

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

Prepared and issued by
Accounting Professional & Ethical Standards Board Limited

EXPOSURE DRAFT **02/16**
ISSUED: December 2016

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Commenting on this Exposure Draft

This Exposure Draft, *Proposed Amendments to APES 110 Code of Ethics for Professional Accountants* due to revisions to IESBA's *Code of Ethics for Professional Accountants*, (Amendments), was developed and approved by the Accounting Professional & Ethical Standards Board Limited (APESB).

The proposals in this Exposure Draft may be modified in light of comments received before being issued in final form. **Comments are requested by 15 March 2017.**

Comments should be addressed to:

The Chairman
Accounting Professional & Ethical Standards Board Limited
Level 11, 99 William Street
Melbourne Victoria 3000
Australia

APESB would prefer that respondents express a clear overall opinion on whether the proposed Amendments, as a whole, is supported and that this opinion be supplemented by detailed comments, whether supportive or critical, on any matter. APESB regards both critical and supportive comments as essential to a balanced view of the proposed Amendments.

Respondents are asked to submit their comments electronically through the APESB website, using the link <http://www.apesb.org.au/apesb-exposure-drafts-open-for-comment>.

Please submit comments in both a PDF and Word file. All comments will be considered a matter of public record and will ultimately be posted on the website www.apesb.org.au.

APESB prefers that comments are submitted via its website. However, if there are practical difficulties, comments can also be sent to sub@apesb.org.au or mailed to the address noted above.

Obtaining a copy of this Exposure Draft

This Exposure Draft is available on the APESB website: www.apesb.org.au. Alternatively, any individual or organisation may obtain one printed copy of this Exposure Draft without charge until **15 March 2017** by contacting:

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Reasons for issuing Exposure Draft 02/16

Accounting Professional & Ethical Standards Board Limited (APESB) proposes to amend the APESB 110 *Code of Ethics for Professional Accountants* (“the Code”) primarily to incorporate the recent changes made by the International Ethics Standards Board for Accountants (IESBA) on the *International Code of Ethics for Professional Accountants*.

Overview of the proposed Amendments

The proposed Amendments to the current version of the Code relate to:

- Responding to Non-Compliance with Laws and Regulations (NOCLAR)
 - (a) Addition of Section 225 (Members in Public Practice) and Section 360 (Members in Business) which set the conceptual framework and guide Members on how to act in the public interest when they become aware of non-compliance or suspected non-compliance with laws and regulations committed by a client or employer.
 - (b) Consequential and conforming changes made on several sections of the Code due to the addition of the above NOCLAR sections.
- Revisions in Sections 290 and 291 in respect of:
 - (a) Long association of personnel (including partner rotation) with an Audit or Assurance Client
 - (i) Enhanced general provisions relating to long association of Members in Public Practice involved in Audit or Assurance Engagements (Section 290 and 291).
 - (ii) Provision of new rotation requirements for Members in Public Practice involved in audits of Public Interest Entities (Section 290).
 - (b) Provision of Non-Assurance Services for Audit and Assurance Clients
 - (i) Removal of exceptions permitting Members in Public Practice to provide accounting and bookkeeping services, including preparation of tax calculations for the purpose of accounting entries’ preparation for Audit Clients that are not Public Interest Entities (PIEs) (Section 290).
 - (ii) Additional guidance and clarification regarding what constitutes management responsibility (Section 290 and Section 291).
 - (iii) Enhanced guidance and clarification regarding the concept of “routine or mechanical” services relating to the preparation of accounting records and Financial Statements for Audit Clients that are not PIEs (Section 290).

Proposed Operative Date

It is intended that the proposed amendments to the Code will be effective from 1 July 2018 with earlier adoption being permitted.

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

ISSUED: [DATE]

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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 apply from the date specified in the respective transitional provisions (refer page 44XX). The amending standards relating to non-compliance with laws and regulations, long association of personnel (including partner rotation) with an Audit or Assurance Client and provision of non-assurance services for Audit or Assurance Clients will be effective 1 July 2018. Early adoption is permitted.

[Paragraphs 1.2 to 1.6 of the extant Code remain unchanged.]

- 1.7 In this Standard, 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

[Definitions in the 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:

[Sub-paragraphs 100.5(a) – 100.5(d) of extant paragraph 100.5 remain unchanged.]

- (e) *Professional behaviour* – to comply with relevant laws and regulations and avoid any ~~action- 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. ~~Instances in which the Member may consider obtaining legal advice vary. For example, a Member may have encountered a fraud,~~

~~the reporting of which could breach the Member's responsibility to respect confidentiality. The Member may consider obtaining legal advice in that instance to determine whether there is a requirement to report.~~

- 100.24 If, after exhausting all relevant possibilities, the ethical conflict remains unresolved, a Member shall, ~~where possible 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

- 100.25 When communicating with Those Charged with Governance in accordance with the provisions of this Code, the Member or Firm shall determine, having regard to the nature and importance of the particular circumstances and matter to be communicated, the appropriate person(s) within the entity's governance structure with whom to communicate. If the Member or Firm communicates with a subgroup of Those Charged with Governance, for example, an audit committee or an individual, the Member or Firm shall determine whether communication with all of Those Charged with Governance is also necessary so that they are adequately informed.

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.

[Sections 110, 120 and 130 of the Code 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~~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 ~~and including ethical~~s 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 ~~action-conduct~~ or omission that the Member knows or should know may discredit the profession. This includes ~~actions-conduct~~ or omissions 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.

[Paragraphs 150.2 of extant Section 150 remain unchanged.]

PART B - MEMBERS IN PUBLIC PRACTICE

[Section 200 of the Code remains 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, ~~questionable~~ issues associated with the client (its owners, management or activities)- ~~210.2 Client issues~~ that, if known, could threaten compliance with the fundamental principles. These include, for example, client involvement in illegal activities (such as money laundering), dishonesty, ~~or~~ questionable financial reporting practices or other unethical behaviour.

210.~~32~~ 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 improve-improving corporate governance practices or internal controls.

210.~~43~~ 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.~~54~~ ~~It is recommended that a Member in Public Practice periodically review acceptance decisions for recurring client engagements.~~ 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 in Public Practice 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 in Public Practice identifies a threat to compliance with the fundamental principles, the Member in Public Practice 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 in Public Practice shall consider terminating the client relationship where termination is not prohibited by law or regulation.

Engagement Acceptance

- 210.65 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 in Public Practice is competent to perform. Before accepting a specific client engagement, a Member in Public Practice 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.
- 210.76 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.
- 210.87 When a Member in Public Practice intends to rely on the advice or work of an expert, the Member in Public Practice 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

210.98 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.

~~210.409~~ A Member in Public Practice shall evaluate the significance of any threats. ~~Depending on the nature of the Engagement, this may require direct communication with the Existing Accountant to establish the facts and circumstances regarding the proposed change so that the Member in Public Practice can decide whether it would be appropriate 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 Existing Accountant that may influence the decision to accept the appointment~~ 210.11 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 Existing predecessor Accountant to provide known information on any facts or circumstances that, in the Existing predecessor Accountant's 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.

~~AUST210.11.1~~ ~~A Member in Public Practice who is asked to replace an existing auditor or to accept nomination as a replacement auditor shall:~~

- ~~(a) Request the prospective client's permission to communicate with the existing auditor. If such permission is refused the Member shall, in the absence of exceptional circumstances, decline the Audit Engagement or the nomination; and~~
- ~~(b) On receipt of permission, request in writing of the existing auditor all information which ought to be available to enable the Member to make a decision as to whether the Audit Engagement or the nomination should be accepted.~~

[Paragraph AUST210.11.1 has been deleted and replaced by 210.14.]

210.112 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.

210.123 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.

210.134 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 ~~legal laws~~ and ~~other~~ 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 professional accountant 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.

AUST210.15.1 The requirements of section 210 also apply where a Member in Public Practice is replacing or being replaced by an accountant who is not a Member.

[Section 220 of the Code remains 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 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 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 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 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 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 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 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 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 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 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'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 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 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 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 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 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 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 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 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 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 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 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 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 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 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.

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).

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 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 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 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 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 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 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 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 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 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'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 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 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 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 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 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 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 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 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 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.

[Sections 230, 240, 250 and 260 of the Code remain unchanged.]

SECTION 270

Custody of Client Assets

[Paragraphs 270.1 – 270.2 of the 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 ~~may consider seeking legal advice~~shall comply with the provisions of Section 225.

[Section 280 of the Code remain unchanged.]

SECTION 290

Independence – Audit and Review Engagements

[Paragraphs 290.1 – 290.147 of the extant Section 290 remain unchanged.]

Long association of ~~senior~~ personnel (including partner rotation) with an Audit Client

General Provisions

290.148 Familiarity and self-interest threats, which may impact an individual's objectivity and professional scepticism, may ~~are~~ be created and may increase in significance when an individual is involved in an Audit Engagement by using the same senior personnel on an Audit Engagement over a long period of time. The significance of the threats will depend on factors such as:

- ~~How long the individual has been a member of the Audit Team;~~
- ~~The role of the individual on the Audit Team;~~
- ~~The structure of the Firm;~~
- ~~The nature of the Audit Engagement;~~
- ~~Whether the client's management team has changed; and~~
- ~~Whether the nature or complexity of the client's accounting and reporting issues has changed.~~

Although an understanding of an Audit Client and its environment is fundamental to audit quality, a familiarity threat may be created as a result of an individual's long association as a member of the Audit Team with:

- The Audit Client and its operations;
- The Audit Client's senior management; or
- The Financial Statements on which the Firm will express an Opinion or the financial information which forms the basis of the Financial Statements.

A self-interest threat may be created as a result of an individual's concern about losing a longstanding client or an interest in maintaining a close personal relationship with a member of senior management or Those Charged with Governance, and which may inappropriately influence the individual's judgement.

- ~~How long the individual has been a member of the Audit Team;~~
- ~~The role of the individual on the Audit Team;~~
- ~~The structure of the Firm;~~
- ~~The nature of the Audit Engagement;~~
- ~~Whether the client's management team has changed; and~~
- ~~Whether the nature or complexity of the client's accounting and reporting issues has changed.~~

290.149 The significance of the threats will depend on factors, individually or in combination, relating to both the individual and the Audit Client.

(a) Factors relating to the individual include:

- The overall length of the individual's relationship with the client, including if such relationship existed while the individual was at a prior Firm.
- How long the individual has been a member of the Engagement Team, and the nature of the roles performed.

- The extent to which the work of the individual is directed, reviewed and supervised by more senior personnel.
- The extent to which the individual, due to the individual's seniority, has the ability to influence the outcome of the audit, for example, by making key decisions or directing the work of other members of the Engagement Team.
- The closeness of the individual's personal relationship with senior management or Those Charged with Governance.
- The nature, frequency and extent of the interaction between the individual and senior management or Those Charged with Governance.

(b) Factors relating to the Audit Client include:

- The nature or complexity of the client's accounting and financial reporting issues and whether they have changed.
- Whether there have been any recent changes in senior management or Those Charged with Governance.
- Whether there have been any structural changes in the client's organisation which impact the nature, frequency and extent of interactions the individual may have with senior management or Those Charged with Governance.

290.150 The combination of two or more factors may increase or reduce the significance of the threats. For example, familiarity threats created over time by the increasingly close relationship between an individual and a member of the client's senior management would be reduced by the departure of that member of the client's senior management and the start of a new relationship.

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

- Rotating the ~~individual senior personnel~~ off the Audit Team;
- Changing the role of the individual on the Audit Team or the nature and extent of the tasks the individual performs.
- Having a Member who was not a member of the Audit Team review the work of the ~~senior personnel/individual~~ or
- Performing Rregular independent internal or external quality reviews of the engagement.
- Performing an Engagement Quality Control Review.

290.152 If a Firm decides that the threats are so significant that rotation of an individual is a necessary safeguard, the Firm shall determine an appropriate period during which the individual shall not be a member of the Engagement Team, provide quality control for the Audit Engagement, or exert direct influence on the outcome of the Audit Engagement. The period shall be of sufficient duration to allow the familiarity and self-interest threats to Independence to be eliminated or reduced to an Acceptable Level. In the case of a Public Interest Entity, paragraphs 290.153 to 290.168 also apply.

Audit Clients that are Public Interest Entities

290.149~~153~~In respect of an audit of a Public Interest Entity, an individual shall not act in any of the following roles, or a combination of such roles, for a period of more than seven cumulative years (the "time-on" period): be a Key Audit Partner for more than seven years.²—After such time, the individual shall not be a member of the Engagement Team or be a Key Audit Partner for the client for two years. During that period, the individual shall not participate in the audit of the entity, provide quality control for the engagement, consult with the Engagement Team or the client regarding technical or industry specific issues, transactions or events or otherwise directly influence the outcome of the engagement.

(a) The Engagement Partner;

(b) The individual appointed as responsible for the Engagement Quality Control Review; or

(c) Any other Key Audit Partner role.

After the time-on period, the individual shall serve a cooling-off period in accordance with the provisions in paragraphs 290.155 – 290.163.

290.154 In calculating the time-on period, the count of years may be restarted if the individual ceases to act in any one of the above roles for a consecutive period equal to at least the cooling-off period determined in accordance with paragraphs 290.155 to 290.157 as applicable to the role in which the individual served in the year immediately before ceasing such involvement. For example, an individual who served as Engagement Partner for four years followed by five consecutive years off the Audit Engagement may thereafter return to the same Audit Engagement for a cumulative period of seven years in any one of the roles in paragraph 290.153(a) – (c) above or a combination of such roles.

Cooling-off Period

290.155 If the individual acted as the Engagement Partner for seven cumulative years, the cooling-off period shall be five consecutive years.

290.156 Where the individual has been appointed as responsible for the Engagement Quality Control Review and has acted in that capacity for seven cumulative years, the cooling-off period shall be three consecutive years.

290.157 If the individual has acted in any other capacity as a Key Audit Partner for seven cumulative years, the cooling-off period shall be two consecutive years.

Service in a combination of Key Audit Partner roles

290.158 If the individual acted in a combination of Key Audit Partner roles and served as the Engagement Partner for four or more years, the cooling-off period shall be five consecutive years.

290.159 If the individual acted in a combination of Key Audit Partner roles and served as the Key Audit Partner responsible for the Engagement Quality Control Review for four or more years, the cooling-off period shall, subject to paragraph 290.160(a), be three consecutive years.

² Refer to s324DA of the *Corporations Act 2001* which has more restrictive Audit Partner rotation requirements for Listed Entities in Australia.

290.160 If an individual has acted in a combination of Engagement Partner and Engagement Quality Control Review roles for four or more years in aggregate during the time-on period, the cooling-off period shall be:

- (a) Five consecutive years where the individual has been the Engagement Partner for three or more years; or
- (b) Three consecutive years in the case of any other combination.

290.161 If the individual acted in any other combination of Key Audit Partner roles, the cooling-off period shall be two consecutive years.

Service at a Prior Firm

290.162 In determining the number of years that an individual has been a Key Audit Partner under paragraphs 290.153 to 290.154, the length of the relationship shall, where relevant, include time while the individual was a Key Audit Partner on that engagement at a prior Firm.

Alternative Jurisdictional Approaches to Addressing Threats Created by Long Association

290.163 A legislative body or regulator (or organisation authorised by such legislative body or regulator) may have evaluated the familiarity and self-interest threats to Independence that arise from long association with an Audit Client and determined that a different set or combination of requirements to those established in this Section is appropriate to reduce the threats to an Acceptable Level. In such circumstances, the cooling-off period of five consecutive years specified in paragraphs 290.155, 290.158 and 290.160 may be reduced to three consecutive years if, in relation to the audit of that Public Interest Entity:

- (a) The legislative body or regulator (or organisation authorised by such legislative body or regulator) has established requirements for:
 - (i) A time-on period shorter than seven years during which an individual is permitted to be the Engagement Partner; or
 - (ii) Mandatory Firm rotation or mandatory re-tendering of the audit appointment after a predefined period; or
 - (iii) Joint audits; and
- (b) An independent regulatory inspection regime operates in the jurisdiction.

AUST290.163.1 In Australia, the provisions of paragraph 290.163 apply to circumstances where legislation or regulator prescribes a time-on period of shorter than seven years during which an individual is permitted to be Engagement Partner in the audits of Public Interest Entities.² In these circumstances, the cooling-off period may be reduced to three consecutive years. However, where the Audit Client has exercised an option, in accordance with legislation or regulation, to extend the Engagement Partner's time-on period to seven years, the cooling-off period shall be five consecutive years.

Restrictions on Activities During the Cooling-off Period

290.164 For the duration of the relevant cooling-off period, the individual shall not:

² Refer to s324DA of the *Corporations Act 2001* which has more restrictive Audit Partner rotation requirements for Listed Entities in Australia.

- (a) Be a member of the Engagement Team or provide quality control for the Audit Engagement;
- (b) Consult with the Engagement Team or the client regarding technical or industry-specific issues, transactions or events affecting the Audit Engagement (other than discussions with the Engagement Team limited to work undertaken or conclusions reached in the last year of the individual's time-on period where this remains relevant to the audit). However, if an individual who has acted as the Engagement Partner or the individual responsible for the Engagement Quality Control Review is also, or becomes, an individual whose primary responsibility is to be consulted within a Firm on a technical or industry-specific issue, the individual may provide such technical consultation to the Engagement Team provided:
 - (i) Two years have elapsed since the individual was a member of the Engagement Team or the individual responsible for the Engagement Quality Control Review;
 - (ii) There is no other partner within the Firm expressing the audit opinion with the expertise to provide the advice; and
 - (iii) Such consultation is in respect of an issue, transaction or event that was not previously considered by that individual in the course of acting as the Engagement Partner or the individual responsible for the Engagement Quality Control Review;
- (c) Be responsible for leading or coordinating the Firm's Professional Services to the Audit Client or overseeing the Firm's relationship with the Audit Client; or
- (d) Undertake any other role or activity not referred to above with respect to the Audit Client, including the provision of non-assurance services, that would result in the individual:
 - (i) Having significant or frequent interaction with senior management or Those Charged with Governance; or
 - (ii) Exerting direct influence on the outcome of the Audit Engagement.

The provisions of this paragraph are not intended to prevent the individual from assuming a leadership role in the Firm, such as that of the Senior or Managing Partner.

Other Matters

290.165 There may be situations where a Firm, based on an evaluation of threats in accordance with the general provisions above, concludes that it is not appropriate for an individual who is a Key Audit Partner to continue in that role even though the length of time served as a Key Audit Partner is less than seven years. In evaluating the threats, particular consideration shall be given to the roles undertaken and the length of the individual's association with the Audit Engagement prior to an individual becoming a Key Audit Partner.

290.15066 Despite paragraph 290.449153-290.161, Key Audit Partners whose continuity is especially important to audit quality may, in rare cases due to unforeseen circumstances outside the Firm's control, and with the concurrence of Those Charged with Governance, be permitted to serve an additional year as a Key Audit Partner on the Audit Team ~~on the Audit Team~~ as long as the threat to Independence can be eliminated or reduced to an Acceptable Level by applying safeguards. For example, a Key Audit Partner may remain in that role on the Audit Team for up to one additional year in circumstances where, due to unforeseen events, a required rotation was not possible, as might be the case due to serious illness of the intended Engagement Partner. The

Firm shall discuss with Those Charged with Governance the reasons why the planned rotation cannot take place and the need for any safeguards to reduce any threat created.

~~290.151 The long association of other partners with an Audit Client that is a Public Interest Entity creates familiarity and self-interest threats. The significance of the threats will depend on factors such as:~~

- ~~• How long any such partner has been associated with the Audit Client;~~
- ~~• The role, if any, of the individual on the Audit Team; and~~
- ~~• The nature, frequency and extent of the individual's interactions with the client's management or Those Charged with Governance.~~

~~The significance of the threats shall be evaluated and safeguards applied when necessary to eliminate the threats or reduce them to an Acceptable Level. Examples of such safeguards include:~~

- ~~• Rotating the partner off the Audit Team or otherwise ending the partner's association with the Audit Client; or~~
- ~~• Regular independent internal or external quality reviews of the engagement.~~

290.152-67 When an Audit Client becomes a Public Interest Entity, the length of time the individual has served the Audit Client as a Key Audit Partner before the client becomes a Public Interest Entity shall be taken into account in determining the timing of the rotation.³ If the individual has served the Audit Client as a Key Audit Partner for a period of five cumulative years or less when the client becomes a Public Interest Entity, the number of years the individual may continue to serve the client in that capacity before rotating off the engagement is seven years less the number of years already served. If the individual has served the Audit Client as a Key Audit Partner for six or more cumulative years when the client becomes a Public Interest Entity, the partner may continue to serve in that capacity with the concurrence of Those Charged with Governance for a maximum of two additional years before rotating off the engagement.

290.15368 When a Firm has only a few people with the necessary knowledge and experience to serve as a Key Audit Partner on the audit of a Public Interest Entity, rotation of Key Audit Partners may not be an available safeguard. If an independent regulator⁴ in the relevant jurisdiction has provided an exemption from partner rotation in such circumstances, an individual may remain a Key Audit Partner for more than seven years, in accordance with such regulation, provided that the independent regulator has specified alternative safeguards which are applied, such as a regular independent external review.

Provision of Non-assurance Services to Audit Clients

[Paragraphs 290.154 – 290.158 of extant Section 290 remain unchanged but renumbered as paragraphs 290.169 – 290.173.]

3 Refer to s324DA of the *Corporations Act 2001* which has more restrictive Audit Partner rotation requirements for Listed Entities in Australia.

4 Refer to s342A of the *Corporations Act 2001* which specifies that the Australian Securities and Investment Commission may grant extensions.

Management Responsibilities

290.15974 Management ~~of an entity performs many activities in managing the entity in the best interests of stakeholders of the entity. It is not possible to specify every activity that is a management responsibility. However, management~~ responsibilities involve controlling, leading and directing an entity, including making ~~significant~~ decisions regarding the acquisition, deployment and control of human, financial, technological, physical and intangible resources.

290.16075 ~~Determining~~ ~~Whether~~ an activity is a management responsibility depends on the circumstances and requires the exercise of judgement. Examples of activities that would ~~generally~~ 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 entity's 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 ~~the~~ Financial Statements in accordance with the applicable financial reporting framework; ~~and~~
- Taking responsibility for designing, implementing, monitoring or ~~and~~ maintaining internal controls.

290.161 ~~Activities that are routine and administrative, or involve matters that are insignificant, generally are deemed not to be a management responsibility. For example, executing an insignificant transaction that has been authorised by management or monitoring the dates for filing statutory returns and advising an Audit Client of those dates is deemed not to be a management responsibility. Further, providing advice and recommendations to assist management in discharging its responsibilities is not assuming a management responsibility.~~

290.16276 ~~If a~~ Firm shall not ~~were to~~ 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. ~~Therefore, the Firm shall not assume a management responsibility for an Audit Client. Subject to compliance with paragraph 290.177, providing advice and recommendations to assist management in discharging its responsibilities is not assuming a management responsibility.~~

290.16377 To avoid the risk of assuming a management responsibility when providing non-assurance services to an Audit Client, the Firm shall be satisfied that ~~a member of client management is responsible for making the significant~~ makes all judgements and decisions that are the ~~proper~~ 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 ~~evaluating~~ evaluates the adequacy of the results of the services performed for the client's purpose; and
- ~~and a~~ Accepting responsibility for the actions, if any, to be taken arising from the results of the services. This reduces the risk of the Firm inadvertently making any significant judgements or decisions on behalf of management. The risk is further reduced when the Firm gives the client the opportunity to make judgements and decisions based on an objective and transparent analysis and presentation of the issues.

Administrative Services

290.178 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

290.16479 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. Originating or changing journal entries, or determining the account classifications of transactions; and~~
- 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.

290.16580 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.

290.16681 The audit process, however, necessitates dialogue between the Firm and management of the Audit Client, which may involve:

- ~~(a) The application of accounting standards or policies and Financial Statement disclosure requirements;~~
- ~~(b) The appropriateness of financial and accounting control and the methods used in determining the stated amounts of assets and liabilities;~~ or

- ~~(e) P~~ 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.

290.1~~6782~~ 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

290.1~~6883~~ 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. Some Eexamples of such services include:

- ~~Providing~~ Preparing payroll services 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 ~~for which~~ 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. Posting transactions coded by the client to the general ledger;
- 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; ~~and~~
- 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.

Audit Clients that are Public Interest Entities

290.16984A Firm shall not provide to an Audit Client that is a Public Interest Entity accounting and bookkeeping services, including payroll services, or prepare Financial Statements on which the Firm will express an Opinion or financial information which forms the basis of the Financial Statements.

290.17085Despite paragraph 290.16984, a Firm may provide accounting and bookkeeping services, including payroll services and the preparation of Financial Statements or other financial information, of a routine or mechanical nature for divisions or Related Entities of an Audit Client that is a Public Interest Entity if the personnel providing the services are not members of the Audit Team and:

- (a) The divisions or Related Entities for which the service is provided are collectively immaterial to the Financial Statements on which the Firm will express an Opinion; or
- (b) The services relate to matters that are collectively immaterial to the Financial Statements of the division or Related Entity.

~~Emergency Situations—Audit Clients that are not Public Interest Entities~~

~~290.171 Accounting and bookkeeping services, which would otherwise not be permitted under this section, may be provided to Audit Clients that are not Public Interest Entities in emergency or other unusual situations when it is impractical for the Audit Client to make other arrangements. This may be the case when (a) only the Firm has the resources and necessary knowledge of the client's systems and procedures to assist the client in the timely preparation of its accounting records and Financial Statements, and (b) a restriction on the Firm's ability to provide the services would result in significant difficulties for the client (for example, as might result from a failure to meet regulatory reporting requirements). In such situations, the following conditions shall be met:~~

- ~~(a) Those who provide the services are not members of the Audit Team;~~
- ~~(b) The services are provided for only a short period of time and are not expected to recur;~~
~~and~~
- ~~(c) The situation is discussed with Those Charged with Governance.~~

[Paragraphs 290.172 – 290.177 of extant Section 290 remain unchanged but renumbered as paragraphs 290.186 – 290.191.]

Taxation Services

[Paragraphs 290.178 – 290.181 of extant Section 290 remain unchanged but renumbered as paragraphs 290.192 – 290.195]

Tax Calculations for the Purpose of Preparing Accounting Entries

Audit Clients that are Public Interest Entities

290.18296In the case of an Audit Client that is a Public Interest Entity, a Firm shall not prepare tax calculations of current and deferred tax liabilities (or assets) for the purpose of preparing accounting entries that are material to the Financial Statements on which the Firm will express an Opinion.

~~Emergency Situations—Audit Clients that are not Public Interest Entities~~

~~290.183—The preparation of calculations of current and deferred tax liabilities (or assets) for an Audit Client that is not a Public Interest Entity for the purpose of the preparation of accounting entries, which would otherwise not be permitted under this section, may be provided to Audit Clients in emergency or other unusual situations when it is impractical for the Audit Client to make other arrangements. This may be the case when (a) only the Firm has the resources and necessary knowledge of the client's business to assist the client in the timely preparation of its calculations of current and deferred tax liabilities (or assets), and (b) a restriction on the Firm's ability to provide the services would result in significant difficulties for the client (for example, as might result from a failure to meet regulatory reporting requirements). In such situations, the following conditions shall be met:~~

- ~~(a)—Those who provide the services are not members of the Audit Team;~~
- ~~(b)—The services are provided for only a short period of time and are not expected to recur;
and~~
- ~~(c)—The situation is discussed with Those Charged with Governance.~~

[Paragraphs 290.184 – 290.228 of extant Section 290 have remained unchanged but renumbered as paragraphs 290.197-290.241.]

Paragraphs 290.242 to 290.499 are intentionally left blank.

[Paragraphs 290.500 – 290.514 of extant Section 290 have remained unchanged.]

SECTION 291

Independence – Other Assurance Engagements

[Paragraphs 291.1 – 37 have of the extant Section 291 have remained unchanged.]

Paragraphs 291.38 to 291.99 are intentionally left blank.

[Paragraphs 291.100 – 291.36 of the extant Section 291 have remained unchanged.]

Long Association of Senior Personnel with an Assurance Clients

291.137 Familiarity and self-interest threats, which may impact an individual's objectivity and professional scepticism, may ~~are~~ be created and may increase in significance when an individual is involved by using the same senior personnel on an Assurance Engagement of a recurring nature over a long period of time. ~~The significance of the threats will depend on factors such as:~~

A familiarity threat may be created as a result of an individual's long association with:

- The Assurance Client; or
- The subject matter and subject matter information of the Assurance Engagement.

A self-interest threat may be created as a result of an individual's concern about losing a longstanding Assurance Client or an interest in maintaining a close personal relationship with the Assurance Client or a member of senior management and which may inappropriately influence the individual's judgement.

291.138 The significance of the threats will depend on factors, considered individually or in combination, such as:

- The nature of the Assurance Engagement.
- How long the individual has been a member of the Assurance Team, the individual's seniority on the team, and the nature of the roles performed, including if such a relationship existed while the individual was at a prior Firm.
- The extent to which the work of the individual is directed, reviewed and supervised by more senior personnel.
- The extent to which the individual, due to the individual's seniority, has the ability to influence the outcome of the Assurance Engagement, for example, by making key decisions or directing the work of other members of the Engagement Team.
- The closeness of the individual's personal relationship with the Assurance Client or, if relevant, senior management.
- ~~The role of the individual on the Assurance Team;~~
- ~~The structure of the Firm;~~
- The nature, ~~of the Assurance Engagement;~~ frequency and extent of interaction between the individual and the Assurance Client.
- ~~Whether the client's management team has changed; and~~

- Whether the nature or complexity of the subject matter ~~or subject matter~~ information has changed.
- Whether there have been any recent changes in the individual or individuals who are the responsible party, or if relevant, senior management.

291.139 The combination of two or more factors may increase or reduce the significance of the threats. For example, familiarity threats created over time by the increasingly close relationship between an individual and the Assurance Client would be reduced by the departure of the person who is the responsible party and the start of a new relationship.

291.140 The significance of ~~the any~~ threats shall be evaluated and safeguards applied when necessary to eliminate the threats or reduce them to an Acceptable Level. Examples of such safeguards include:

- Rotating the senior personnel off the Assurance Team;
- Changing the role of the individual on the Assurance Team or the nature and extent of the tasks the individual performs.
- Having a Member who ~~was~~ is not a member of the Assurance Team review the work of the ~~senior personnel;~~ or individual.
- Performing a ~~R~~regular independent internal or external quality reviews of the engagement.
- Performing an Engagement Quality Control Review.

291.141 If a Firm decides that the threats are so significant that rotation of an individual is a necessary safeguard, the Firm shall determine an appropriate period during which the individual shall not be a member of the Engagement Team, provide quality control for the Assurance Engagement, or exert direct influence on the outcome of the Assurance Engagement. The period shall be of sufficient duration to allow the familiarity and self-interest threats to be eliminated or reduced to an Acceptable Level.

Provision of Non-assurance Services to Assurance Clients

[Paragraphs 291.138 – 291.140 of the extant Section 291 have remained unchanged but renumbered as paragraphs 291.142 – 291.144.]

Management Responsibilities

291.1415 Management ~~of an entity performs many activities in managing the entity in the best interests of stakeholders of the entity. It is not possible to specify every activity that is a management responsibility. However, management~~ responsibilities involve controlling, leading and directing an entity, including making significant decisions regarding the acquisition, deployment and control of human, financial, technological, physical and intangible resources.

291.1426 Determining ~~W~~whether an activity is a management responsibility depends on the circumstances and requires the exercise of judgement. Examples of activities that would ~~generally~~ 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 entity's 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 ~~and~~ maintaining internal controls.

~~291.143 Activities that are routine and administrative, or involve matters that are insignificant, generally are deemed not to be a management responsibility. For example, executing an insignificant transaction that has been authorised by management or monitoring the dates for filing statutory returns and advising an Assurance Client of those dates is deemed not to be a management responsibility. Further, providing advice and recommendations to assist management in discharging its responsibilities is not assuming a management responsibility.~~

~~291.1447 Assuming a management responsibility for an Assurance Client may create threats to Independence. If a 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. Accordingly, 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 and/or subject matter information of an Assurance Engagement provided by the Firm.~~

~~291.1458 To avoid the risk of assuming a management responsibility related to the subject matter or subject matter information of the Assurance Engagement, When providing services that are related to the subject matter information of an Assurance Engagement provided by the Firm, the Firm shall be satisfied that a member of client management is responsible for making makes the significant all judgements and decisions relating to the subject matter or subject matter information of the Assurance Engagement that are the proper 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
- and accepts responsibility for the actions, if any, to be taken arising from the results of the services. This reduces the risk of the Firm inadvertently making any significant

~~judgements or decisions on behalf of management. This risk is further reduced when the Firm gives the client the opportunity to make judgements and decisions based on an objective and transparent analysis and presentation of the issues.~~

[Paragraphs 291.146 – 291.157 of extant Section 291 have remained unchanged but renumbered as paragraphs 291.149 – 291.160.]

PART C - MEMBERS IN BUSINESS

[Sections 300, 310, 320, 330, 340 and 350 of the Code 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' 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' 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 ("Senior Members") 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 within the employing organisation.

Obtaining an Understanding of the Matter

360.14 If, in the course of carrying out Professional Activities, a Senior Member 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 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 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 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 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 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's 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's 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 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 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 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 Member 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 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 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 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 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 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 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 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.

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 and Member;
- 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;
- ~~Unless strict requirements are met, APES 110 prohibits Members in Public Practice from providing accounting and bookkeeping services and preparing tax calculations for Audit Clients which are Public Interest Entities, even in emergency situations (refer paragraphs 290.169 – 290.170 and 290.182).~~