

Corporate Ethics and Professional & Ethical Standards

Monash University

Melbourne, 26 March 2019

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APESB 
Accounting Professional & Ethical Standards Board

Overview

- Role of the APESB
- Corporate misconduct and scandals
- The importance of professional ethics
- APESB pronouncements
- APES 110 *Code of Ethics for Professional Accountants*
 - NOCLAR
- Corporate ethics

Role of the APESB

APESB

- Develops mandatory professional and ethical standards for members of CA ANZ, CPA Australia and IPA
- Members subject to disciplinary procedures of professional body or ASIC (auditors and liquidators)
- APESB structure is unique — one of the most comprehensive suites of accounting professional standards in the world
- Influence international standards setting process:
 - IESBA's National Standards Setters group
 - Involvement with IFAC Committees
 - Submissions on consultations
- To date APESB has released 21 pronouncements consisting of 15 Standards and 6 Guidance Notes.

Corporate misconduct & scandals

Recent Corporate Scandals

Bad ethics is good business? - Incentives and culture drives behaviour

1. Volkswagen – Emissions (No 1 global car maker)
2. Royal Commission into Banking – misconduct in the Australian banking, superannuation and financial services industry (e.g. AMP)
3. Accounting Firms:
 - KPMG South Africa – involved in Gupta and VBS Bank scandals
 - PwC India – negligence in Satyam audit
4. Carillion – Independence and conflicts of interest

Volkswagen scandal

Volkswagen emissions scandal

VW admitted in September 2015 it had installed so-called defeat devices in 11 million diesel engines worldwide to make the cars seem less polluting than they were

What was the scam?

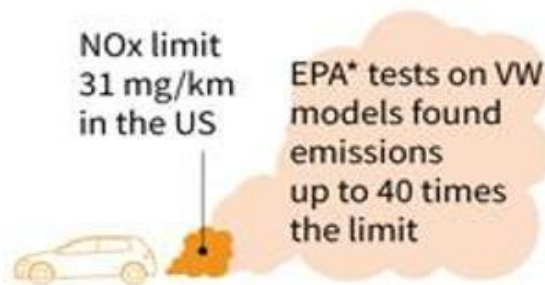


Defeat devices

- ▶ Customised software that programmed diesel engines to detect when a car is undergoing emissions tests
- ▶ Turned full emissions controls for **nitrogen oxides (NOx)** on only during the test

What happened at other times?

- ▶ Emissions controls were turned off, vehicle emits NOx above legal limits



*Environmental Protection Agency

What does NOx do?



- ▶ Linked to increased asthma attacks, other respiratory and cardiovascular illnesses

Royal Commission into Banking



Royal Commission

into Misconduct in the Banking, Superannuation and Financial Services Industry

- Reported many instances of misconduct in industry:
 - Fees for no service - approx. **\$1.8b**
 - Inappropriate advice provided to customers
 - Mortgage loans bribery and forgery
 - Financial services entities **broke the law** and not held to account
 - Issues of independence (e.g. AMP & 'independent' report by Clayton Utz)
- **Primary responsibility** with Boards and Senior Management

Case Study

Inappropriate financial advice

In April 2015 a couple met with a financial planner of BT Financial Group and a Westpac business banker. The couple outlined:

- desire to buy a B&B to live in & run in retirement (est. cost of \$1 million)
- they had a number of debts including mortgage on home
- only money available to contribute was superannuation of \$200,000
- Seeking advice on SMSFs & acquiring a loan to purchase B&B property

Advice given to couple:

- Sell family home immediately
- Take out Westpac life and income protection insurance now
- Establish SMSF and rollover superannuation

Cost of advice: upfront fees of \$5,280 plus \$3,000 for ongoing advice.

- To third party: \$3,905 for establishing the SMSF

Key issues with advice:

- No advice at initial meeting on viability of SMSF to purchase B&B
- Subsequent to couple selling home, the Bank advised they could only lend \$200,000 to the couple (not the \$1 million initially quoted)
- Timing of the transactions as advised were not in best interests of the client
- Conflict of interests:
 - Westpac received commissions of \$17,600 for the establishment of the insurance policies
 - Adviser received a monthly bonus
- Couple were placed in a worse off position overall by following the advice

Royal Commission - key observations

Four key observations by Commissioner Hayne:

- Misconduct was driven by the pursuit of profit and personal gain;
- Entities and individuals acted in the way they did because they could;
- The conflict between duty and interest was seldom able to be managed
- Too often financial services entities that broke the law were not held to account

Three drivers of misconduct in the banking industry (outlined by Philip Lowe, Governor, RBA):

- Inadequate response to conflicts of interest
- Poorly designed incentive systems distort behaviour
- Inadequate consequences for misconduct

Royal Commission – underlying principles to guide conduct

- Obey the law
- Do not mislead or deceive
- Act fairly
- Provide services that are fit for purpose
- Deliver services with reasonable care and skill
- When acting for another, act in the best interests of that other

Royal Commission – general rules for the financial services industry

- The law must be applied and its application enforced
- Industry codes should be approved under statute and breach of key promises made to customers in the codes should be a breach of a statute
- No financial product should be ‘hawked’ to retail clients
- Intermediaries should only act on behalf of, and in the interests of, the party who pays the intermediary
- Exceptions to the ban on conflicted remuneration should be eliminated
- Culture and governance practices (including remuneration arrangements) must focus on both financial and non-financial risks

Royal commission impacts

Impacts :

- Reputation of financial services entities and their management damaged
- Large remediation payments to be made for fees for no service — AMP \$359.7m; CBA \$116m and Westpac \$117m
- Grandfathered commissions to be banned

Potential implications

- Possible criminal breaches for entities providing fees for no service
- More enforcement by ASIC

Accounting Firms



- Involved in Gupta corruption and VBS Bank scandal
- Banned from working on South African government contracts



- Negligence in the audit of Satyam which reported fraudulent earnings
- 2 – year ban from auditing listed companies in India
- US \$6 million penalty paid to US SEC

Carillion & Independence

- **Carillion PLC** went into liquidation in January 2018:
 - Approx. **£ 7 Billion** in liabilities
 - **3,000** redundancies
 - 20% rise in insolvencies of building firms in 2018
 - Broader impact on public, suppliers, customers and employees, including pension schemes
- **KPMG:**
 - Auditor from 1999 (served **19 years**) with accum fees of **£ 29m**
 - Only issued **unqualified** audit opinions
 - **£ 845m** write-down of contracts 4 months after 2016 accounts published
- Criticisms raised about Deloitte (internal auditor), EY (turnaround advice) & PwC (conflicts of interests)



Carillion impacts

Impacts :

- UK parliamentary enquiry into role of directors, regulators and the **audit profession**
- Existing regulator (FRC UK) to be replaced by new Authority
- KPMG under review by FRC UK
- Carillion Audit Partner and team members **suspended** by KPMG
- Calls for **ban** on all but **essential audit-related services** for audit clients
 - Nov 2018, KPMG (UK) **internally** bans provision of non-audit services to FTSE 350 audit clients
 - **Mar 2019**, FRC UK commences consultation on this matter

Potential implications

- Call for more regulation – removal of self regulation by profession
- Call for Big 4 firms to be broken up between audit and consulting

The Importance of Professional Ethics

Importance of professional ethics (including Independence)

- Protects **public interest**
- Maintain and increase **trust** in the profession
- Assists accountants to address professional and ethical issues
- If **adhered** to establishes robust standards of professional conduct

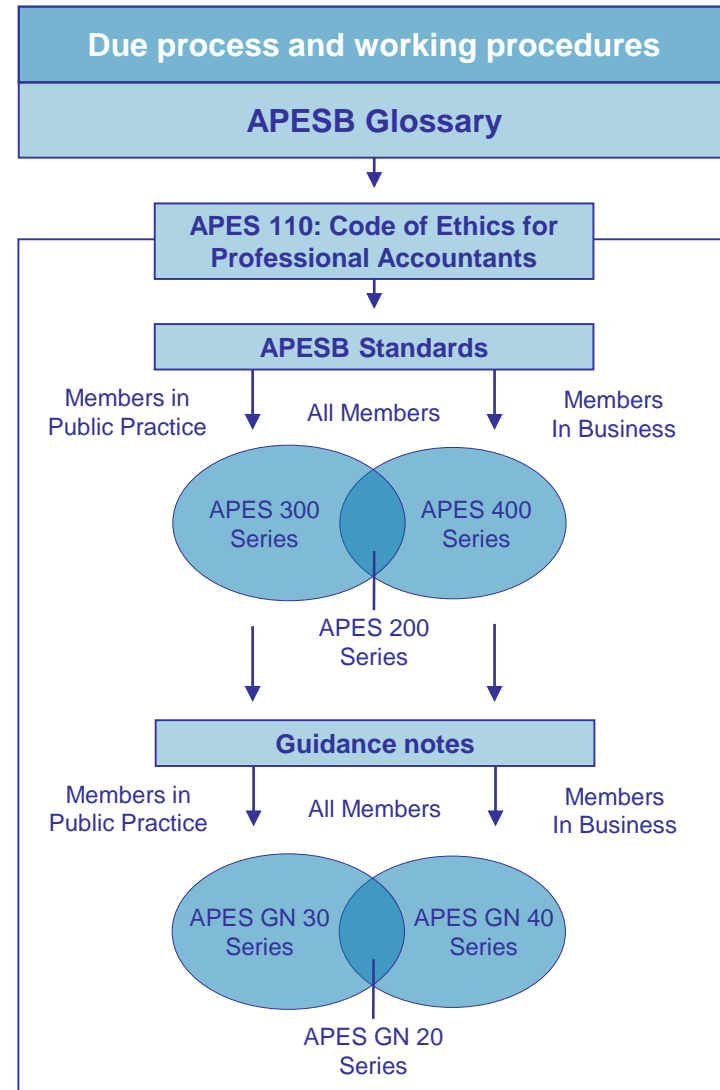
APESB pronouncements

Structure of APESB pronouncements

- **Conceptual Framework**
 - Principles based
 - Mandatory for professional accountants

- **Standard**
 - Introduces principles
 - Mandatory requirements in black letter
 - Guidance and/or explanation in grey letter

- **Guidance notes**
 - Do not introduce new principles
 - Guidance on a specific matter on which the principles are already stated in a Standard
 - Guidance is only in grey letter



APESB Pronouncements to date

All members

- APES 110 *Code of Ethics for Professional Accountants*
- APES 205 *Conformity with Accounting Standards*
- APES 210 *Conformity with Auditing and Assurance Standards*
- APES 215 *Forensic Accounting Services*
- APES 220 *Taxation Services*
- APES 225 *Valuation Services*
- APES 230 *Financial Planning Services*
- APES GN 20 *Scope and Extent of Work for Valuation Services*
- APES GN 21 *Valuation Services for Financial Reporting*

APESB Pronouncements to date

Members in Public Practice

- APES 305 *Terms of Engagement*
- APES 310 *Dealing with Client Monies*
- APES 315 *Compilation of Financial Information*
- APES 320 *Quality Control for Firms*
- APES 325 *Risk Management for Firms*
- APES 330 *Insolvency Services*
- APES 345 *Reporting on Prospective Financial Information Prepared in Connection with a Disclosure Document*
- APES 350 *Participation by Members in Due Diligence Committees in connection with a Public Document*
- APES GN 30 *Outsourced Services*
- APES GN 31 *Professional and Ethical Considerations relating to Low Doc Offering Sign-offs*

APESB Pronouncements to date

Members in Business

- APES GN 40 *Ethical Conflicts in the Workplace*
- APES GN 41 *Management Representations*

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

Global Adoption of IESBA Code

- Adopted, used as basis for national ethical standards or codes in **120+** jurisdictions
- Adopted by the largest **27** international networks of firms (the [Forum of Firms](#)) for transnational audits
- Translated in about **40** languages, including all major UN languages



Highlights of the Restructured Code

- New **user guide** and updated glossary
- Requirements now **separate** to guidance material
- Increased **focus** on compliance with the fundamental principles and independence
- **Enhanced** conceptual framework
- Auditor independence sections are now **Independence Standards**
- Audit Partner Rotation (Long Association) – effective **1 Jan 2019**
- Non-compliance with Laws and Regulations (NOCLAR) – effective **1 Jan 2018**

Highlights of the Restructured Code

- New guidance on **professional judgement** and **professional scepticism**
- Strengthened provisions on **Non-assurance Services**
- New **Inducements** provisions
- Enhanced **PDF features** in APES 110:
 - Bookmarks and **pop-ups** of definitions
 - **Dynamic links** to sections and sub-sections
 - Increased **navigation** within the document and externally

New Structure of the Code of Ethics

SCOPE AND APPLICATION

(All Members)

GLOSSARY

(All Members)

PART 1

Complying with the Code, Fundamental Principles and Conceptual Framework

(Sections 100 to 199)

(All Members)

PART 2

Members in Business
(including employment
relationships of
Members in Public Practice)

(Sections 200 to 299)

PART 3

Members in Public Practice

(Sections 300 to 399)

PARTS 4A & 4B

Independence Standards

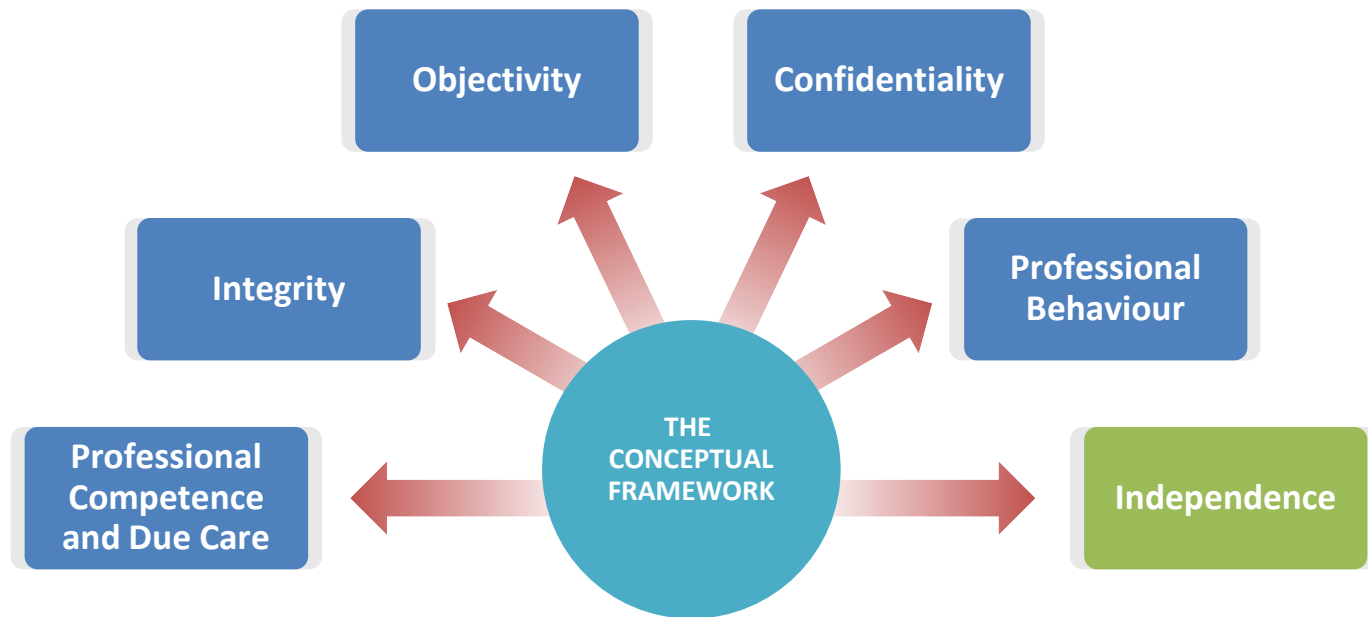
Part 4A—Independence for Audits & Reviews

(Sections
400 to 899)

Part 4B—Independence for Assurance Engagements Other
than Audit & Review Engagements

(Sections
900 to 999)

Overarching requirements



Categories of threats

Self-interest

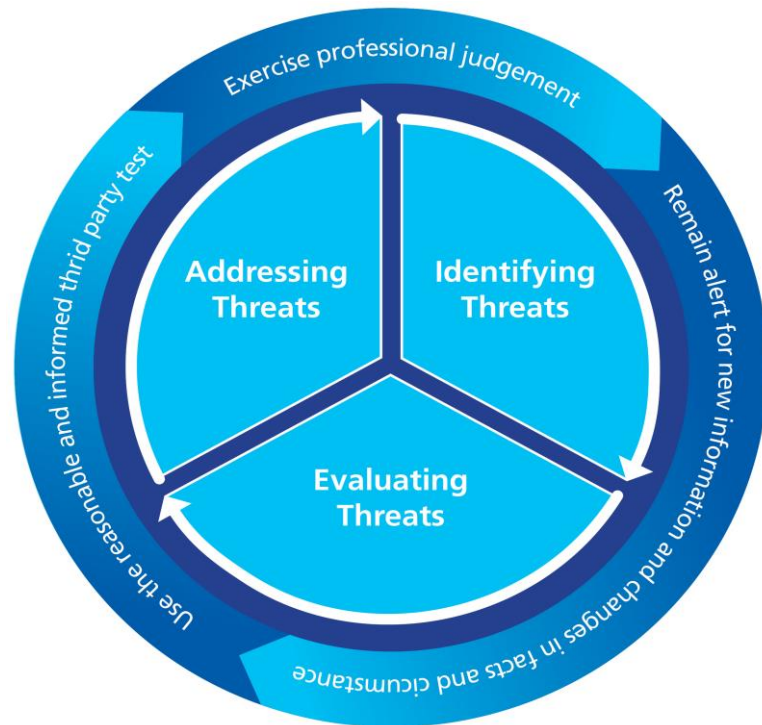
Self-review

Advocacy

Familiarity

Intimidation

Conceptual Framework



- Identified threats that are **not** at Acceptable Level must be addressed in one of three ways:
 - **Eliminate** circumstances creating the threats;
 - **Apply** safeguards; or
 - **Decline** or **end** the specific professional activity/service
- **New requirement** –form an overall conclusion on effectiveness of actions, and remain alert to new information or changes in circumstances

Pressure to breach the fundamental principles

- **New requirement** on pressure to breach the fundamental principles.

*Don't allow pressure from others, or **put pressure** on others, to **breach** the fundamental principles*

NOCLAR

- **An act that causes substantial harm contrary to prevailing laws or regulations:**
- Committed by a client, employer, TCWG, management or other individuals employed by the Client
- Involves serious **adverse consequences** to investors, creditors, employees, general public in **financial** or **non-financial terms**
- Has wide **public interest** implications
- NOCLAR provisions set out a **thought process, relevant factors** to consider a **response framework**

Scope of NOCLAR

NOCLAR or suspected NOCLAR that can cause **substantial harm** relates to matters that:

- Have a **direct and material** effect on a client's or employer's **financial statements**
- Are **fundamental** to an entity's **business/operations** or to avoid **material penalties**

Excludes:

- Inconsequential matters
- Personal misconduct unrelated to business
- Non-compliance **not** committed by a client or employer

Examples of laws and regulations

NOCLAR covers:

- Fraud/corruption/bribery
- Securities markets trading
- AML/CTF/proceeds of crime
- Banking/financial products & services
- Public health and safety
- Data protection
- Tax/pension liabilities
- Environmental protection
- Public health and safety



RioTinto

ATO fraud scandal



Corporate Ethics

The seven signs of corporate ethical collapse

The Seven Signs of Ethical Collapse: How to Spot Moral Meltdowns in Companies Before It's Too Late by Professor Marianne Jennings (2006)

- Pressure to maintain those numbers
- Fear and silence
- Young 'uns and a bigger than life CEO
- Weak Board
- Conflicts
- Innovation like no other
- Goodness in some areas atoning for evil in others

Next steps...

- For more information:

Visit: www.apesb.org.au

- For timely updates, follow the APESB page:

[LinkedIn](#) 

- To download APESB's mobile app:



Q & A session...