

# 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 March 2012]**

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*Conformity with International Pronouncements*

*Acknowledgements*

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

*Appendix 1: Summary of revisions to the previous APES GN 40 (Issued in March 2012)*

## 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 and inducements; 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 supersedes APES GN 40 issued in March 2012.
- 1.3 APES GN 40 provides guidance to Members in Business on the application of the fundamental principles contained within *Part A: General Application* and *Part C: Members in Business* of APES 110 *Code of Ethics for Professional Accountants* (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 working in Australia should follow the guidance in APES GN 40 when they provide services to their Employer.
- 1.5 Members in Business working 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.
- 1.6 The Guidance Note is not intended to detract from any responsibilities which may be imposed by law or regulation.
- 1.7 All references to Professional Standards, guidance notes and legislation are references to those provisions as amended from time to time.
- 1.8 Members in Business should be familiar with relevant Professional Standards and guidance notes when performing Professional Activities.
- 1.9 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.
- 1.10 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

For the purpose of this Guidance Note:

**Acceptable Level** means a level at which a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances available to the Member at that time, that compliance with the fundamental principles is not compromised.

**Code** means APES 110 *Code of Ethics for Professional Accountants*.

**Employer** within the context of this Guidance Note means an entity or person that employs, engages or contracts a Member in Business.

**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 employed or engaged in an executive or non-executive capacity in such areas as commerce, industry, service, the public sector, education, the not for profit sector, regulatory bodies or professional bodies, or a Member contracted by such entities.

**Professional Activity** means an activity requiring accountancy or related skills undertaken by a Member, including accounting, auditing, taxation, 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 may include management personnel, for example, executive members of a governance board of a private or public sector entity, or an owner-manager.

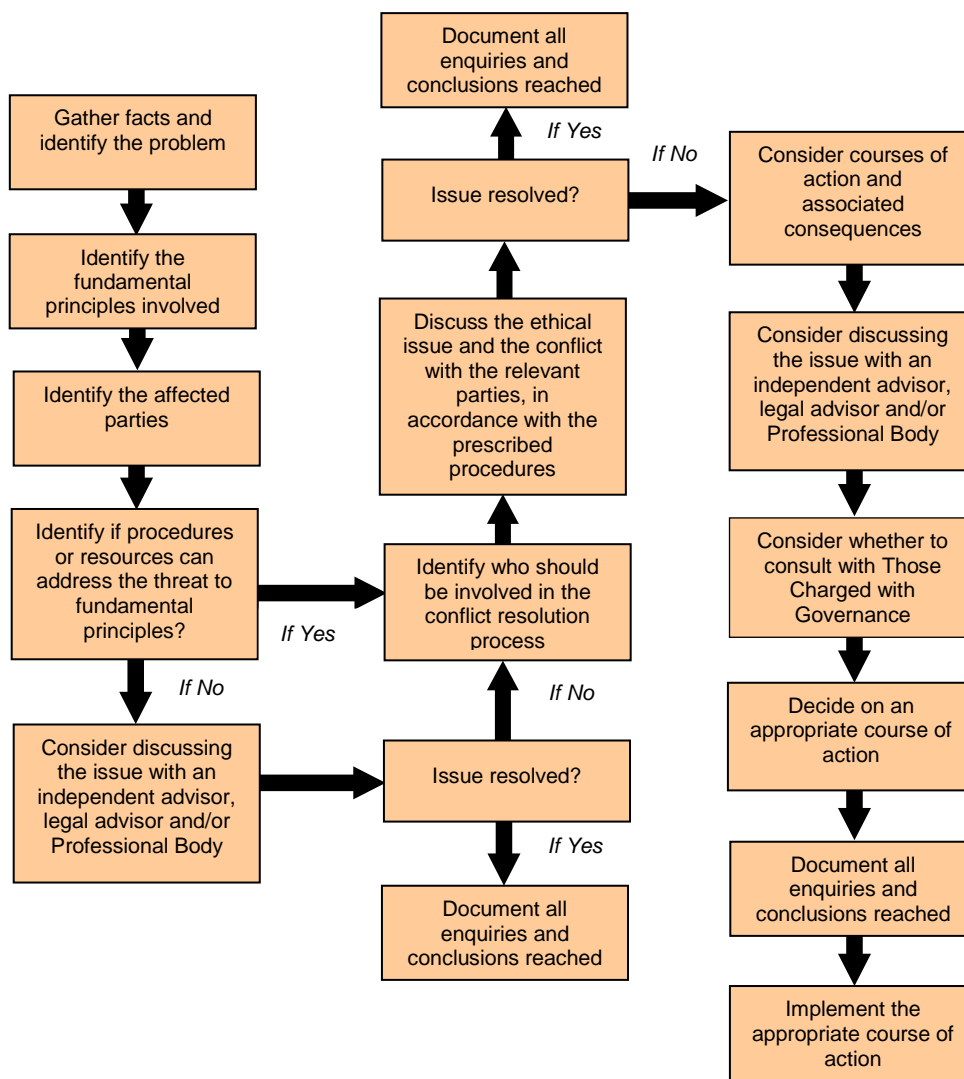
### 3. Fundamental responsibilities of Members in Business

- 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, taxation, management consulting and financial management services. Activities performed by Members in Business for the 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 *Part A – General Application of the Code* and *Part C – Members in Business* including Section 100 *Introduction and Fundamental Principles* and any relevant law or regulation. Part C 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 implement safeguards to eliminate the threats or reduce 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 safeguards that may be adopted. Members should use the framework to address ethical issues arising from their work at an early stage to enable them to adopt appropriate safeguards which are suitable to the circumstance.
- 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:
- i. Gather the facts and identify the problem or threat;
  - ii. Identify the fundamental principles involved;
  - iii. Identify the affected parties;
  - iv. Determine whether established organisational procedures and conflict resolution resources exist to address the threat to compliance with the fundamental principles;
  - v. Identify the relevant parties who should be involved in the conflict resolution process;
  - vi. 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 safeguards available;
  - vii. Consider courses of action and associated consequences;
  - viii. 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;
  - ix. Consider whether to consult Those Charged with Governance;
  - x. Decide on an appropriate course of action;
  - xi. Document all enquiries and conclusions reached; and
  - xii. 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 13 illustrate the application of the fundamental principles and the types of safeguards that can be implemented. 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 and safeguards

### 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 implement safeguards to eliminate the threats or reduce 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 A – *General Application 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 the judgement or behaviour of a Member in Business;
  - (b) Self-review – the threat that a Member in Business will not appropriately evaluate the results of a previous judgement or Professional Activity performed by the Member or another individual within the Employer, on which the Member in Business 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.

### Safeguards

- 5.3 The Code classifies safeguards that may eliminate or reduce threats faced by Members in Business to an Acceptable Level into two broad categories:
- safeguards created by the profession, legislation or regulation; and
  - safeguards in the work environment.
- Examples of such safeguards are outlined in paragraphs 100.14 - 100.16 and 300.14 - 300.15 of the Code.
- 5.4 In addition to the categories above, safeguards may also be created by the Member in Business. Such safeguards may include but are not restricted to:
- keeping records of contentious issues and the action taken to resolve them;
  - maintaining a broader perspective on how similar organisations function through establishing business relationships with other professionals; and
  - using an independent advisor.

- 5.5 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.

## **6. Overview of APES 110 Part C: Members in Business**

- 6.1 APES 110 Part C illustrates how the conceptual framework contained in APES 110 Part A is to be applied by Members in Business.
- 6.2 APES 110 Part C Section 300 provides an overview of the various types of threats encountered by Members in Business in their work environment and appropriate safeguards that can be considered. In certain circumstances there may be no 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 300.15, 320.7 and 330.4 of the Code).
- 6.3 APES 110 Part C Sections 310 - 350 specifies professional obligations of Members in Business in the following circumstances:
- Section 310 – Conflicts of Interest;
  - Section 320 – Preparation and Reporting of Information;
  - Section 330 – Acting with Sufficient Expertise;
  - Section 340 – Financial Interests, Compensation and Incentives Linked to Financial Reporting and Decision Making; and
  - Section 350 – Inducements.

## **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 310 *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 reporting of information to be used by internal and external parties**

- 8.1 Members in Business are often involved in the preparation and reporting of information that may either be made public or used by others inside or outside the Employer. When preparing and reporting such information, Members are required to comply with section 320 *Preparation and Reporting 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, safeguards such as those discussed in section 320 *Preparation and Reporting of Information* of the Code should be applied. Examples addressing the analysis of threats and application of safeguards 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, safeguards such as those in section 330 *Acting with Sufficient Expertise* of the Code should be applied. Examples addressing the need to act with sufficient expertise are provided in Case Study 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. The Member is required to comply with section 340 *Financial Interests, Compensation and Incentives Linked to Financial Reporting and Decision Making* of the Code in such circumstances. The Code requires the Member to evaluate the significance of such a threat, and the appropriate safeguards to be applied. 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. An additional example of personal financial gain for a Member is provided in Case Study 13.

## **11. Inducements offered to a Member in Business**

- 11.1 Inducements refer to both the receiving of offers and making offers.
- 11.2 A Member in Business or an immediate or close family member may be offered an inducement such as gifts, hospitality, preferential treatment and inappropriate appeals to friendship or loyalty. 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 Where threats to the fundamental principles arise from inducements, the Member in Business is required to follow the principles and guidance in Section 350 *Inducements* 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. Disclosure of information and whistleblowing**

### **Disclosure of information**

- 12.1 In accordance with Section 140 *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 or professional right or duty to disclose it.

- 12.2 The *Privacy Act 1988* (Cth) (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.
- 12.3 Whistleblower laws at Federal and 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.
- 12.4 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>1</sup> in accordance with the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth); 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 authorised person under the *Corporations Act 2001* (Cth) (Corporations Act).

### Protection of whistleblowers

- 12.5 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:
- the whistleblower is an officer, employee or contractor or employee of a contractor of the company;
  - the whistleblower first identifies themselves before making the disclosure (anonymous reports are not protected);
  - the report is made by the whistleblower to a prescribed entity or person such as the Australian Securities and Investments Commission, 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;
  - 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
  - the report is made in good faith.
- 12.6 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.

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<sup>1</sup> AUSTRAC is Australia's anti-money laundering and counter-terrorism financing regulator and specialist financial intelligence unit

## Decision making process

- 12.7 Sometimes confidentiality, privacy and whistleblowing are the subject of internal business policies and procedures. 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.
- 12.8 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 and State and Territory privacy and whistleblower laws;
  - (b) Statutory protection for whistleblowers contained in Federal and 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.
- 12.9 Examples that address whistleblowing are included in Case Studies 15 - 17.

### **Prohibited dealing with information**

12.10 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>2</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.

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<sup>2</sup> See for example the *Crimes Act 1958 (Vic)*

### 13. Case Studies

No	Title	Issues Discussed
1	Significant personal expenses claimed as company expenses	Potential conflicts
2	Council rates	Potential conflicts
3	Inappropriate small expense claim	Potential conflicts
4	Unlicensed software	Potential conflicts
5	Incorrect reporting of financial information	Preparation and reporting of information
6	Inappropriate capitalisation of research and development costs	Preparation and reporting of information
7	Inappropriate contractor claims	Preparation and reporting of information
8	Loss leaders or divisional failure?	Preparation and reporting of information
9	Satisfying the bank's lending criteria	Preparation and reporting of information/ Financial interests of a Member
10	Valuing share options	Acting with sufficient expertise
11	Personal financial interest in a proposal	Financial interests of a Member
12	Inducements for non-disclosure of information	Inducements
13	Earnings management	Financial interests of a Member/ Inducement
14	Tender bids	Inducement
15	Non-disclosure to auditors and corrupt business practices	Whistleblowing
16	Inappropriate expense claims lodged by the Chief Executive	Whistleblowing
17	Inappropriate recording of patient attendance at a doctors' medical practice	Whistleblowing
18	Insider information	Public Sector - Inducement
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 reporting of information
21	Ignorance is no excuse	Preparation and reporting of information/ Acting with sufficient expertise

#### **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, 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.

The presentation of each Case Study follows the following pattern:

- Case outline: basic facts are described;
- Fundamental principles of the Code: those identified as the key principles in the Case Study;
- Ethical decision making approach: selected steps from the conceptual framework approach in the Code; and
- Suggested possible courses of action are discussed.

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

### ***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 Member in Business 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 Member in Business 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 Member in Business 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 Member in Business, the Chief Executive, the Chairman and the Board. Other possible affected parties are the accounts payable department, human resources, internal audit, Australian Tax Office, 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 Member in Business 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?

### **Consider possible course of action**

The Member in Business 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 Member in Business obtaining clarity on the arrangement which may lead to documentary evidence supporting the understanding with the Chairman. If the issue is not resolved, the CFO and Member in Business 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 Member in Business and CFO 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, audit committee or the external auditors may be required. All enquiries and conclusions reached should be documented by the Member in Business. Where such documentation is maintained, the Member in Business needs to consider the legal ramifications of doing so.

The Member in Business may also consider the ethical conflict resolution processes of his Professional Body.

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## **Case Study 2 – Council rates**

### ***Potential Conflicts***

#### **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 (MD) Jane finds that the balance relates to 4 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, 4 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 4 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 Member in Business maintain her integrity when she is being asked to undertake a course of action which she clearly has doubts about?

#### **Objectivity**

How would the Member in Business maintain her objectivity given that her Employer 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 Member in Business could make disclosures given the Employer obviously believes that the company's non-payment of rates is confidential information.

#### **Professional behaviour**

How does the Member in Business proceed in order to not discredit herself?

### **Ethical decision-making approach**

#### **Identify relevant facts**

Are there any other reasons why the company has not received a bill for rates? Can the Member in Business 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 Member in Business, 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 Member in Business have trusted colleagues with whom she can discuss her position? Is there anyone else within the company that the Member in Business should speak to regarding this matter? Are the other directors aware of this issue? Has the Member in Business 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**

The Member in Business could try to use her interpersonal skills in a non-confrontational way to offer to find a solution to the underlying problem. She may consider explaining the potential consequences to the Managing Director 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 Member in Business could also highlight the need for the company to get legal advice on its obligations. The Member in Business 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 Member in Business. Where such documentation is maintained, the Member in Business needs to consider the legal ramifications of doing so.

To resolve the problem, the Member in Business could suggest asking 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.

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### **Case Study 3 – Inappropriate small expense claim**

#### ***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 3 month probationary period and formal performance review, Jeremy's supervisor, who is also a senior sales person, tells him that he incurred \$175 expense 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.

### **Key fundamental principles and duties**

#### **Integrity**

Can the Member in Business overlook the information he overheard and maintain his integrity?

#### **Objectivity**

How will the Member in Business 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 Member in Business ignore the information acquired and still satisfy the principle of professional behaviour?

### **Ethical decision-making approach**

#### **Identify relevant facts**

Does the Member in Business have all of the facts? Can he discuss the nature of the expense further with the supervisor? What is the Member in Business's 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 Member in Business and the supervisor. Other possible affected parties are the supervisor's wife, the Australian Tax 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 Member in Business 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 Member in Business's understanding? Does the Member in Business need to discuss the issue with anyone else in the company?

#### **Consider possible course of action**

The Member in Business 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 Member in Business is unable to corroborate the expense claim he could highlight the implications of allowing inappropriate expense claims to continue such as Australian Tax Office investigations and potentially fines. Where this approach is unsuccessful the Member in Business may need to initiate discussions with another manager within the company to assist in resolution of the problem.

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## **Case Study 4 – Unlicensed software**

### ***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 Microsoft Office and asks him to install the software on 25 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.

#### **Key fundamental principles and duties**

##### **Integrity**

Can the Member in Business overlook the fact that the company does not have the appropriate licences to use the software and maintain his integrity?

##### **Objectivity**

How will the Member in Business 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 Member in Business 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 Member in Business discuss the matter further with the financial controller?

##### **Identify affected parties**

The key affected parties are the Member in Business, Microsoft Corporation, 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 resolution**

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 which the Member in Business 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 Member in Business need to discuss the issue with anyone else in the company?

##### **Consider possible course of action**

The Member in Business may consider further discussions with the financial controller to highlight the importance of obtaining a licence for use of the product. The Member in Business 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**

### ***Preparation and Reporting of Information***

#### **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 Member in Business show that the accounts are true and fair without amending them?

##### **Objectivity**

Given the manager is a forceful and intimidating individual, how would the Member in Business 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 Professional Standards?

##### **Professional behaviour**

How should the Member in Business 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 Member in Business 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 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 Member in Business may discuss the matter with her immediate line manager given the available evidence and possible consequences. Can the Member in Business 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 Member in Business 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 Member in Business's immediate line manager. If the manager's response is not what the Member in Business considers appropriate, the matter may then be discussed with recipients of the management and financial accounts and 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.

In the case of a small business, the Member in Business 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 Member in Business may discuss the requirements with the line manager using facts as the basis for this discussion.

The Member in Business can also consider the ethical conflict resolution resources of her Professional Body. The Member in Business should also consider her employment options.

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

### ***Preparation and Reporting 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 1 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 Member in Business maintain his integrity with the project leader, the Board and the auditors? Can the Member in Business retain his integrity without bringing the matter to the Board's attention?

##### **Objectivity**

How does the Member in Business 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 behaviour**

How does the Member in Business proceed in order to not discredit himself?

##### **Professional competence and due care**

Have the accounts been prepared in accordance with applicable accounting standards, laws and regulations, and Professional Standards?

### **Ethical decision-making approach**

#### **Identify relevant facts**

Should the Member in Business discuss the matter further with the project leader prior to taking the matter to the Board? What information will the Member in Business disclose to the auditors?

Other points to consider include whether there is a supportive environment for open discussion of practical dilemmas or is there a recriminatory or '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 Member in Business, 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 Member in Business 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 Member in Business may need to have further discussions with Doug to obtain a more comprehensive understanding of the project and its current status. The Member in Business 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 *Income Tax Assessment Act 1997* research and development provisions. This may lead to penalties and other negative consequences under the Act. If this approach fails then the Member in Business 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 Member in Business could consider highlighting the expense as an exceptional item in order to provide a true and fair view.

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### **Case Study 7 – Inappropriate contractor claims**

#### ***Preparation and Reporting of Information***

##### **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.

### **Key fundamental principles and duties**

#### **Integrity**

Can the Member in Business overlook his findings and maintain his integrity?

#### **Objectivity**

Knowing that something may be wrong, how can the Member in Business maintain his objectivity?

#### **Confidentiality**

Does the Member in Business have a legal or professional right or duty to disclose the information acquired? What whistleblowing obligations and protection does the Member in Business have?

#### **Professional behaviour**

How should the Member in Business proceed in order to comply with relevant laws and regulations and avoid any action that discredits the profession?

#### **Professional competence and due care**

Is the Member in Business able to check that his findings are correct?

### **Ethical decision –making approach**

#### **Identify relevant facts**

Does the Member in Business 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 are other costs associated with employing contractors that may not have been taken into consideration (costs such as relocation costs)? Can the Member in Business 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 Member in Business, the contractors, the engineering manager and the company itself. Other possible affected parties include the Australian Tax 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 resolution**

Who should be involved in the resolution of this matter and for what reason? What is the appropriate timing of their involvement? Does the Member in Business have trusted colleagues with whom the Member 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 Member in Business should explain to the engineering manager the requirement to substantiate the alleged fraudulent claim and that the matter is to be investigated. The Member in Business 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 Member in Business would also need to consider the fraudulent implications that arise from deceitful billing practices and determine whether any further sort of legal or other action is required. All enquiries and conclusions reached should be documented by the Member in Business. Where such documentation is maintained, the

Member in Business needs to consider the legal ramifications of doing so. The Member in Business should consider reporting the outcomes to Those Charged with Governance.

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

### ***Preparation and Reporting 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 the divisional manager 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.

#### **Key fundamental principles and duties**

##### **Integrity**

Can the Member in Business overlook her findings and maintain her integrity?

##### **Objectivity**

Knowing that something may be wrong, how can the Member in Business maintain her objectivity?

##### **Professional behaviour**

How should the Member in Business proceed?

##### **Professional competence and due care**

Is the Member in Business able to check that her findings are correct?

#### **Ethical decision –making approach**

##### **Identify relevant facts**

Does the Member in Business 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 Member in Business discuss the matter further with the divisional manager?

##### **Identify affected parties**

The key affected parties are the Member in Business, the divisional manager 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 resolution**

Who should be involved in the resolution of this matter and for what reason? What is the appropriate timing of their involvement? Does the Member in Business 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 Member in Business 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 Member in Business may approach the head office CFO directly to discuss the issue. All enquiries and conclusions reached should be documented by the Member in Business. The Member in Business should also ensure that she maintains a copy of her analysis.

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

***Preparation and Reporting of Information/Financial interests of a Member***

**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 3 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 Member in Business maintain her integrity with the Chief Executive and the bank?

**Objectivity**

How does the Member in Business remain objective as to the reporting on the company’s financial status considering the pressure to misstate the accounts?

**Professional behaviour**

How does the Member in Business proceed in order to not discredit herself?

**Ethical decision-making approach**

**Identify relevant facts**

Can the Member in Business retain her integrity without reporting false information to the bank? Should the Member in Business discuss the matter further with the Chief Executive prior to presenting her report? What information will the Member in Business disclose to the bank?

**Identify affected parties**

The main affected parties are the Member in Business, the bank, the Chief Executive and the company’s employees and the 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 Member in Business can discuss her position? The Member in Business should consider whether to consult confidentially with external advisers such as the Professional Body to which she belongs and whether to consult Those Charged with Governance.

**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 Member in Business 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 Code if they prepared or were associated with it. To produce such a report may actually jeopardise future borrowing activities of the company with this and other banks. The Member in Business may 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.

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**Case Study 10 – Valuing share options**

***Acting with Sufficient Expertise***

**Case outline**

Olivia's Employer has requested that she (Member in Business) perform a valuation of share options. Olivia 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 Member in Business have the necessary skills and experience to undertake the work?

**Professional behaviour**

How should the Member in Business proceed so as not to discredit herself or the company?

**Ethical decision-making approach**

**Identify relevant facts**

Can the Member in Business 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 Member in Business and the Employer 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 Member in Business can discuss her position?

**Discuss the ethical dilemma with relevant parties**

Does further discussion need to take place with the Member in Business's manager? At what point will the Member in Business consider involving the next level of management?

**Consider possible course of action**

The Member in Business may consider discussing her concern about the lack of knowledge to value share options with her immediate manager. The Member in Business 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 Member in Business 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 Member in Business does not consider her manager's reaction to be satisfactory, it may be appropriate to discuss the matter with the next level of management. If this response is not satisfactory, the Member in Business 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 why, and her involvement should all be documented by the Member in Business. When doing so, the Member in Business may need to consider whether there are legal implications of maintaining such documentation in compliance with relevant laws and regulations.

The Member in Business could also consider the ethical conflict resolution resources of her Professional Body.

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

***Financial Interests***

**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 Member in Business's personal interest, how will she ensure that her honesty remains unquestionable?

**Objectivity**

How will the Member in Business remain unbiased, and consider only the relevant facts, despite her personal interest in the benefits package?

**Professional competence and due care**

Does the Member in Business have all the necessary skills to draw up such a package?

**Professional behaviour**

How should the Member in Business 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, 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 Member in Business 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 Member in Business have trusted colleagues with whom she can discuss her position? Has the Member in Business 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?

#### **Consider possible course of action**

Prior to explaining the findings to the Board, it may be advisable that the Member in Business informs the Board how she approached the project and who else was involved in the process (such as human resources). The Member in Business 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 Member in Business may need to consider the legal implications of doing so. When it is time to propose the new benefits package, the Member in Business may need to declare her conflict of interest. Findings may need to be presented to the Board by human resources or another independent party.

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

#### ***Inducement***

#### **Case outline**

John (Member in Business) has been with his current Employer for 8 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 Member in Business need to do to demonstrate his integrity? How far does the Member in Business need to go?

##### **Objectivity**

How will the Member in Business manage the conflict between financial benefit and integrity?

##### **Confidentiality**

Is there any basis on which the Member in Business could make disclosures?

### **Ethical decision-making approach**

#### **Identify relevant facts**

Are the Member in Business's concerns based on facts and does he have relevant facts to back his concerns? Are all the facts available or only a selection? Can the rest be established? Identifying the relevant facts could include understanding any requirements of legislation to make disclosures, and any protection that the Member in Business may seek from relevant legislation. Have any steps already been taken to try to resolve the Member in Business's concerns? Have these steps been documented?

#### **Identify affected parties**

The Member in Business and the Employer are the key affected parties. Other parties that may be affected are the regulator, auditor and the public, as well as Member in Business's 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 Member in Business can also consider the ethical conflict resolution resources of his Professional Body.

#### **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 Member in Business have trusted colleagues with whom he can discuss his position? Can the Member in Business speak with his Employer about his concerns? Has the Member in Business made full disclosures to his solicitor, and received advice? Has the Member in Business discussed the matter with his family? Are there any external organisations that the Member in Business can contact such as public authorities?

#### **Discuss the ethical dilemma with relevant parties**

Do any additional discussions need to be held with the Member in Business's current Employer?

#### **Consider possible course of action**

There are two issues that need to be resolved:

1. How to address the matters of concern; and
2. How to achieve a satisfactory financial settlement.

Given the nature of the dilemma, the Member in Business may need to take advice early and often. The Member in Business 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 Member in Business and his family, the Employer, the industry and the profession. If the evidence available is considered sufficient, the Member in Business may resist the gagging clause, and argue for the concerns raised to be documented and considered by Those Charged with Governance of the company. The Member in Business should always ensure his family is aware of his concerns and actions, and their implications, without revealing confidential information.

The Member in Business 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 Member in Business.

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## **Case Study 13 – Earnings management**

### ***Financial Interest of a Member/Inducement***

#### **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.

#### **Key fundamental principles and duties**

##### **Integrity**

It is possible to support the business without being involved in reporting potentially misleading information?

##### **Objectivity**

How can the Member in Business avoid his professional judgement being influenced by the financial interest resulting from the bonus?

##### **Professional behaviour**

How will the Member in Business 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 Member in Business 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 Member in Business, the family business, professional advisers, bankers and venture capitalists are the key affected parties. Others that may be affected are the Member in Business's own family and the profession.

##### **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 Member in Business can discuss his position? Can the Member in Business's Professional Body 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**

The Member in Business 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 Member in Business may

prepare realistic figures for presentation and explain the importance of presenting these for the company and his professional standing.

During the resolution process, Member in Business 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 Member in Business may also need to consider his employment options.

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## **Case Study 14 – Tender bids**

### ***Inducement***

#### **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 in 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 very generous financial terms in the past and would expect Paula to do the same.

#### **Key fundamental principles and duties**

##### **Integrity**

Can the Member in Business retain her integrity if she distorts the tender process? How does the Member in Business deal with the caller's allegations about more senior personnel within her company?

##### **Objectivity**

The Member in Business 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 Member in Business ensure that she handles the client's allegations sensitively and professionally? Particularly given that the Member in Business 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 Member in Business 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 Member in Business, 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, 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 Member in Business immediately raise this with her manager before the caller phones back? Secondly, when the caller does phone back does the Member in Business transfer the call to her manager, 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 Member in Business 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 Member in Business needs to ensure that a fair tender process is held despite the short-term commercial pressure. The Member in Business also needs to ensure that any actions taken are within the confines of the law. The Member in Business may need to disclose the receiving of the call and the content of the discussion to Those Charged with Governance.

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

***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.

**Key fundamental principles and duties**

**Integrity**

Can the Member in Business 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 Member in Business maintain her objectivity?

**Confidentiality**

On what basis could or should the Member in Business make disclosures?

**Professional behaviour**

How should the Member in Business proceed so as not to discredit herself or the company?

**Ethical decision-making approach**

**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 Member in Business taken the appropriate steps to understand her legal rights and responsibilities?

**Identify affected parties**

The Member in Business, 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 Member in Business considered contacting her Professional Body for advice and guidance? Does the Member in Business have trusted colleagues with whom she can discuss her position? At what point will the Member in Business 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 Member in Business may consider checking the facts and discussing the matter with her immediate line manager. If the Member in Business feels that the response from the line manager is not satisfactory, the next step may be to discuss the matter further with the next level of management, internal audit, the audit committee or the Board.

The Member in Business's 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 Member in Business may contact her Professional Body (subject to confidentiality, privacy and whistleblower obligations) and consider obtaining legal advice. During the resolution process, it may be helpful to document the Member in Business's 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 Member in Business always needs to keep the legal considerations in mind.

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

***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.

**Key fundamental principles and duties**

**Integrity**

Can the Member in Business overlook the Chief Executive Officer's expense claim and maintain her integrity?



**Objectivity**

Knowing that something may be wrong, how can the Member in Business maintain her objectivity?

**Confidentiality**

On what basis could or should the Member in Business make disclosures?

**Professional behaviour**

How should the Member in Business proceed so as not to discredit herself or the company?

**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?

**Ethical decision –making approach**

**Identify relevant facts**

Does the Member in Business have all of the facts? Can the Member in Business 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 whistle blowing? What steps has the Member in Business taken to understand her legal rights and responsibilities?

**Identify affected parties**

The key affected parties are the Member in Business and the Chief Executive Officer. Other possible affected parties are the Australian Tax 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.

**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 Member in Business have trusted colleagues with whom she can discuss her position? Has the Member in Business 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 Member in Business may consider contacting the international manager who approved the expenses to clarify her understanding of the transactions. The Member in Business 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 Member in Business 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 Member in Business 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 Member in Business. The Member in Business 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**

### ***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.

#### **Key fundamental principles and duties**

##### **Integrity**

Can the Member in Business overlook the doctor’s actions and maintain her integrity?

##### **Objectivity**

Knowing that something may be wrong, how can the Member in Business maintain her objectivity?

##### **Confidentiality**

On what basis could or should the Member in Business make disclosures?

##### **Professional behaviour**

How should the Member in Business proceed so as not to discredit herself?

##### **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?

#### **Ethical decision-making approach**

##### **Identify relevant facts**

Does the Member in Business 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 Member in Business taken to understand her legal rights and responsibilities? Has the Member in Business 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 Member in Business, the doctor concerned, other doctors of the practice and the patients whose records are not accurate. Other possible affected parties are the Australian Tax 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 Member in Business have trusted colleagues with whom she can discuss her position? Has the Member in Business 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 Member in Business may consider further discussions with the doctor concerned to clarify her understanding of the situation. Prior to discussions, the Member in Business 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 Member in Business and when doing so, the Member in Business needs to be aware of the associated legal implications.

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## **Case Study 18 – Insider information**

### ***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.

#### **Key fundamental principles and duties**

##### **Integrity**

How can the Member in Business demonstrate integrity despite the influence of the information available to her?

##### **Objectivity**

How can the Member in Business maintain her objectivity?

##### **Confidentiality**

How should the Member in Business act to maintain confidentiality?

**Professional behaviour**

How should the Member in Business proceed so as not to discredit herself?

**Professional competence and due care**

How can the Member in Business proceed in order to be seen as acting with due skill, care and diligence?

**Ethical decision-making approach**

**Identify relevant facts**

What are the risk factors here? What pressures is the Member in Business feeling to breach confidentiality principles? The Member in Business 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 Member in Business's chances to the detriment of a fair and honest tender process.

**Identify affected parties**

The Member in Business, Employer 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 Member in Business can discuss her position?

**Discuss the ethical dilemma with relevant parties**

Should further discussion take place with the Member in Business's Professional Body?

**Consider possible course of action**

The Member in Business may consider disclosing this threat to the tendering department as well as any information she may already have received on the tender. The Member in Business 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 Member in Business could consider discussing her concerns with Those Charged with Governance 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 Member in Business could also examine her other employment options as a worst case scenario.

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

***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.

### **Key fundamental principles and duties**

#### **Integrity**

Can the Member in Business 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 Member in Business saying nothing. How can she avoid the temptation to agree to the apparently easy solution and instead maintain objectivity?

#### **Confidentiality**

On what basis could or should the Member in Business make disclosures?

#### **Professional behaviour**

How should the Member in Business proceed so as not to discredit herself? Does this matter in cases where the employment is voluntary?

#### **Professional competence and due care**

How can the Member in Business demonstrate she is acting with due skill, care and diligence?

### **Ethical decision-making approach**

#### **Identify relevant facts**

Does a voluntary position affect the level of professionalism that one must demonstrate? The Member in Business 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 Member in Business 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 Member in Business, 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.

#### **Consider who should be involved in resolution**

Are there trusted colleagues or friends with whom the Member in Business can discuss her position? Can the Member in Business's Professional Body provide advice and provide assistance?

### **Discuss the ethical dilemma with relevant parties**

Since the Member in Business 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 Member in Business 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.

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

### ***Charitable Organisations – Preparation and Reporting of Information***

#### **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.

#### **Key fundamental principles and duties**

##### **Integrity**

Can the Member in Business 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 Member in Business remain objective when deciding how to resolve this matter since his future position with the organisation may be at risk?

##### **Confidentiality**

On what basis could or should the Member in Business make disclosures?

##### **Professional behaviour**

How should the Member in Business proceed so as not to discredit himself?

##### **Professional competence and due care**

How can the Member in Business demonstrate he is acting with due skill, care and diligence?

#### **Ethical decision-making approach**

##### **Identify relevant facts**

The matter has yet to be analysed to ensure that preliminary findings are substantiated. The Member in Business 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 Member in Business's objectivity?

### **Identify affected parties**

The key affected parties are the Member in Business, the auditor, the Employer, 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 resolution**

Are there trusted colleagues or friends with whom the Member in Business can discuss his position? Can the Member in Business's Professional Body 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 Member in Business consider discussion with Those Charged with Governance?

### **Consider possible course of action**

The Member in Business 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 Member in Business 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 Member in Business 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 its 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 Member in Business 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.

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## **Case Study 21 – Ignorance is no excuse**

### ***Preparation and Reporting of Information/Acting with Sufficient Expertise***

#### **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, the finance team, and preliminary sign-off has been obtained from the company auditor.

#### **Key fundamental principles and duties**

##### **Integrity**

Can the Member in Business overlook the available information and maintain her integrity?

##### **Objectivity**

Can the Member in Business 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 behaviour**

How should the Member in Business proceed so as not to discredit herself?

**Professional competence and due care**

How can the Member in Business demonstrate she is acting with due skill, care and diligence? Should the Member in Business ask herself why her analysis is different to that of the others? How does the Member in Business ensure that a proper decision-making process is applied? How does she demonstrate the appropriate level of professional judgement?

**Ethical decision-making approach**

**Identify relevant facts**

Can the Member in Business rely on management and the company auditor without taking reasonable actions to understand the underlying information in the financial statements? The Member in Business 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 Member in Business, the CFO, the company auditor, the Employer, 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 resolution**

Are there trusted colleagues or friends with whom the Member in Business can discuss her position? Can the Member in Business's Professional Body provide advice and assistance? Is the Member in Business able to discuss the matter with a board member?

**Discuss the ethical dilemma with relevant parties**

Should the Member in Business raise this with the Board?

**Consider possible course of action**

The Member in Business 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 Member in Business may need to make inquiries of the CFO and the auditor and then raise the matter as soon as possible with the Board. The Member in Business may find it helpful to document the matter thoroughly and may need to disclose her findings to the Board.

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***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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## Appendix 1

### Summary of revisions to the previous APES GN 40 (Issued in March 2012)

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

**Table of revisions\***

Paragraph affected	How affected
1.1	Added
1.2 – Paragraph 1.1 of existing APES GN 40 relocated	Amended
1.7 – Paragraph 1.6 of existing APES GN 40 relocated	Amended
1.8 – Paragraph 1.7 of existing APES GN 40 relocated	Amended
1.9 - Paragraph 1.8 of existing APES GN 40 relocated	Amended
1.10	Added
2 – Definition of Acceptable Level	Amended
2 – Definition of Member	Amended
2 – Definition of Member in Business	Amended
2 - Definition of Professional Activity	Added
2 – Definition of Professional Bodies	Amended
2 – Definition of Professional Services	Deleted
2 – Definition of Those Charged with Governance	Amended
3.1	Amended
3.3	Amended
3.4	Amended
5.2	Amended
6.2	Amended
6.3	Amended
7.2	Amended
10.1	Amended
12.1	Amended

\* Refer Technical Update 2015/10