staff layoffs or a reduction in services occurring should there be penalties from the ATO or if the organisation loses its tax exempt status. Then the idea comes to her that the matter should be quietly managed in-house and that it should not be disclosed to the ATO since it was only an oversight in the current year.

Fundamental principles of the Code	
Integrity	Can the <b>Member in Business</b> be involved in this decision and maintain his integrity? Is there a 'common sense' argument for not disclosing this unintentional slip to the authorities?
Objectivity	Can the <b>Member in Business</b> remain objective when deciding how to resolve this matter since his future position with the organisation may be at risk?
Professional competence and due care	How can the <b>Member in Business</b> demonstrate he is acting with due skill, care and diligence?
Confidentiality	On what basis could or should the <b>Member in Business</b> make disclosures?
Professional behaviour	How should the <b>Member in Business</b> proceed so as not to discredit himself?

Ethical decision-making approach	
Identify relevant facts	The matter has yet to be analysed to ensure that preliminary findings are substantiated. The <b>Member in Business</b> should consider the alternatives. Is there any ethical discretion available in making a decision on this matter? Do the facts of the matter overrule any motives or intentions of the organisation when determining the tax implications? Would knowing the responsible party or their intentions affect the <b>Member in Business's</b> objectivity?
Identify affected parties	The key affected parties are the <b>Member in Business</b> , the auditor, the <b>Employer</b> , the management and staff, and the ATO.
Determine whether a procedure of conflict resolution exists within the organisation	Consider the company's policies, procedures and guidelines, best practices, applicable laws and regulations.
Consider who should be involved in the conflict resolution process	Are there trusted colleagues or friends with whom the <b>Member in Business</b> can discuss his position? Can the <b>Member in Business's Professional Body</b> provide advice and provide assistance?
Discuss the ethical dilemma with relevant parties	Since the matter has already been discussed with the Chief Executive, should the <b>Member in Business</b> consider discussion with <b>Those Charged with Governance</b> ?
Consider possible course of action	The <b>Member in Business</b> could investigate the auditor's findings in the first instance to determine whether there is any merit to the auditor's preliminary analysis. Should the auditor's findings be substantiated, the <b>Member in Business</b> may find it helpful to document the matter thoroughly and then consider whether to consult with internal or external taxation experts on how to approach the matter. The <b>Member in Business</b> may need to consider whether there is any legitimate means to deal with the matter and what long-term repercussions would be on his professional reputation, and on the organisation's reputation and future, should they follow the Chief Executive's suggested solution and not disclose the matter to the ATO and the Australian Charities and Not-For-Profits Commission. Legitimate alternatives could be sought to limit the organisation's exposure to potential tax penalties or loss of charitable status. The <b>Member in Business</b> may find it useful to make inquiries on the ATO's powers to give relief in the event of loss of charitable status. Immediate contact with the ATO may be warranted in cases where timeliness of notification is a factor in the severity of the ruling by the authorities.

### Case Study 21 – Ignorance is no excuse

*Issues:* Preparation and presentation of information/Acting with sufficient expertise/Pressure to breach the fundamental principles

*Case outline:* Jill (**Member in Business**) is a long standing non-executive director for a large publicly listed property management group. The company has been taking advantage of readily available funds through short-term credit and rapidly increasing its portfolio of investment properties. Although this short-term debt has been easily converted into longer term less risky debt in the past, the tightening of the credit market due to a global financial crisis has left a large amount of debt which needs to be refinanced in the short term. Jill has reviewed the draft financial statements and notices that the split between current and non-current debt appears not to reflect this position. Jill makes inquiries of the Chief Financial Officer (CFO) whereupon she receives the response that the accounts have been reviewed by the CFO and the finance team, and preliminary sign-off has been obtained from the company auditor.

<b>Fundamental principles of the Code</b>	
Integrity	Can the <b>Member in Business</b> overlook the available information and maintain her integrity?
Objectivity	Can the <b>Member in Business</b> rely on management and the auditor's judgement and remain objective when deciding how to resolve this matter since she is aware of differences?
Professional competence and due care	How can the <b>Member in Business</b> demonstrate she is acting with due skill, care and diligence? Should the <b>Member in Business</b> ask herself why her analysis is different to that of the others? How does the <b>Member in Business</b> ensure that a proper decision-making process is applied? How does she demonstrate the appropriate level of professional judgement?
Professional behaviour	How should the <b>Member in Business</b> proceed so as not to discredit herself?

<b>Ethical decision-making approach</b>	
Identify relevant facts	Can the <b>Member in Business</b> rely on management and the company auditor without taking reasonable actions to understand the underlying information in the financial statements? The <b>Member in Business</b> is aware that significant events have taken place that are not disclosed in the accounts. What level of inquiry is required by non-executive directors of management in order to discharge their responsibilities?
Identify affected parties	The key affected parties are the <b>Member in Business</b> , the CFO, the company auditor, the <b>Employer</b> , the shareholders, and the securities regulator(s).
Determine whether a procedure of conflict resolution exists within the organisation	Consider the company's policies, procedures and guidelines, accounting standards, best practices, applicable laws and regulations.
Consider who should be involved in the conflict resolution process	Are there trusted colleagues or friends with whom the <b>Member in Business</b> can discuss her position? Can the <b>Member in Business's Professional Body</b> provide advice and assistance? Is the <b>Member in Business</b> able to discuss the matter with a board member?
Discuss the ethical dilemma with relevant parties	Should the <b>Member in Business</b> raise this with the Board?
Consider possible course of action	The <b>Member in Business</b> may need to consider her professional and legal obligations in this matter and could perform further analysis to determine whether the split between current and non-current debt in the accounts is appropriate. If further review of the accounts indicates that the current/non-current split is not consistent with a true and fair view, then the <b>Member in Business</b> may need to make inquiries of the CFO and the auditor and then raise the matter as soon as possible with the Board. The <b>Member in Business</b> may find it helpful to document the matter thoroughly and may need to disclose her findings to the Board.

### **Conformity with International Pronouncements**

The International Ethics Standards Boards for Accountants (IESBA) has not issued a pronouncement equivalent to APES GN 40.



## Acknowledgements

APESB gratefully acknowledges the publications listed below which provided insights into ethical issues faced by **Members in Business** and development of this Guidance Note. Further, some of the cases in this Guidance Note are based on scenarios described in these publications:

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## Bibliography

### **High-profile examples of poor ethical behaviour in the corporate world**

The following is a bibliography of actual examples of poor ethical behaviour in the corporate world:

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#### Opes Prime

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WorldCom

Scharff, M M, July 2005, *WorldCom: A Failure of Moral and Ethical Values*, retrieved 8 October 2019, <https://web.archive.org/web/20150915195317/https://www.questia.com/library/journal/1P3-1176439141/worldcom-a-failure-of-moral-and-ethical-values>

## Appendix 1

### Summary of revisions to the previous APES GN 40 (Issued in October 2015)

APES GN 40 *Ethical Conflicts in the Workplace – Considerations for Members in Business* was originally issued in March 2012 and revised in October 2015 (extant APES GN 40). APES GN 40 has been revised by APESB in March 2020. A summary of the revisions is given in the table below.

Table of revisions\*

Paragraph affected	How affected
1.1	Amended
1.2	Amended
1.3	Amended
1.4	Added
1.5 – paragraph 1.4 in extant APES GN 40 relocated	Amended
1.6 – paragraph 1.5 in extant APES GN 40 relocated	Amended
1.7 – paragraph 1.6 in extant APES GN 40	Relocated
1.8 – paragraph 1.7 in extant APES GN 40	Relocated
1.9 – paragraph 1.8 in extant APES GN 40 relocated	Amended
1.10 – paragraph 1.9 in extant APES GN 40	Relocated
1.11 – paragraph 1.10 in extant APES GN 40	Relocated
2 – Introduction	Amended
2 – Definition of Acceptable Level	Amended
2 – Definition of Close Family	Added
2 – Definition of Code	Amended
2 – Definition of Employer	Amended
2 – Definition of Immediate Family	Added
2 – Definition of Inducement	Added
2 – Definition of Member in Business	Amended
2 – Definition of Professional Activity	Amended
2 – Definition of Those Charged with Governance	Amended
3.1	Amended
3.3	Amended
3.4	Amended
4.1	Amended
4.2	Amended
4.3	Amended
4.4	Amended
5.1	Amended
5.2	Amended
5.3	Amended
5.4	Amended
5.5	Added
5.6 – paragraph 5.5 in the extant APES GN 40	Relocated
5.7 – paragraph 12.1 in the extant APES GN 40 relocated	Amended
5.8 – paragraph 12.2 in the extant APES GN 40 relocated	Amended
5.9 – paragraph 12.3 in the extant APES GN 40 relocated	Amended
5.10 – paragraph 12.4 in the extant APES GN 40 relocated	Amended
6.1	Amended
6.2	Amended
6.3	Amended
7.2	Amended
8.1	Amended
8.2	Amended
9.2	Amended
10.1	Amended
10.2 – part of paragraph 10.1 in extant APES GN 40 relocated	Amended

Paragraph affected	How affected
11.1	Amended
11.2	Amended
11.3	Added
11.4 – Paragraph 11.3 in extant APES GN 40 relocated	Amended
12.1	Added
12.2	Added
12.3 – Paragraph 12.5 in extant APES GN 40 relocated	Amended
12.4 – Paragraph 12.6 in extant APES GN 40	Relocated
12.5 – Paragraph 12.7 in extant APES GN 40 relocated	Amended
12.6 – Paragraph 12.8 in extant APES GN 40 relocated	Amended
12.7 – Paragraph 12.9 in extant APES GN 40 relocated	Amended
12.8 – Paragraph 12.10 in extant APES GN 40	Relocated
13.1	Added
13.2	Added
14 – Section 13 in extant APES GN 40 relocated	Amended
14 – Introduction	Amended
14 – Case Studies 1 – 21	Amended
Acknowledgements	Amended
Bibliography	Amended

\* Refer Technical Update 2020/5