

Amendments to APES 110 *Code of Ethics for Professional Accountants* due to revisions to IESBA's *Code of Ethics for Professional Accountants*

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1 SCOPE AND APPLICATION

- 1.1 Accounting Professional & Ethical Standards Board Limited (APESB) issues APES 110 *Code of Ethics for Professional Accountants* (this Code). This Code is operative from 1 July 2011 and supersedes APES 110 *Code of Ethics for Professional Accountants* (issued in June 2006 and subsequently amended in February 2008). Earlier adoption of this Code is permitted. Transitional provisions relating to Public Interest Entities, partner rotation, non-assurance services, Fees – relative size, compensation and evaluation policies, non-compliance with laws and regulations and the provision of non-assurance services apply from the date specified in the respective transitional provisions.

[Paragraphs 1.2 to 1.6 of extant Scope and Application remain unchanged.]

- 1.7 In this Code, 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

[AUST] Member means a member of a Professional Body that has adopted this Code as applicable to their membership, as defined by that Professional Body.

Member in Public Practice means a Member, irrespective of functional classification (e.g., audit, tax or consulting) in a Firm that provides Professional Services. This term is also used to refer to a Firm of Members in Public Practice and means a practice entity and a participant in that practice entity as defined by the applicable Professional Body.

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

[All other definitions in the extant Code remain unchanged.]

PART A – GENERAL APPLICATION OF THE CODE

SECTION 100

Introduction and Fundamental Principles

[Paragraphs 100.1 – 100.4 of extant Section 100 remain unchanged.]

Fundamental Principles

100.5 A Member shall comply with the following fundamental principles:

- (a) *Integrity* – to be straightforward and honest in all professional and business relationships.
- (b) *Objectivity* – to not allow bias, conflict of interest or undue influence of others to override professional or business judgements.
- (c) *Professional competence and due care* – to maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent Professional Activities based on current developments in practice, legislation and techniques and act diligently and in accordance with applicable technical and professional standards.
- (d) *Confidentiality* – to respect the confidentiality of information acquired as a result of professional and business relationships and, therefore, not disclose any such information to third parties without proper and specific authority, unless there is a legal or professional right or duty to disclose, nor use the information for the personal advantage of the Member or third parties.
- (e) *Professional behaviour* – to comply with relevant laws and regulations and avoid any conduct that discredits the profession.

Each of these fundamental principles is discussed in more detail in Sections 110 - 150.

[Paragraphs 100.6 – 100.18 of extant Section 100 remain unchanged.]

Ethical Conflict Resolution

[Paragraphs 100.19 – 100.22 of extant Section 100 remain unchanged.]

100.23 If a significant conflict cannot be resolved, a Member may consider obtaining professional advice from the relevant professional body or from legal advisors. The Member generally can obtain guidance on ethical issues without breaching the fundamental principle of confidentiality if the matter is discussed with the relevant professional body on an anonymous basis or with a legal advisor under the protection of legal privilege.

100.24 If, after exhausting all relevant possibilities, the ethical conflict remains unresolved, a Member shall, unless prohibited by law, refuse to remain associated with the matter creating the conflict. The Member shall determine whether, in the circumstances, it is appropriate to withdraw from the Engagement Team or specific assignment, or to resign altogether from the engagement, the Firm or the employing organisation.

Communicating with Those Charged with Governance

[Paragraph 100.25 of extant Section 100 remains unchanged.]

100.26 In some cases, all of Those Charged with Governance are involved in managing the entity, for example, a small business where a single owner manages the entity and no one else has a governance role. In these cases, if matters are communicated with person(s) with management responsibilities, and those person(s) also have governance responsibilities, the matters need not be communicated again with those same person(s) in their governance role. The Member or Firm shall nonetheless be satisfied that communication with person(s) with management responsibilities adequately informs all of those with whom the Member or Firm would otherwise communicate in their governance capacity.

SECTION 110

Integrity

[Paragraphs 110.1 – 110.3 of extant Section 110 remain unchanged.]

SECTION 120

Objectivity

[Paragraphs 120.1 – 120.2 of extant Section 120 remain unchanged.]

SECTION 130

Professional Competence and Due Care

[Paragraphs 130.1 – 130.6 of Section 130 remain unchanged.]

SECTION 140

Confidentiality

[Paragraphs 140.1 – 140.6 of extant Section 140 remain unchanged.]

140.7 As a fundamental principle, confidentiality serves the public interest because it facilitates the free flow of information from the Member's client or employing organisation to the Member. Nevertheless, the following are circumstances where Members are or may be required to disclose confidential information or when such disclosure may be appropriate:

- (a) Disclosure is permitted by law and is authorised by the client or the employer;
- (b) Disclosure is required by law, for example:
 - (i) Production of documents or other provision of evidence in the course of legal proceedings; or
 - (ii) Disclosure to the appropriate public authorities of infringements of the law that come to light; and

- (c) There is a professional duty or right to disclose, when not prohibited by law:
 - (i) To comply with the quality review of a member body or Professional Body;
 - (ii) To respond to an inquiry or investigation by a member body or regulatory body;
 - (iii) To protect the professional interests of a Member in legal proceedings; or
 - (iv) To comply with technical and professional standards, including ethical requirements.

[Paragraphs AUST140.7.1 – 140.8 of extant Section 140 remain unchanged.]

SECTION 150

Professional Behaviour

150.1 The principle of professional behaviour imposes an obligation on all Members to comply with relevant laws and regulations and avoid any conduct that the Member knows or should know may discredit the profession. This includes conduct that a reasonable and informed third party, weighing all the specific facts and circumstances available to the Member at that time, would be likely to conclude adversely affects the good reputation of the profession.

[Paragraph 150.2 of extant Section 150 remains unchanged.]

PART B - MEMBERS IN PUBLIC PRACTICE

SECTION 200

Introduction

[Paragraphs 200.1 – 200.15 of extant Section 200 remain unchanged.]

SECTION 210

Professional Appointment

Client Acceptance and Continuance

210.1 Before accepting a new client relationship, a Member in Public Practice shall determine whether acceptance would create any threats to compliance with the fundamental principles. Potential threats to integrity or professional behaviour may be created from, for example, issues associated with the client (its owners, management or activities) that, if known, could threaten compliance with the fundamental principles. These include, for example, client involvement in illegal activities (such as money laundering), dishonesty, questionable financial reporting practices or other unethical behaviour.

[Paragraph 210.2 of extant Section 210 has been deleted as content incorporated into paragraph 210.1.]

210.2 A Member in Public Practice shall evaluate the significance of any threats and apply safeguards when necessary to eliminate them or reduce them to an Acceptable Level.

Examples of such safeguards include:

- Obtaining knowledge and understanding of the client, its owners, managers and those responsible for its governance and business activities; or
- Securing the client's commitment to address the questionable issues, for example, through improving corporate governance practices or internal controls.

210.3 Where it is not possible to reduce the threats to an Acceptable Level, the Member in Public Practice shall decline to enter into the client relationship.

210.4 Potential threats to compliance with the fundamental principles may have been created after acceptance that would have caused the Member in Public Practice to decline the engagement had that information been available earlier. A Member shall, therefore, periodically review whether to continue with a recurring client engagement. For example, a threat to compliance with the fundamental principles may be created by a client's unethical behaviour such as improper earnings management or balance sheet valuations. If a Member identifies a threat to compliance with the fundamental principles, the Member shall evaluate the significance of the threats and apply safeguards when necessary to eliminate the threat or reduce it to an Acceptable Level. Where it is not possible to reduce the threat to an Acceptable Level, the Member shall consider terminating the client relationship where termination is not prohibited by law or regulation.

Engagement Acceptance

- 210.5 The fundamental principle of professional competence and due care imposes an obligation on a Member in Public Practice to provide only those services that the Member is competent to perform. Before accepting a specific client engagement, a Member shall determine whether acceptance would create any threats to compliance with the fundamental principles. For example, a self-interest threat to professional competence and due care is created if the Engagement Team does not possess, or cannot acquire, the competencies necessary to properly carry out the engagement.
- 210.6 A Member in Public Practice shall evaluate the significance of threats and apply safeguards, when necessary, to eliminate them or reduce them to an Acceptable Level. Examples of such safeguards include:
- Acquiring an appropriate understanding of the nature of the client's business, the complexity of its operations, the specific requirements of the engagement and the purpose, nature and scope of the work to be performed.
 - Acquiring knowledge of relevant industries or subject matters.
 - Possessing or obtaining experience with relevant regulatory or reporting requirements.
 - Assigning sufficient staff with the necessary competencies.
 - Using experts where necessary.
 - Agreeing on a realistic time frame for the performance of the engagement.
 - Complying with quality control policies and procedures designed to provide reasonable assurance that specific engagements are accepted only when they can be performed competently.
- 210.7 When a Member in Public Practice intends to rely on the advice or work of an expert, the Member shall determine whether such reliance is warranted. Factors to consider include: reputation, expertise, resources available and applicable professional and ethical standards. Such information may be gained from prior association with the expert or from consulting others.

Changes in a Professional Appointment

- 210.8 A Member in Public Practice who is asked to replace another Member in Public Practice, or who is considering tendering for an engagement currently held by another Member in Public Practice, shall determine whether there are any reasons, professional or otherwise, for not accepting the engagement, such as circumstances that create threats to compliance with the fundamental principles that cannot be eliminated or reduced to an Acceptable Level by the application of safeguards. For example, there may be a threat to professional competence and due care if a Member in Public Practice accepts the engagement before knowing all the pertinent facts.
- 210.9 A Member in Public Practice shall evaluate the significance of any threats. Safeguards shall be applied when necessary to eliminate any threats or reduce them to an Acceptable Level. Examples of such safeguards include:

- When replying to requests to submit tenders, stating in the tender that, before accepting the engagement, contact with the Existing or predecessor accountant will be requested so that inquiries may be made as to whether there are any professional or other reasons why the appointment should not be accepted;
- Asking the predecessor accountant to provide known information on any facts or circumstances that, in the predecessor accountant's opinion, the proposed successor accountant needs to be aware of before deciding whether to accept the engagement. For example, the apparent reasons for the change in appointment may not fully reflect the facts and may indicate disagreements with the predecessor accountant that may influence the decision to accept the appointment; or
- Obtaining necessary information from other sources.

210.10 When the threats cannot be eliminated or reduced to an Acceptable Level through the application of safeguards, a Member in Public Practice shall, unless there is satisfaction as to necessary facts by other means, decline the engagement.

[Paragraph AUST210.11.1 of extant Section 210 has been deleted and replaced by paragraph 210.14.]

210.11 A Member in Public Practice may be asked to undertake work that is complementary or additional to the work of the Existing Accountant. Such circumstances may create threats to professional competence and due care resulting from, for example, a lack of or incomplete information. The significance of any threats shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an Acceptable Level. An example of such a safeguard is notifying the Existing Accountant of the proposed work, which would give the Existing Accountant the opportunity to provide any relevant information needed for the proper conduct of the work.

210.12 An Existing or predecessor accountant is bound by confidentiality. Whether that Member is permitted or required to discuss the affairs of a client with a proposed accountant will depend on the nature of the engagement and on:

- (a) Whether the client's permission to do so has been obtained; or
- (b) The legal or ethical requirements relating to such communications and disclosure, which may vary by jurisdiction.

Circumstances where the Member is or may be required to disclose confidential information or where such disclosure may otherwise be appropriate are set out in Section 140 of Part A of this Code.

210.13 A Member in Public Practice will generally need to obtain the client's permission, preferably in writing, to initiate discussion with an Existing or predecessor accountant. Once that permission is obtained, the Existing or predecessor accountant shall comply with relevant laws and regulations governing such requests. Where the Existing or predecessor accountant provides information, it shall be provided honestly and unambiguously. If the proposed accountant is unable to communicate with the Existing or predecessor accountant, the proposed accountant shall take reasonable steps to obtain information about any possible threats by other means, such as through inquiries of third parties or background investigations of senior management or Those Charged with Governance of the client.

210.14 In the case of an audit of Financial Statements, a Member in Public Practice shall request the predecessor accountant to provide known information regarding any facts or other information that, in the predecessor accountant's opinion, the proposed successor accountant needs to be aware of before deciding whether to accept the engagement. Except for the circumstances involving identified or suspected non-compliance with laws and regulations set out in paragraph 225.31:

- (a) If the client consents to the predecessor accountant disclosing any such facts or other information, the predecessor accountant shall provide the information honestly and unambiguously; and
- (b) If the client fails or refuses to grant the predecessor accountant permission to discuss the client's affairs with the proposed successor accountant, the predecessor accountant shall disclose this fact to the proposed successor accountant, who shall carefully consider such failure or refusal when determining whether or not to accept the appointment.

[Paragraph AUST210.15.1 of extant Section 210 remains unchanged.]

SECTION 220

Conflicts of Interest

[Paragraphs 220.1 – 220.14 of extant Section 220 remain unchanged.]

SECTION 225

Responding to Non-Compliance with Laws and Regulations

Purpose

225.1 A Member in Public Practice may encounter or be made aware of non-compliance or suspected non-compliance with laws and regulations in the course of providing a Professional Service to a client. The purpose of this section is to set out the Member's responsibilities when encountering such non-compliance or suspected non-compliance, and guide the Member in assessing the implications of the matter and the possible courses of action when responding to it. This section applies regardless of the nature of the client, including whether or not it is a Public Interest Entity.

225.2 Non-compliance with laws and regulations ("non-compliance") comprises acts of omission or commission, intentional or unintentional, committed by a client, or by Those Charged with Governance, by management or by other individuals working for or under the direction of a client which are contrary to the prevailing laws or regulations.

225.3 In some jurisdictions, there are legal or regulatory provisions governing how Members in Public Practice should address non-compliance or suspected non-compliance which may differ from or go beyond this section. When encountering such non-compliance or suspected non-compliance, the Member has a responsibility to obtain an understanding of those provisions and comply with

them, including any requirement to report the matter to an appropriate authority and any prohibition on alerting the client prior to making any disclosure, for example, pursuant to anti-money laundering legislation.

225.4 A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. When responding to non-compliance or suspected non-compliance, the objectives of the Member in Public Practice are:

- (a) To comply with the fundamental principles of integrity and professional behavior;
- (b) By alerting management or, where appropriate, Those Charged with Governance of the client, to seek to:
 - (i) Enable them to rectify, remediate or mitigate the consequences of the identified or suspected non-compliance; or
 - (ii) Deter the commission of the non-compliance where it has not yet occurred; and
- (c) To take such further action as appropriate in the public interest.

Scope

225.5 This section sets out the approach to be taken by a Member in Public Practice who encounters or is made aware of non-compliance or suspected non-compliance with:

- (a) Laws and regulations generally recognised to have a direct effect on the determination of material amounts and disclosures in the client's Financial Statements; and
- (b) Other laws and regulations that do not have a direct effect on the determination of the amounts and disclosures in the client's Financial Statements, but compliance with which may be fundamental to the operating aspects of the client's business, to its ability to continue its business, or to avoid material penalties.

225.6 Examples of laws and regulations which this section addresses include those that deal with:

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

225.7 Non-compliance may result in fines, litigation or other consequences for the client that may have a material effect on its Financial Statements. Importantly, such non-compliance may have wider public interest implications in terms of potentially substantial harm to investors, creditors, employees or the general public. For the purposes of this section, an act that causes substantial harm is one that results in serious adverse consequences to any of these parties in financial or non-financial terms. Examples include the perpetration of a fraud resulting in significant financial

losses to investors, and breaches of environmental laws and regulations endangering the health or safety of employees or the public.

225.8 A Member in Public Practice who encounters or is made aware of matters that are clearly inconsequential, judged by their nature and their impact, financial or otherwise, on the client, its stakeholders and the general public, is not required to comply with this section with respect to such matters.

225.9 This section does not address:

- (a) Personal misconduct unrelated to the business activities of the client; and
- (b) Non-compliance other than by the client or Those Charged with Governance, management or other individuals working for or under the direction of the client. This includes, for example, circumstances where a Member in Public Practice has been engaged by a client to perform a due diligence assignment on a third party entity and the identified or suspected non-compliance has been committed by that third party.

The Member in Public Practice may nevertheless find the guidance in this section helpful in considering how to respond in these situations.

Responsibilities of the Client's Management and Those Charged with Governance

225.10 It is the responsibility of the client's management, with the oversight of Those Charged with Governance, to ensure that the client's business activities are conducted in accordance with laws and regulations. It is also the responsibility of management and Those Charged with Governance to identify and address any non-compliance by the client, by an individual charged with governance of the entity, by a member of management, or by other individuals working for or under the direction of the client.

Responsibilities of Members in Public Practice

225.11 Where a Member in Public Practice becomes aware of a matter to which this section applies, the steps that the Member takes to comply with this section shall be taken on a timely basis, having regard to the Member's understanding of the nature of the matter and the potential harm to the interests of the entity, investors, creditors, employees or the general public.

Audits of Financial Statements

Obtaining an Understanding of the Matter

225.12 If a Member in Public Practice engaged to perform an audit of Financial Statements becomes aware of information concerning an instance of non-compliance or suspected non-compliance, whether in the course of performing the engagement or through information provided by other parties, the Member shall obtain an understanding of the matter, including the nature of the act and the circumstances in which it has occurred or may occur.

225.13 The Member in Public Practice is expected to apply knowledge, professional judgement and expertise, but is not expected to have a level of knowledge of laws and regulations that is greater than that which is required to undertake the engagement. Whether an act constitutes non-

compliance is ultimately a matter to be determined by a court or other appropriate adjudicative body. Depending on the nature and significance of the matter, the Member may consult on a confidential basis with others within the Firm, a Network Firm or a Professional Body, or with legal counsel.

- 225.14 If the Member in Public Practice identifies or suspects that non-compliance has occurred or may occur, the Member shall discuss the matter with the appropriate level of management and, where appropriate, Those Charged with Governance.
- 225.15 Such discussion serves to clarify the Member in Public Practice's understanding of the facts and circumstances relevant to the matter and its potential consequences. The discussion also may prompt management or Those Charged with Governance to investigate the matter.
- 225.16 The appropriate level of management with whom to discuss the matter is a question of professional judgement. Relevant factors to consider include:
- The nature and circumstances of the matter.
 - The individuals actually or potentially involved.
 - The likelihood of collusion.
 - The potential consequences of the matter.
 - Whether that level of management is able to investigate the matter and take appropriate action.
- 225.17 The appropriate level of management is generally at least one level above the person or persons involved or potentially involved in the matter. If the Member in Public Practice believes that management is involved in the non-compliance or suspected non-compliance, the Member shall discuss the matter with Those Charged with Governance. The Member may also consider discussing the matter with internal auditors, where applicable. In the context of a group, the appropriate level may be management at an entity that controls the client.

Addressing the Matter

- 225.18 In discussing the non-compliance or suspected non-compliance with management and, where appropriate, Those Charged with Governance, the Member in Public Practice shall advise them to take appropriate and timely actions, if they have not already done so, to:
- (a) Rectify, remediate or mitigate the consequences of the non-compliance;
 - (b) Deter the commission of the non-compliance where it has not yet occurred; or
 - (c) Disclose the matter to an appropriate authority where required by law or regulation or where considered necessary in the public interest.
- 225.19 The Member in Public Practice shall consider whether the client's management and Those Charged with Governance understand their legal or regulatory responsibilities with respect to the non-compliance or suspected non-compliance. If not, the Member may suggest appropriate sources of information or recommend that they obtain legal advice.

225.20 The Member in Public Practice shall comply with applicable:

- (a) Laws and regulations, including legal or regulatory provisions governing the reporting of non-compliance or suspected non-compliance to an appropriate authority. In this regard, some laws and regulations may stipulate a period within which reports are to be made; and
- (b) Requirements under Auditing and Assurance Standards, including those relating to:
 - Identifying and responding to non-compliance, including fraud.
 - Communicating with Those Charged with Governance.
 - Considering the implications of the non-compliance or suspected non-compliance for the auditor's report.

Communication with Respect to Groups

225.21 A Member in Public Practice may:

- (a) For purposes of an audit of group Financial Statements, be requested by the group Engagement Team to perform work on financial information related to a component of the group; or
- (b) Be engaged to perform an audit of a component's Financial Statements for purposes other than the group audit, for example, a statutory audit.

Where the Member becomes aware of non-compliance or suspected non-compliance in relation to the component in either situation, the Member shall, in addition to responding to the matter in accordance with the provisions of this section, communicate it to the group Engagement Partner unless prohibited from doing so by law or regulation. This is to enable the group Engagement Partner to be informed about the matter and to determine, in the context of the group audit, whether and, if so, how it should be addressed in accordance with the provisions in this section.

225.22 Where the group Engagement Partner becomes aware of non-compliance or suspected non-compliance in the course of an audit of group Financial Statements, including as a result of being informed of such a matter in accordance with paragraph 225.21, the group Engagement Partner shall, in addition to responding to the matter in the context of the group audit in accordance with the provisions of this section, consider whether the matter may be relevant to one or more components:

- (a) Whose financial information is subject to work for purposes of the audit of the group Financial Statements; or
- (b) Whose Financial Statements are subject to audit for purposes other than the group audit, for example, a statutory audit.

If so, the group Engagement Partner shall take steps to have the non-compliance or suspected non-compliance communicated to those performing work at components where the matter may be relevant, unless prohibited from doing so by law or regulation. If necessary in relation to subparagraph (b), appropriate inquiries shall be made (either of management or from publicly available information) as to whether the relevant component(s) is subject to audit and, if so, to ascertain to the extent practicable the identity of the auditor. The communication is to enable

those responsible for work at such components to be informed about the matter and to determine whether and, if so, how it should be addressed in accordance with the provisions in this section.

Determining Whether Further Action is Needed

225.23 The Member in Public Practice shall assess the appropriateness of the response of management and, where applicable, Those Charged with Governance.

225.24 Relevant factors to consider in assessing the appropriateness of the response of management and, where applicable, Those Charged with Governance include whether:

- The response is timely.
- The non-compliance or suspected non-compliance has been adequately investigated.
- Action has been, or is being, taken to rectify, remediate or mitigate the consequences of any non-compliance.
- Action has been, or is being, taken to deter the commission of any non-compliance where it has not yet occurred.
- Appropriate steps have been, or are being, taken to reduce the risk of re-occurrence, for example, additional controls or training.
- The non-compliance or suspected non-compliance has been disclosed to an appropriate authority where appropriate and, if so, whether the disclosure appears adequate.

225.25 In light of the response of management and, where applicable, Those Charged with Governance, the Member in Public Practice shall determine if further action is needed in the public interest.

225.26 The determination of whether further action is needed, and the nature and extent of it, will depend on various factors, including:

- The legal and regulatory framework.
- The urgency of the matter.
- The pervasiveness of the matter throughout the client.
- Whether the Member in Public Practice continues to have confidence in the integrity of management and, where applicable, Those Charged with Governance.
- Whether the non-compliance or suspected non-compliance is likely to recur.
- Whether there is credible evidence of actual or potential substantial harm to the interests of the entity, investors, creditors, employees or the general public.

225.27 Examples of circumstances that may cause the Member in Public Practice no longer to have confidence in the integrity of management and, where applicable, Those Charged with Governance include situations where:

- The Member suspects or has evidence of their involvement or intended involvement in any non-compliance.

- The Member is aware that they have knowledge of such non-compliance and, contrary to legal or regulatory requirements, have not reported, or authorised the reporting of, the matter to an appropriate authority within a reasonable period.

225.28 In determining the need for, and nature and extent of, further action, the Member in Public Practice shall exercise professional judgement and take into account whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the Member at the time, would be likely to conclude that the Member has acted appropriately in the public interest.

225.29 Further action by the Member in Public Practice may include:

- Disclosing the matter to an appropriate authority even when there is no legal or regulatory requirement to do so.¹
- Withdrawing from the engagement and the professional relationship where permitted by law or regulation.

225.30 Where the Member in Public Practice determines that withdrawing from the engagement and the professional relationship would be appropriate, doing so would not be a substitute for taking other actions that may be needed to achieve the Member's objectives under this section. In some jurisdictions, however, there may be limitations as to the further actions available to the Member and withdrawal may be the only available course of action.

225.31 Where the Member in Public Practice has withdrawn from the professional relationship pursuant to paragraphs 225.25 and 225.29, the Member shall, on request by the proposed successor accountant, provide all such facts and other information concerning the identified or suspected non-compliance that, in the predecessor accountant's opinion, the proposed successor accountant needs to be aware of before deciding whether to accept the audit appointment. The predecessor accountant shall do so despite paragraph 210.14, unless prohibited by law or regulation. If the proposed successor accountant is unable to communicate with the predecessor accountant, the proposed successor accountant shall take reasonable steps to obtain information about the circumstances of the change of appointment by other means, such as through inquiries of third parties or background investigations of management or Those Charged with Governance.

225.32 As consideration of the matter may involve complex analysis and judgements, the Member in Public Practice may consider consulting internally, obtaining legal advice to understand the Member's options and the professional or legal implications of taking any particular course of action, or consulting on a confidential basis with a regulator or professional body.

Determining Whether to Disclose the Matter to an Appropriate Authority

225.33 Disclosure of the matter to an appropriate authority would be precluded if doing so would be contrary to law or regulation. Otherwise, the purpose of making disclosure is to enable an

¹ In Australia, whistleblower protection is addressed in the *Corporations Act 2001* (for the private sector) and in other legislation in place federally and in states and territories (for the public sector).

appropriate authority to cause the matter to be investigated and action to be taken in the public interest.

225.34 The determination of whether to make such a disclosure depends in particular on the nature and extent of the actual or potential harm that is or may be caused by the matter to investors, creditors, employees or the general public. For example, the Member in Public Practice may determine that disclosure of the matter to an appropriate authority is an appropriate course of action if:

- The entity is engaged in bribery (for example, of local or foreign government officials for purposes of securing large contracts).
- The entity is regulated and the matter is of such significance as to threaten its license to operate.
- The entity is listed on a securities exchange and the matter could result in adverse consequences to the fair and orderly market in the entity's securities or pose a systemic risk to the financial markets.
- Products that are harmful to public health or safety would likely be sold by the entity.
- The entity is promoting a scheme to its clients to assist them in evading taxes.

The determination of whether to make such a disclosure will also depend on external factors such as:

- Whether there is an appropriate authority that is able to receive the information, and cause the matter to be investigated and action to be taken. The appropriate authority will depend on the nature of the matter, for example, a securities regulator in the case of fraudulent financial reporting or an environmental protection agency in the case of a breach of environmental laws and regulations.
- Whether there exists robust and credible protection from civil, criminal or professional liability or retaliation afforded by legislation or regulation, such as under whistle-blowing legislation or regulation.
- Whether there are actual or potential threats to the physical safety of the Member or other individuals.

225.35 If the Member in Public Practice determines that disclosure of the non-compliance or suspected non-compliance to an appropriate authority is an appropriate course of action in the circumstances, this will not be considered a breach of the duty of confidentiality under Section 140 of this Code. When making such disclosure, the Member shall act in good faith and exercise caution when making statements and assertions. The Member shall also consider whether it is appropriate to inform the client of the Member's intentions before disclosing the matter.

225.36 In exceptional circumstances, the Member in Public Practice may become aware of actual or intended conduct that the Member has reason to believe would constitute an imminent breach of a law or regulation that would cause substantial harm to investors, creditors, employees or the general public. Having considered whether it would be appropriate to discuss the matter with management or Those Charged with Governance of the entity, the Member shall exercise professional judgement and may immediately disclose the matter to an appropriate authority in

order to prevent or mitigate the consequences of such imminent breach of law or regulation. Such disclosure will not be considered a breach of the duty of confidentiality under Section 140 of this Code.

Documentation

- 225.37 In relation to an identified or suspected act of non-compliance that falls within the scope of this section, the Member in Public Practice shall, in addition to complying with the documentation requirements under applicable Auditing and Assurance Standards, document:
- How management and, where applicable, Those Charged with Governance have responded to the matter.
 - The courses of action the Member considered, the judgements made and the decisions that were taken, having regard to the reasonable and informed third party perspective.
 - How the Member is satisfied that the Member has fulfilled the responsibility set out in paragraph 225.25.
- 225.38 Auditing and Assurance Standards, for example, require a Member in Public Practice performing an audit of Financial Statements to:
- Prepare documentation sufficient to enable an understanding of significant matters arising during the audit, the conclusions reached, and significant professional judgements made in reaching those conclusions;
 - Document discussions of significant matters with management, Those Charged with Governance, and others, including the nature of the significant matters discussed and when and with whom the discussions took place; and
 - Document identified or suspected non-compliance, and the results of discussion with management and, where applicable, Those Charged with Governance and other parties outside the entity.

Professional Services Other than Audits of Financial Statements

Obtaining an Understanding of the Matter and Addressing It with Management and Those Charged with Governance

- 225.39 If a Member in Public Practice engaged to provide a Professional Service other than an audit of Financial Statements becomes aware of information concerning an instance of non-compliance or suspected non-compliance, the Member shall seek to obtain an understanding of the matter, including the nature of the act and the circumstances in which it has occurred or may be about to occur.
- 225.40 The Member in Public Practice is expected to apply knowledge, professional judgement and expertise, but is not expected to have a level of understanding of laws and regulations beyond that which is required for the Professional Service for which the Member was engaged. Whether an act constitutes actual non-compliance is ultimately a matter to be determined by a court or other appropriate adjudicative body. Depending on the nature and significance of the matter, the

Member may consult on a confidential basis with others within the Firm, a Network Firm or a Professional Body, or with legal counsel.

- 225.41 If the Member in Public Practice identifies or suspects that non-compliance has occurred or may occur, the Member shall discuss the matter with the appropriate level of management and, if the Member has access to them and where appropriate, Those Charged with Governance.
- 225.42 Such discussion serves to clarify the Member in Public Practice's understanding of the facts and circumstances relevant to the matter and its potential consequences. The discussion also may prompt management or Those Charged with Governance to investigate the matter.
- 225.43 The appropriate level of management with whom to discuss the matter is a question of professional judgement. Relevant factors to consider include:
- The nature and circumstances of the matter.
 - The individuals actually or potentially involved.
 - The likelihood of collusion.
 - The potential consequences of the matter.
 - Whether that level of management is able to investigate the matter and take appropriate action.

Communicating the Matter to the Entity's External Auditor

- 225.44 If the Member in Public Practice is performing a non-audit service for an Audit Client of the Firm, or a component of an Audit Client of the Firm, the Member shall communicate the non-compliance or suspected non-compliance within the Firm, unless prohibited from doing so by law or regulation. The communication shall be made in accordance with the Firm's protocols or procedures or, in the absence of such protocols and procedures, directly to the Audit Engagement Partner.
- 225.45 If the Member in Public Practice is performing a non-audit service for an Audit Client of a Network Firm, or a component of an Audit Client of a Network Firm, the Member shall consider whether to communicate the non-compliance or suspected non-compliance to the Network Firm. Where the communication is made, it shall be made in accordance with the Network's protocols or procedures or, in the absence of such protocols and procedures, directly to the Audit Engagement Partner.
- 225.46 If the Member in Public Practice is performing a non-audit service for a client that is not:
- (a) An Audit Client of the Firm or a Network Firm; or
 - (b) A component of an Audit Client of the Firm or a Network Firm,
- the Member shall consider whether to communicate the non-compliance or suspected non-compliance to the Firm that is the client's external auditor, if any.

225.47 Factors relevant to considering the communication in accordance with paragraphs 225.45 and 225.46 include:

- Whether doing so would be contrary to law or regulation.
- Whether there are restrictions about disclosure imposed by a regulatory agency or prosecutor in an ongoing investigation into the non-compliance or suspected non-compliance.
- Whether the purpose of the engagement is to investigate potential non-compliance within the entity to enable it to take appropriate action.
- Whether management or Those Charged with Governance have already informed the entity's external auditor about the matter.
- The likely materiality of the matter to the audit of the client's Financial Statements or, where the matter relates to a component of a group, its likely materiality to the audit of the group Financial Statements.

225.48 In all cases, the communication is to enable the Audit Engagement Partner to be informed about the non-compliance or suspected non-compliance and to determine whether and, if so, how it should be addressed in accordance with the provisions of this section.

Considering Whether Further Action Is Needed

225.49 The Member in Public Practice shall also consider whether further action is needed in the public interest.

225.50 Whether further action is needed, and the nature and extent of it, will depend on factors such as:

- The legal and regulatory framework.
- The appropriateness and timeliness of the response of management and, where applicable, Those Charged with Governance.
- The urgency of the matter.
- The involvement of management or Those Charged with Governance in the matter.
- The likelihood of substantial harm to the interests of the client, investors, creditors, employees or the general public.

225.51 Further action by the Member in Public Practice may include:

- Disclosing the matter to an appropriate authority even when there is no legal or regulatory requirement to do so.
- Withdrawing from the engagement and the professional relationship where permitted by law or regulation.

225.52 In considering whether to disclose to an appropriate authority, relevant factors to take into account include:

- Whether doing so would be contrary to law or regulation.

- Whether there are restrictions about disclosure imposed by a regulatory agency or prosecutor in an ongoing investigation into the non-compliance or suspected non-compliance.
- Whether the purpose of the engagement is to investigate potential non-compliance within the entity to enable it to take appropriate action.

225.53 If the Member in Public Practice determines that disclosure of the non-compliance or suspected non-compliance to an appropriate authority is an appropriate course of action in the circumstances, this will not be considered a breach of the duty of confidentiality under Section 140 of this Code. When making such disclosure, the Member shall act in good faith and exercise caution when making statements and assertions. The Member shall also consider whether it is appropriate to inform the client of the Member's intentions before disclosing the matter.

225.54 In exceptional circumstances, the Member in Public Practice may become aware of actual or intended conduct that the Member has reason to believe would constitute an imminent breach of a law or regulation that would cause substantial harm to investors, creditors, employees or the general public. Having considered whether it would be appropriate to discuss the matter with management or Those Charged with Governance of the entity, the Member shall exercise professional judgement and may immediately disclose the matter to an appropriate authority in order to prevent or mitigate the consequences of such imminent breach of law or regulation. Such disclosure will not be considered a breach of the duty of confidentiality under Section 140 of this Code.

225.55 The Member in Public Practice may consider consulting internally, obtaining legal advice to understand the professional or legal implications of taking any particular course of action, or consulting on a confidential basis with a regulator or professional body.

Documentation

225.56 In relation to an identified or suspected act of non-compliance that falls within the scope of this section, the Member in Public Practice is encouraged to document:

- The matter.
- The results of discussion with management and, where applicable, Those Charged with Governance and other parties.
- How management and, where applicable, Those Charged with Governance have responded to the matter.
- The courses of action the Member considered, the judgements made and the decisions that were taken.
- How the Member is satisfied that the Member has fulfilled the responsibility set out in paragraph 225.49.

SECTION 230

Second Opinions

[Paragraphs 230.1 – 230.3 of extant Section 230 remain unchanged.]

SECTION 240

Fees and Other Types of Remuneration

[Paragraphs 240.1 – 240.8 of extant Section 240 remain unchanged.]

SECTION 250

Marketing Professional Services

[Paragraph 250.1 of extant Section 250 remains unchanged.]

250.2 A Member in Public Practice shall not bring the profession into disrepute when marketing Professional Services. The Member in Public Practice shall be honest and truthful and not:

- (a) Make exaggerated claims for services offered, qualifications possessed, or experience gained; or
- (b) Make disparaging references or unsubstantiated comparisons to the work of another.

If the Member in Public Practice is in doubt about whether a proposed form of Advertising or marketing is appropriate, the Member in Public Practice shall consider consulting with the relevant Professional Body.

SECTION 260

Gifts and Hospitality

[Paragraphs 260.1 – 260.3 of extant Section 260 remain unchanged.]

SECTION 270

Custody of Client Assets

[Paragraphs 270.1 – 270.2 of extant Section 270 remain unchanged.]

270.3 As part of client and engagement acceptance procedures for services that may involve the holding of client assets, a Member in Public Practice shall make appropriate inquiries about the source of such assets and consider legal and regulatory obligations. For example, if the assets were derived from illegal activities, such as money laundering, a threat to compliance with the fundamental principles would be created. In such situations, the Member shall comply with the provisions of Section 225.

SECTION 280

Objectivity—All Services

[Paragraphs 280.1 - 280.4 of extant Section 280 remain unchanged.]

[AUST] PREFACE: SECTIONS 290 AND 291

[Extant [AUST] PREFACE: SECTIONS 290 AND 291 remains unchanged.]

SECTION 290

INDEPENDENCE - AUDIT AND REVIEW ENGAGEMENTS

[Paragraphs 290.1 – 290.99 of extant Section 290 remain unchanged.]

290.100 Paragraphs 290.102 to 290.226 describe specific circumstances and relationships that create or may create threats to Independence. The paragraphs describe the potential threats and the types of safeguards that may be appropriate to eliminate the threats or reduce them to an Acceptable Level and identify certain situations where no safeguards could reduce the threats to an Acceptable Level. The paragraphs do not describe all of the circumstances and relationships that create or may create a threat to Independence. The Firm and the members of the Audit Team shall evaluate the implications of similar, but different, circumstances and relationships and determine whether safeguards, including the safeguards in paragraphs 200.12 to 200.15, can be applied when necessary to eliminate the threats to Independence or reduce them to an Acceptable Level.

[Paragraphs 290.101 – 290.153 of extant Section 290 remain unchanged.]

Provision of Non-assurance Services to an Audit Client

[Paragraphs 290.154 – 290.158 of extant Section 290 remain unchanged.]

Management Responsibilities

290.159 Management responsibilities involve controlling, leading and directing an entity, including making decisions regarding the acquisition, deployment and control of human, financial, technological, physical and intangible resources.

290.160 Determining whether an activity is a management responsibility depends on the circumstances and requires the exercise of judgement. Examples of activities that would be considered a management responsibility include:

- Setting policies and strategic direction.
- Hiring or dismissing employees.
- Directing and taking responsibility for the actions of employees in relation to the employees' work for the entity.
- Authorising transactions.
- Controlling or managing of bank accounts or investments.
- Deciding which recommendations of the Firm or other third parties to implement.
- Reporting to Those Charged with Governance on behalf of management.
- Taking responsibility for the preparation and fair presentation of Financial Statements in accordance with the applicable financial reporting framework.

- Taking responsibility for designing, implementing, monitoring or maintaining internal controls.

[Paragraph 290.161 of extant Section 290 has been deleted and replaced by paragraph 290.163.]

290.161 A Firm shall not assume a management responsibility for an Audit Client. The threats created would be so significant that no safeguards could reduce the threats to an Acceptable Level. For example, deciding which recommendations of the Firm to implement will create self-review and self-interest threats. Further, assuming a management responsibility creates a familiarity threat because the Firm becomes too closely aligned with the views and interests of management. Subject to compliance with paragraph 290.162, providing advice and recommendations to assist management in discharging its responsibilities is not assuming a management responsibility.

290.162 To avoid the risk of assuming a management responsibility when providing non-assurance services to an Audit Client, the Firm shall be satisfied that client management makes all judgements and decisions that are the responsibility of management. This includes ensuring that the client's management:

- Designates an individual who possesses suitable skill, knowledge and experience to be responsible at all times for the client's decisions and to oversee the services. Such an individual, preferably within senior management, would understand the objectives, nature and results of the services and the respective client and Firm responsibilities. However, the individual is not required to possess the expertise to perform or re-perform the services;
- Provides oversight of the services and evaluates the adequacy of the results of the services performed for the client's purpose; and
- Accepts responsibility for the actions, if any, to be taken arising from the results of the services.

Administrative Services

290.163 Administrative services involve assisting clients with their routine or mechanical tasks within the normal course of operations. Such services require little to no professional judgement and are clerical in nature. Examples of administrative services include word processing services, preparing administrative or statutory forms for client approval, submitting such forms as instructed by the client, monitoring statutory filing dates, and advising an Audit Client of those dates. Providing such services does not generally create a threat to Independence. However, the significance of any threat created shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an Acceptable Level.

Preparing Accounting Records and Financial Statements

General Provisions

290.164 Management is responsible for the preparation and fair presentation of the Financial Statements in accordance with the applicable financial reporting framework. These responsibilities include:

- Determining accounting policies and the accounting treatment within those policies.

- Preparing or changing source documents or originating data, in electronic or other form, evidencing the occurrence of a transaction (for example, purchase orders, payroll time records, and customer orders).
- Originating or changing journal entries, or determining or approving the account classifications of transactions.

290.165 Providing an Audit Client with accounting and bookkeeping services, such as preparing accounting records or Financial Statements, creates a self-review threat when the Firm subsequently audits the Financial Statements.

290.166 The audit process, however, necessitates dialogue between the Firm and management of the Audit Client, which may involve:

- The application of accounting standards or policies and Financial Statement disclosure requirements;
- The appropriateness of financial and accounting control and the methods used in determining the stated amounts of assets and liabilities; or
- Proposing adjusting journal entries.

These activities are considered to be a normal part of the audit process and do not, generally, create threats to Independence so long as the client is responsible for making decisions in the preparation of the accounting records and Financial Statements.

290.167 Similarly, the client may request technical assistance from the Firm on matters such as resolving account reconciliation problems or analysing and accumulating information for regulatory reporting. In addition, the client may request technical advice on accounting issues such as the conversion of existing Financial Statements from one financial reporting framework to another (for example, to comply with group accounting policies or to transition to a different financial reporting framework such as International Financial Reporting Standards). Such services do not, generally, create threats to Independence provided the Firm does not assume a management responsibility for the client.

Audit Clients that are not Public Interest Entities

290.168 The Firm may provide services related to the preparation of accounting records and Financial Statements to an Audit Client that is not a Public Interest Entity where the services are of a routine or mechanical nature, so long as any self-review threat created is reduced to an Acceptable Level. Services that are routine or mechanical in nature require little to no professional judgement from the Member in Public Practice. Some examples of such services are:

- Preparing payroll calculations or reports based on client-originated data for approval and payment by the client.
- Recording recurring transactions for which amounts are easily determinable from source documents or originating data, such as a utility bill where the client has determined or approved the appropriate account classification.
- Recording a transaction for which the client has already determined the amount to be recorded, even though the transaction involves a significant degree of subjectivity.

- Calculating depreciation on fixed assets when the client determines the accounting policy and estimates of useful life and residual values.
- Posting client-approved entries to the trial balance.
- Preparing Financial Statements based on information in the client-approved trial balance and preparing the related notes on client-approved records.

In all cases, the significance of any threat created shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an Acceptable Level. Examples of such safeguards include:

- Arranging for such services to be performed by an individual who is not a member of the Audit Team; or
- If such services are performed by a member of the Audit Team, using a partner or senior staff member with appropriate expertise who is not a member of the Audit Team to review the work performed.

[Paragraphs 290.169 – 290.170 of extant Section 290 remain unchanged.]

[Paragraph 290.171 and its heading “Emergency Situations – Audit Clients that are not Public Interest Entities” of extant Section 290 has been deleted.]

[Paragraphs 290.172 – 290.174 of extant Section 290 remain unchanged but renumbered as paragraphs 290.171 – 290.173.]

290.174 If a Firm is requested to perform a valuation to assist an Audit Client with its tax reporting obligations or for tax planning purposes and the results of the valuation will not have a direct effect on the Financial Statements, the provisions included in paragraph 290.186 apply.

[Paragraphs 290.176 – 290.177 of extant Section 290 remain unchanged but renumbered as paragraphs 290.175 – 290.176.]

Taxation Services

[Paragraphs 290.178 – 290.180 of extant Section 290 remain unchanged but renumbered as paragraphs 290.177 – 290.179.]

Tax Calculations for the Purpose of Preparing Accounting Entries

[Paragraphs 290.181 – 290.182 of extant Section 290 remains unchanged but renumbered as paragraphs 290.180 – 290.181.]

[Paragraph 290.183 and its heading “Emergency Situations – Audit Clients that are not Public Interest Entities” of extant Section 290 has been deleted.]

[Paragraphs 290.184 – 290.187 of extant Section 290 remain unchanged but renumbered as paragraphs 290.182 – 290.185.]

290.186 In providing tax services to an Audit Client, a Firm may be requested to perform a valuation to assist the client with its tax reporting obligations or for tax planning purposes. Where the result of the valuation will have a direct effect on the Financial Statements, the provisions included in

paragraphs 290.171 to 290.176 relating to valuation services are applicable. Where the valuation is performed for tax purposes only and the result of the valuation will not have a direct effect on the Financial Statements (i.e. the Financial Statements are only affected through accounting entries related to tax), this would not generally create threats to Independence if such effect on the Financial Statements is immaterial or if the valuation is subject to external review by a tax authority or similar regulatory authority. If the valuation is not subject to such an external review and the effect is material to the Financial Statements, the existence and significance of any threat created will depend upon factors such as:

- The extent to which the valuation methodology is supported by tax law or regulation, other precedent or established practice and the degree of subjectivity inherent in the valuation.
- The reliability and extent of the underlying data.

The significance of any threat created shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an Acceptable Level. Examples of such safeguards include:

- Using professionals who are not members of the Audit Team to perform the service;
- Having a professional review the audit work or the result of the tax service; or
- Obtaining pre-clearance or advice from the tax authorities.

[Paragraphs 290.189 – 290.204 of extant Section 290 remain unchanged but renumbered as paragraphs 290.187 – 290.202.]

290.203 If the Firm provides a litigation support service to an Audit Client and the service involves estimating damages or other amounts that affect the Financial Statements on which the Firm will express an Opinion, the valuation service provisions included in paragraphs 290.171 to 290.176 shall be followed. In the case of other litigation support services, the significance of any threat created shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an Acceptable Level.

[Paragraphs 290.206 – 290.217 of extant Section 290 remain unchanged but renumbered as paragraphs 290.204 – 290.215.]

AUST 290.215.1 In certain circumstances another party or Firm may refer multiple Audit Clients to a Firm. In these circumstances, when the total fees in respect of multiple Audit Clients referred from one source represent a large proportion of the total fees of the Firm expressing the audit opinions, the dependence on that source and concern about losing those clients creates a self-interest or intimidation threat.

The significance of the threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an Acceptable Level. Paragraph 290.215 provides examples of factors that may affect the significance of the threat and potential safeguards.

[Paragraphs 290.218 – 290.228 of extant Section 290 remain unchanged but renumbered as paragraphs 290.216 – 290.226.]

Paragraphs 290.227 to 290.499 are intentionally left blank.

Reports that Include a Restriction on Use and Distribution

Introduction

[Paragraphs 290.500 – 290.502 of extant Section 290 remain unchanged.]

290.503 If the Firm also issues an audit report that does not include a restriction on use and distribution for the same client, the provisions of paragraphs 290.500 to 290.514 do not change the requirement to apply the provisions of paragraphs 290.1 to 290.226 to that Audit Engagement.

[Paragraph 290.504 of extant Section 290 remains unchanged.]

Public Interest Entities

290.505 When the conditions set out in paragraphs 290.500 to 290.502 are met, it is not necessary to apply the additional requirements in paragraphs 290.100 to 290.226 that apply to Audit Engagements for Public Interest Entities.

[Paragraphs 290.506 – 290.513 of extant Section 290 remain unchanged.]

Provision of Non-Assurance Services

290.514 If the Firm conducts an engagement to issue a restricted use and distribution report for an Audit Client and provides a non-assurance service to the Audit Client, the provisions of paragraphs 290.154 to 290.226 shall be complied with, subject to paragraphs 290.504 to 290.507.

SECTION 291

INDEPENDENCE—OTHER ASSURANCE ENGAGEMENTS

[Paragraphs 291.1 – 291.22 of extant Section 291 remain unchanged.]

291.23 If the Firm also issues an assurance report that does not include a restriction on use and distribution for the same client, the provisions of paragraphs 291.25 to 291.27 do not change the requirement to apply the provisions of paragraphs 291.1 to 291.156 to that Assurance Engagement. If the Firm also issues an audit report, whether or not it includes a restriction on use and distribution, for the same client, the provisions of Section 290 shall apply to that Audit Engagement.

[Paragraphs 291.24 – 291.25 of extant Section 291 remain unchanged.]

291.26 Even though the conditions set out in paragraphs 291.21 to 291.22 are met, if the Firm had a material Financial Interest, whether direct or indirect, in the Assurance Client, the self-interest threat created would be so significant that no safeguards could reduce the threat to an Acceptable Level. Accordingly, the Firm shall not have such a Financial Interest. In addition, the Firm shall comply with the other applicable provisions of this section described in paragraphs 291.112 to 291.156.

[Paragraphs 291.27 – 291.99 of extant Section 291 remain unchanged.]

291.100 Paragraphs 291.104 to 291.156 describe specific circumstances and relationships that create or may create threats to Independence. The paragraphs describe the potential threats and the types of safeguards that may be appropriate to eliminate the threats or reduce them to an Acceptable Level and identify certain situations where no safeguards could reduce the threats to an Acceptable Level. The paragraphs do not describe all of the circumstances and relationships that create or may create a threat to Independence. The Firm and the members of the Assurance Team shall evaluate the implications of similar, but different, circumstances and relationships and determine whether safeguards, including the safeguards in paragraphs 200.11 to 200.15 can be applied when necessary to eliminate the threats to Independence or reduce them to an Acceptable Level.

[Paragraphs 291.101 – 291.137 of extant Section 291 remain unchanged.]

Provision of Non-assurance Services to an Assurance Client

[Paragraphs 291.138 – 291.140 of extant Section 291 remain unchanged.]

Management Responsibilities

291.141 Management responsibilities involve controlling, leading and directing an entity, including making decisions regarding the acquisition, deployment and control of human, financial, technological, physical and intangible resources.

291.142 Determining whether an activity is a management responsibility depends on the circumstances and requires the exercise of judgement. Examples of activities that would be considered a management responsibility include:

- Setting policies and strategic direction.
- Hiring or dismissing employees.
- Directing and taking responsibility for the actions of employees in relation to the employees' work for the entity.
- Authorising transactions.
- Control or management of bank accounts or investments.
- Deciding which recommendations of the Firm or other third parties to implement.
- Reporting to Those Charged with Governance on behalf of management.
- Taking responsibility for designing, implementing, monitoring or maintaining internal controls.

[Paragraph 291.143 of extant Section 291 has been deleted.]

291.143 In providing assurance services to an Assurance Client, a Firm shall not assume a management responsibility as part of the assurance service. If the Firm were to assume a management responsibility as part of the assurance service, the threats created would be so significant that no safeguards could reduce the threats to an Acceptable Level. If the Firm assumes management responsibility as part of any other services provided to the Assurance Client, the Firm shall ensure that the responsibility is not related to the subject matter or subject matter information of the Assurance Engagement provided by the Firm.

291.144 When providing services that are related to the subject matter or subject matter information of an Assurance Engagement provided by the Firm, the Firm shall be satisfied that client management makes all judgements and decisions relating to the subject matter or subject matter information of the Assurance Engagement that are the responsibility of management. This includes ensuring that the client's management:

- Designates an individual who possesses suitable skill, knowledge and experience to be responsible at all times for the client's decisions and to oversee the services. Such an individual, preferably within senior management, would understand the objectives, nature and results of the services and the respective client and Firm responsibilities. However, the individual is not required to possess the expertise to perform or re-perform the services;
- Provides oversight of the services and evaluates the adequacy of the results of the services performed for the client's purpose; and
- Accepts responsibility for the actions, if any, to be taken arising from the results of the services.

[Paragraphs 291.146 – 291.157 of extant Section 291 remain unchanged but renumbered as paragraphs 291.145 – 291.156.]

PART C - MEMBERS IN BUSINESS

SECTION 300

Introduction

[Paragraphs 300.1 – 300.15 of extant Section 300 remain unchanged.]

SECTION 310

Conflicts of Interest

[Paragraphs 310.1 – 310.11 of extant Section 310 remain unchanged.]

SECTION 320

Preparation and Reporting of Information

[Paragraphs 320.1 – 320.5 of extant Section 320 remain unchanged.]

320.6 The significance of any threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an Acceptable Level. Such safeguards include consultation with superiors within the employing organisation, the audit committee or Those Charged with Governance of the organisation, or with a relevant Professional Body.

[Paragraph 320.7 of extant Section 320 remains unchanged.]

SECTION 330

Acting with Sufficient Expertise

[Paragraphs 330.1 – 330.4 of extant Section 330 remain unchanged.]

SECTION 340

Financial Interests, Compensation and Incentives Linked to Financial Reporting and Decision Making

[Paragraphs 340.1 – 340.3 of extant Section 340 remain unchanged.]

340.4 The significance of any threat created by Financial Interests, shall be evaluated and safeguards applied, when necessary, to eliminate the threat or reduce it to an Acceptable Level. In evaluating the significance of any threat, and, when necessary, determining the appropriate safeguards to be applied, a Member in Business shall evaluate the nature of the interest. This includes evaluating the significance of the interest. What constitutes a significant interest will depend on personal circumstances. Examples of such safeguards include:

- Policies and procedures for a committee independent of management to determine the level or form of remuneration of senior management.

- Disclosure of all relevant interests, and of any plans to exercise entitlements or trade in relevant shares, to those charged with the governance of the employing organisation, in accordance with any internal policies.
- Consultation, where appropriate, with superiors within the employing organisation.
- Consultation, where appropriate, with those charged with the governance of the employing organisation or relevant Professional Bodies.
- Internal and external audit procedures.
- Up-to-date education on ethical issues and on the legal restrictions and other regulations around potential insider trading.

SECTION 350

Inducements

[Paragraphs 350.1 – 350.8 of extant Section 350 remain unchanged.]

SECTION 360

Responding to Non-Compliance with Laws and Regulations

Purpose

- 360.1 A Member in Business may encounter or be made aware of non-compliance or suspected non-compliance with laws and regulations in the course of carrying out Professional Activities. The purpose of this section is to set out the Member's responsibilities when encountering such non-compliance or suspected non-compliance, and guide the Member in assessing the implications of the matter and the possible courses of action when responding to it. This section applies regardless of the nature of the employing organisation, including whether or not it is a Public Interest Entity.
- 360.2 Non-compliance with laws and regulations ("non-compliance") comprises acts of omission or commission, intentional or unintentional, committed by the Member in Business's employing organisation or by Those Charged with Governance, by management, or by other individuals working for or under the direction of the employing organisation which are contrary to the prevailing laws or regulations.
- 360.3 In some jurisdictions, there are legal or regulatory provisions governing how Members in Business should address non-compliance or suspected non-compliance which may differ from or go beyond this section. When encountering such non-compliance or suspected non-compliance, the Member has a responsibility to obtain an understanding of those provisions and comply with them, including any requirement to report the matter to an appropriate authority and any prohibition on alerting the relevant party prior to making any disclosure, for example, pursuant to anti-money laundering legislation.

- 360.4 A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. When responding to non-compliance or suspected non-compliance, the objectives of the Member in Business are:
- (a) To comply with the fundamental principles of integrity and professional behavior;
 - (b) By alerting management or, where appropriate, Those Charged with Governance of the employing organisation, to seek to:
 - (i) Enable them to rectify, remediate or mitigate the consequences of the identified or suspected non-compliance; or
 - (ii) Deter the commission of the non-compliance where it has not yet occurred; and
 - (c) To take such further action as appropriate in the public interest.

Scope

- 360.5 This section sets out the approach to be taken by a Member in Business who encounters or is made aware of non-compliance or suspected non-compliance with:
- (a) Laws and regulations generally recognised to have a direct effect on the determination of material amounts and disclosures in the employing organisation's Financial Statements; and
 - (b) Other laws and regulations that do not have a direct effect on the determination of the amounts and disclosures in the employing organisation's Financial Statements, but compliance with which may be fundamental to the operating aspects of the employing organisation's business, to its ability to continue its business, or to avoid material penalties.
- 360.6 Examples of laws and regulations which this section addresses include those that deal with:
- Fraud, corruption and bribery.
 - Money laundering, terrorist financing and proceeds of crime.
 - Securities markets and trading.
 - Banking and other financial products and services.
 - Data protection.
 - Tax and pension liabilities and payments.
 - Environmental protection.
 - Public health and safety.
- 360.7 Non-compliance may result in fines, litigation or other consequences for the employing organisation that may have a material effect on its Financial Statements. Importantly, such non-compliance may have wider public interest implications in terms of potentially substantial harm to investors, creditors, employees or the general public. For the purposes of this section, an act that causes substantial harm is one that results in serious adverse consequences to any of these parties in financial or non-financial terms. Examples include the perpetration of a fraud resulting in significant financial losses to investors, and breaches of environmental laws and regulations endangering the health or safety of employees or the public.

360.8 A Member in Business who encounters or is made aware of matters that are clearly inconsequential, judged by their nature and their impact, financial or otherwise, on the employing organisation, its stakeholders and the general public, is not required to comply with this section with respect to such matters.

360.9 This section does not address:

- (a) Personal misconduct unrelated to the business activities of the employing organisation; and
- (b) Non-compliance other than by the employing organisation or Those Charged with Governance, management, or other individuals working for or under the direction of the employing organisation.

The Member in Business may nevertheless find the guidance in this section helpful in considering how to respond in these situations.

Responsibilities of the Employing Organisation's Management and Those Charged with Governance

360.10 It is the responsibility of the employing organisation's management, with the oversight of Those Charged with Governance, to ensure that the employing organisation's business activities are conducted in accordance with laws and regulations. It is also the responsibility of management and Those Charged with Governance to identify and address any non-compliance by the employing organisation or by an individual charged with governance of the entity, by a member of management, or by other individuals working for or under the direction of the employing organisation.

Responsibilities of Members in Business

360.11 Many employing organisations have established protocols and procedures (for example, an ethics policy or internal whistle-blowing mechanism) regarding how non-compliance or suspected non-compliance by the employing organisation should be raised internally. Such protocols and procedures may allow for matters to be reported anonymously through designated channels. If these protocols and procedures exist within the Member in Business's employing organisation, the Member shall consider them in determining how to respond to such non-compliance.

360.12 Where a Member in Business becomes aware of a matter to which this section applies, the steps that the Member takes to comply with this section shall be taken on a timely basis, having regard to the Member's understanding of the nature of the matter and the potential harm to the interests of the employing organisation, investors, creditors, employees or the general public.

Responsibilities of Senior Members in Business

360.13 Senior Members in Business are Directors, Officers or senior employees able to exert significant influence over, and make decisions regarding, the acquisition, deployment and control of the employing organisation's human, financial, technological, physical and intangible resources. Because of their roles, positions and spheres of influence within the employing organisation, there is a greater expectation for them to take whatever action is appropriate in the public interest

to respond to non-compliance or suspected non-compliance than other Members in Business within the employing organisation.

Obtaining an Understanding of the Matter

- 360.14 If, in the course of carrying out Professional Activities, a senior Member in Business becomes aware of information concerning an instance of non-compliance or suspected non-compliance, the Member shall obtain an understanding of the matter, including:
- (a) The nature of the act and the circumstances in which it has occurred or may occur;
 - (b) The application of the relevant laws and regulations to the circumstances; and
 - (c) The potential consequences to the employing organisation, investors, creditors, employees or the wider public.
- 360.15 A senior Member in Business is expected to apply knowledge, professional judgement and expertise, but is not expected to have a level of understanding of laws and regulations beyond that which is required for the Member's role within the employing organisation. Whether an act constitutes non-compliance is ultimately a matter to be determined by a court or other appropriate adjudicative body. Depending on the nature and significance of the matter, the Member may cause, or take appropriate steps to cause, the matter to be investigated internally. The Member may also consult on a confidential basis with others within the employing organisation or a Professional Body, or with legal counsel.

Addressing the Matter

- 360.16 If the senior Member in Business identifies or suspects that non-compliance has occurred or may occur, the Member shall, subject to paragraph 360.11, discuss the matter with the Member's immediate superior, if any, to enable a determination to be made as to how the matter should be addressed. If the Member's immediate superior appears to be involved in the matter, the Member shall discuss the matter with the next higher level of authority within the employing organisation.
- 360.17 The senior Member in Business shall also take appropriate steps to:
- (a) Have the matter communicated to Those Charged with Governance to obtain their concurrence regarding appropriate actions to take to respond to the matter and to enable them to fulfill their responsibilities;
 - (b) Comply with applicable laws and regulations, including legal or regulatory provisions governing the reporting of non-compliance or suspected non-compliance to an appropriate authority;
 - (c) Have the consequences of the non-compliance or suspected non-compliance rectified, remediated or mitigated;
 - (d) Reduce the risk of re-occurrence; and
 - (e) Seek to deter the commission of the non-compliance if it has not yet occurred.
- 360.18 In addition to responding to the matter in accordance with the provisions of this section, the senior Member in Business shall determine whether disclosure of the matter to the employing

organisation's external auditor, if any, is needed pursuant to the Member's duty or legal obligation to provide all information necessary to enable the auditor to perform the audit.

Determining Whether Further Action Is Needed

- 360.19 The senior Member in Business shall assess the appropriateness of the response of the Member's superiors, if any, and Those Charged with Governance.
- 360.20 Relevant factors to consider in assessing the appropriateness of the response of the senior Member in Business' superiors, if any, and Those Charged with Governance include whether:
- The response is timely.
 - They have taken or authorised appropriate action to seek to rectify, remediate or mitigate the consequences of the non-compliance, or to avert the non-compliance if it has not yet occurred.
 - The matter has been disclosed to an appropriate authority where appropriate and, if so, whether the disclosure appears adequate.
- 360.21 In light of the response of the senior Member in Business' superiors, if any, and Those Charged with Governance, the Member shall determine if further action is needed in the public interest.
- 360.22 The determination of whether further action is needed, and the nature and extent of it, will depend on various factors, including:
- The legal and regulatory framework.
 - The urgency of the matter.
 - The pervasiveness of the matter throughout the employing organisation.
 - Whether the senior Member in Business continues to have confidence in the integrity of the Member's superiors and Those Charged with Governance.
 - Whether the non-compliance or suspected non-compliance is likely to recur.
 - Whether there is credible evidence of actual or potential substantial harm to the interests of the employing organisation, investors, creditors, employees or the general public.
- 360.23 Examples of circumstances that may cause the senior Member in Business no longer to have confidence in the integrity of the Member's superiors and Those Charged with Governance include situations where:
- The Member suspects or has evidence of their involvement or intended involvement in any non-compliance.
 - Contrary to legal or regulatory requirements, they have not reported the matter, or authorised the matter to be reported, to an appropriate authority within a reasonable period.
- 360.24 In determining the need for, and nature and extent of any further action needed, the senior Member in Business shall exercise professional judgement and take into account whether a reasonable and informed third party, weighing all the specific facts and circumstances available

to the Member at the time, would be likely to conclude that the Member has acted appropriately in the public interest.

360.25 Further action by the senior Member in Business may include:

- Informing the management of the parent entity of the matter if the employing organisation is a member of a group.
- Disclosing the matter to an appropriate authority even when there is no legal or regulatory requirement to do so.
- Resigning from the employing organisation.

360.26 Where the senior Member in Business determines that resigning from the employing organisation would be appropriate, doing so would not be a substitute for taking other actions that may be needed to achieve the Member's objectives under this section. In some jurisdictions, however, there may be limitations as to the further actions available to the Member and resignation may be the only available course of action.

360.27 As consideration of the matter may involve complex analysis and judgements, the senior Member in Business may consider consulting internally, obtaining legal advice to understand the Member's options and the professional or legal implications of taking any particular course of action, or consulting on a confidential basis with a regulator or Professional Body.

Determining Whether to Disclose the Matter to an Appropriate Authority

360.28 Disclosure of the matter to an appropriate authority would be precluded if doing so would be contrary to law or regulation. Otherwise, the purpose of making disclosure is to enable an appropriate authority to cause the matter to be investigated and action to be taken in the public interest.

360.29 The determination of whether to make such a disclosure depends in particular on the nature and extent of the actual or potential harm that is or may be caused by the matter to investors, creditors, employees or the general public. For example, the senior Member in Business may determine that disclosure of the matter to an appropriate authority is an appropriate course of action if:

- The employing organisation is engaged in bribery (for example, of local or foreign government officials for purposes of securing large contracts).
- The employing organisation is a regulated entity and the matter is of such significance as to threaten its license to operate.
- The employing organisation is listed on a securities exchange and the matter could result in adverse consequences to the fair and orderly market in the employing organisation's securities or pose a systemic risk to the financial markets.
- Products that are harmful to public health or safety would likely be sold by the employing organisation.
- The employing organisation is promoting a scheme to its clients to assist them in evading taxes.

The determination of whether to make such a disclosure will also depend on external factors such as:

- Whether there is an appropriate authority that is able to receive the information, and cause the matter to be investigated and action to be taken. The appropriate authority will depend upon the nature of the matter, for example, a securities regulator in the case of fraudulent financial reporting or an environmental protection agency in the case of a breach of environmental laws and regulations.
- Whether there exists robust and credible protection from civil, criminal or professional liability or retaliation afforded by legislation or regulation, such as under whistle-blowing legislation or regulation.
- Whether there are actual or potential threats to the physical safety of the Member or other individuals.

360.30 If the senior Member in Business determines that disclosure of the matter to an appropriate authority is an appropriate course of action in the circumstances, this will not be considered a breach of the duty of confidentiality under Section 140 of this Code. When making such disclosure, the Member shall act in good faith and exercise caution when making statements and assertions.

360.31 In exceptional circumstances, the senior Member in Business may become aware of actual or intended conduct that the Member has reason to believe would constitute an imminent breach of a law or regulation that would cause substantial harm to investors, creditors, employees or the general public. Having considered whether it would be appropriate to discuss the matter with management or Those Charged with Governance of the entity, the Member shall exercise professional judgement and may immediately disclose the matter to an appropriate authority in order to prevent or mitigate the consequences of such imminent breach of law or regulation. Such disclosure will not be considered a breach of the duty of confidentiality under Section 140 of this Code.

Documentation

360.32 In relation to an identified or suspected act of non-compliance that falls within the scope of this section, the senior Member in Business is encouraged to have the following matters documented:

- The matter.
- The results of discussions with the Member's superiors, if any, and Those Charged with Governance and other parties.
- How the Member's superiors, if any, and Those Charged with Governance have responded to the matter.
- The courses of action the Member considered, the judgements made and the decisions that were taken.
- How the Member is satisfied that the Member has fulfilled the responsibility set out in paragraph 360.21.

Responsibilities of Members in Business Other than Senior Members in Business

- 360.33 If, in the course of carrying out Professional Activities, a Member in Business becomes aware of information concerning an instance of non-compliance or suspected non-compliance, the Member shall seek to obtain an understanding of the matter, including the nature of the act and the circumstances in which it has occurred or may occur.
- 360.34 The Member in Business is expected to apply knowledge, professional judgement and expertise, but is not expected to have a level of understanding of laws and regulations beyond that which is required for the Member's role within the employing organisation. Whether an act constitutes non-compliance is ultimately a matter to be determined by a court or other appropriate adjudicative body. Depending on the nature and significance of the matter, the Member may consult on a confidential basis with others within the employing organisation or a Professional Body, or with legal counsel.
- 360.35 If the Member in Business identifies or suspects that non-compliance has occurred or may occur, the Member shall, subject to paragraph 360.11, inform an immediate superior to enable the superior to take appropriate action. If the Member's immediate superior appears to be involved in the matter, the Member shall inform the next higher level of authority within the employing organisation.
- 360.36 In exceptional circumstances, the Member in Business may decide that disclosure of the matter to an appropriate authority is an appropriate course of action. If the Member does so pursuant to paragraph 360.29, this will not be considered a breach of the duty of confidentiality under Section 140 of this Code. When making such disclosure, the Member shall act in good faith and exercise caution when making statements and assertions.

Documentation

- 360.37 In relation to an identified or suspected act of non-compliance that falls within the scope of this section, the Member in Business is encouraged to have the following matters documented:
- The matter.
 - The results of discussions with the Member's superior, management and, where applicable, Those Charged with Governance and other parties.
 - How the Member's superior has responded to the matter.
 - The courses of action the Member considered, the judgements made and the decisions that were taken.

TRANSITIONAL PROVISIONS

The Code is subject to the following transitional provisions:

[Paragraphs 1 – 3 of extant Transitional Provisions remain unchanged.]

Non-assurance services

4. Paragraphs 290.154 - 290.214 address the provision of non-assurance services to an Audit or Review Client. If, at the effective date of the Code, services are being provided to an Audit or Review Client and the services were permissible under the June 2006 Code (revised February 2008) but are either prohibited or subject to restrictions under the revised Code, the Firm may continue providing such services only if they were contracted for and commenced prior to July 1, 2012, and are completed before January 1, 2013.

Fees – Relative Size

5. Paragraph 290.217 provides that, in respect of an Audit or Review Client that is a Public Interest Entity, when the total fees from that client and its related entities (subject to the considerations in paragraph 290.27) for two consecutive years represent more than 15% of the total fees of the Firm expressing the opinion on the Financial Statements, a pre- or post-issuance review (as described in paragraph 290.217) of the second year's audit shall be performed. This requirement is effective for Audits or Reviews of Financial Statements covering years that begin on or after January 1, 2012. For example, in the case of an Audit Client with a calendar year end, if the total fees from the client exceeded the 15% threshold for 2012 and 2013, the pre- or post-issuance review would be applied with respect to the audit of the 2013 Financial Statements.

Compensation and Evaluation Policies

6. Paragraph 290.224 provides that a Key Audit Partner shall not be evaluated or compensated based on that partner's success in selling non-assurance services to the partner's Audit Client. This requirement is effective on January 1, 2013. A Key Audit Partner may, however, receive compensation after January 1, 2013 based on an evaluation made prior to January 1, 2013 of that partner's success in selling non-assurance services to the Audit Client.

Responding to Non-Compliance with Laws and Regulations (NOCLAR)

7. Sections 225 and 360 of the Code outline a framework to assist a Member in what actions to take in the public interest when they become aware of non-compliance or suspected non-compliance with laws and regulations by either a client or their employer. Other consequential amendments to consider this framework are included in paragraphs 100.5, 100.23 – 100.26, 140.7, and 270.3, and also Sections 150 and 210. The NOCLAR standard and related amendments are effective from 1 January 2018. Early adoption of these provisions is permitted.

Non-assurance services provisions for Audit and Assurance Clients

8. The non-assurance services provisions set out in paragraphs 290.159 – 290.186 and paragraphs 291.141 – 291.144 are effective from 1 January 2018. Early adoption of these provisions is permitted.

CONFORMITY WITH INTERNATIONAL PRONOUNCEMENTS

APES 110 and the IESBA Code

APES 110 incorporates the *Code of Ethics for Professional Accountants* (IESBA Code) issued by the International Ethics Standards Board for Accountants (IESBA) in July 2009 and as amended.

Compliance with the IESBA Code

The principles and requirements of APES 110 and the IESBA Code are consistent except for the following:

- The addition of a Scope and Application section in APES 110;
- The addition of paragraphs and definitions prefixed as AUST in APES 110. The additional definitions are of AASB, Administration, AuASB, AUASB, Auditing and Assurance Standards, Australian Accounting Standards, Member and Professional Bodies;
- APES 110 generally refers to Members whereas the IESBA Code refers to professional accountants;
- Defined terms are in title case in APES 110;
- The definition of Engagement Team in APES 110 does not exclude individuals within the client's internal audit function who provide direct assistance on an Audit Engagement as the AUASB has prohibited the use of direct assistance in Auditing and Assurance Standard ASA 610 *Using the Work of Internal Auditors* (November 2013);
- APES 110 tailors the following IESBA defined terms to the Australian environment: Audit Engagement, Engagement Team, Financial Statements, Firm, Member in Public Practice, and Review Engagement;
- Paragraph 290.25 of APES 110 expresses Public Interest Entity in the singular form consistent with its definition in section 2; and
- Paragraph 290.26 in APES 110 mandates Firms to determine whether additional entities are Public Interest Entities and the reference to member bodies has been removed.

Effective Date

The changes will be effective on 1 January 2018 with early adoption permitted.