

AGENDA PAPER

Item Number: 10
Date of Meeting: 9 February 2012
Subject: APES GN 40 *Ethical Conflicts in the workplace – Considerations for Members in Business*

Action Required **For Information Only**

Purpose and background

To obtain the Board's approval to issue the proposed Guidance Note APES GN 40 *Ethical Conflicts in the workplace – Considerations for Members in Business*

Background

APESB initiated a project in late 2008 to replace the existing GN 1 *Members in Business Guidance Statement* with the proposed APES GN 40. The project was delayed due to other APESB commitments during 2009 and 2010.

APESB's engagement with Members in Business to date indicates that there is a low level of awareness of APESB Standards within the business community. This is partly due to the focus of the previous professional standards being on Members in Public Practice rather than on Members in Business.

APESB in its development process of the APES series included Members in Business where applicable in the standards development process (i.e. APES 215 *Forensic Accounting Services* and APES 220 *Taxation Services*). However, as historically there were very few professional standards applicable to Members in Business, the level of awareness of Members in Business of Professional Standards has continued to be low.

APESB received 6 submissions from the Joint Accounting Bodies, Dr Peter Sexton, Deakin University, the UK Association of Chartered Certified Accountants (ACCA), the Group of 100, and Tiina-Liisa Sexton.

Consideration of issues

The following key issues were identified:

1. Additional safeguard to advise the organisation against unethical or illegal acts;
2. Reference to the option of refusal or resignation as an alternative course of action;
3. Greater coverage of the public and not-for-profit sector;
4. Use of proper names versus 'Member in Business' for fictional protagonists in the Case Studies; and
5. Request to develop an example based on "Centro".

1. Additional safeguard

One taskforce member suggested including an additional safeguard in section 5 'Threats and Safeguards':

where appropriate advising the organisation that it is not in the interest of the organisation to be involved in behaviour that may be regarded by others as illegal or unethical".

Another taskforce member suggested that this amendment may be a departure from the intended purpose of this section and deals with where the perception is that something is illegal or unethical and that the suggestion to 'advise the organisation' may be interpreted as 'heavy-handed'.

In response, Technical Staff reviewed the original intent of the passage and noted that its primary objective was to expand on a section of the Code that was perceived by the taskforce as somewhat inadequate. Section 5.4 was created to provide guidance on the safeguards of documenting the processes to be followed by a Member in Business and actions taken in respect of issues and seeking guidance from an independent party as appropriate.

The action of advising the organisation of appropriate behaviour does not fit with the broad intent of this paragraph. Further drastic actions such as advising the employing organisation of its conduct in respect of alleged or unethical behaviour will generally be the exception rather than the norm.

Furthermore, paragraph 5.3 refers to section 300.14 of the Code which considers safeguards in the workplace. These include employing organisations' systems of corporate oversight, leadership that stresses the importance of ethical behaviour, and policies and procedures to empower and encourage employees to communicate with senior levels of the organisation in respect of ethical issues. Given the existence of these provisions, Technical Staff do not believe that the proposed inclusion noted above is required.

2. Resignation or refusal

Some respondents have suggested that the guidance would benefit from additional detail in the alternative courses of action to resolve ethical conflicts including an evaluation of the options of refusal of tasks allocated to the Member or resignation from the assignment or engagement (Refer SC 12).

In response, Technical Staff has included in paragraph 6.2 a discussion of circumstances where refusal to perform tasks or resignation may be necessary and this has been linked back to the provisions in the Code (Section 300.15, 320.6 and 330.4).

3. Greater coverage of public and not-for-profit sectors

Some respondents were concerned that the guidance note did not adequately cover Members in Business employed in the public and not-for-profit sectors (Refer GC 7, SC 20, 21).

In response, Technical Staff has added 3 examples of case studies from the not-for-profit and public sectors (Refer Case Studies 18-20).

4. Proper names vs. Member in Business in Case Studies

Some respondents have expressed the opinion that the case studies could be made more readable through use of proper names throughout instead of the current state which uses proper names in the background details and Member in Business in the analysis (SC 19).

In response, Technical Staff reviewed other APESB standards and guidance notes and noted that a more formal approach has been used in drafting examples in APES 225 and proposed APES GN 30 and therefore suggests keeping the current style for consistency. The approach adopted in other international documents varies from use of the second person 'you' throughout the case study background and analysis to using official titles and roles of the professional accountant such as 'Finance Director' and 'he/she' in a similar manner to what is currently adopted in APES GN 40.

Matter for Board's consideration

The Board is to provide direction to Technical Staff whether to maintain the existing approach or amend APES GN 40 to use proper names.

5. 'Centro' case study example

Some respondents have expressed the desire to include a case study based on the recent 'Centro' case to provide a potentially different form of conflict (SC 43).

In response, Technical Staff drafted Case Study 21 using the media reported facts of 'Centro' as a basis for the background, and modifying the material to fit the guidance note approach.

Other Matters

The other matters identified by the respondents to the ED are dealt with in the General and Specific Comments tables.

Material Presented

- APES GN 40 *Ethical Conflicts in the workplace – Considerations for Members in Business* (Marked Up);
- APES GN 40 *Ethical Conflicts in the workplace – Considerations for Members in Business* (Clean);
- General Comments Table;
- Specific Comments Table;
- Specific Comments Table – Appendix B; and
- Draft Taskforce Meeting Minutes.

Staff Recommendation

Subject to the Board's review comments, Technical Staff recommend that the Board approve the issue of APES GN 40 *Ethical Conflicts in the workplace – Considerations for Members in Business*.

Authors: Channa Wijesinghe
Rob Nickel

Date: 1 February 2012