



***Annual Review of APES GN 40 Ethical Conflicts in the Workplace –
Considerations for Members in Business***

Prepared by
Rozelle Azad
Margareth Lioe

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1. Executive Summary

1.1 Background

Accounting Professional and Ethical Standards Board (APESB) issued APES GN 40 *Ethical Conflicts in the workplace – Considerations for Members in Business* in March 2012. This Guidance Note superseded GN 1 *Members in Business Guidance Statement* jointly issued by ICAA and CPA Australia.

1.2 Reason for this report

In accordance with APESB's constitution, a review needs to be performed on an annual basis after a new standard or guidance note is effective to identify any issues reported by stakeholders. This report presents a review of the issues reported to the APESB or identified by an internal technical review and the proposed recommendations to address the identified issues.

1.3 Issues identified

Defined terms

The Technical staff review identified that the definitions section in APES GN 40 needs to be revised as a result of the IESBA's revision of the International Code and APESB's subsequent amendments to APES 110 *Code of Ethics for Professional Accountants* (the Code).

Removal of references to the term "Professional Services"

The Technical staff review identified that as a result of the amended definition of *Professional Services* in the Code, the term is no longer relevant to Members in Business.

Editorial changes required as a result of amended descriptors in sections 310 and 340 of the Code and other amendments

The Technical staff review identified that the Code has amended descriptors for sections 310 and 340 of the Code which leads to consequential amendments to APES GN 40. A stakeholder has also identified a minor editorial amendment in respect of Case Study 20.

1.4 Summary of Recommendations

Defined terms

It is recommended that the defined term "*Professional Services*" be removed from the Guidance Note and the definitions of "*Acceptable Level*", "*Member*" and "*Those Charged with Governance*" be revised. A new defined term "*Professional Activity*" should also be

added to the Guidance Note for consistency with the Code. This is to be done at the next revision of APES GN 40.

Removal of references to the term “Professional Services”

It is recommended that paragraphs 1.7, 3.3, 3.4 and 12.1 of APES GN 40 be amended to remove the term “Professional Services”. This is to be done at the next revision of APES GN 40.

Editorial changes required as a result of amended descriptors for sections 310 and 340 of the Code and other amendments

It is recommended that paragraphs 6.3, 7.2 and 10.1 APES GN 40 be amended to reflect the revised descriptors in the Code. As noted in the Issues Register, there is a minor editorial in respect of Case Study 20 that also requires amendment. It is recommended that these changes be processed at the next revision of APES GN 40.

2. Review of Issues

2.1 Defined terms

Issue

The technical review identified that one definition needs to be removed, three definitions need to be revised and a new definition needs to be added to APES GN 40.

Definition to be removed

Professional Services means services requiring accountancy or related skills performed by a Member including accounting, auditing, taxation, management consulting and financial management services.

Definitions to be revised

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

Member means a member of a professional body that has adopted this Code as applicable to their membership, as defined by that professional body.

Those Charged with Governance means the person(s) or organisation(s) (for example, a corporate trustee) with responsibility for overseeing the strategic direction of the entity and obligations related to the accountability of the entity.

This includes overseeing the financial reporting process. For some entities in some jurisdictions, Those Charged with Governance may include management personnel, for example, executive members of a governance board of a private or public sector entity or an owner-manager.

Definition to be added

Professional Activity means an activity requiring accountancy or related skills undertaken by a Member, including accounting, auditing, taxation, management consulting, and financial management.

Subsequent to the revision of the definitions section, consequential editorial amendments may also be required to APES GN 40.

Impacted Stakeholders

Members in Business, Employers and Professional Bodies

Recommendation

The defined terms in APES GN 40 should be revised in a manner consistent with the Code and other APESB Standards. It is recommended that these changes and any other consequential amendments be processed at the next revision of APES GN 40.

2.2 Removal of references to the term “Professional Services”

Issue

The technical review identified that as the Code has been revised to limit the application of Professional Services to activities carried out by Members in Public Practice. It now does not apply to activities carried out by Members in Business. Accordingly, the reference to “Professional Services” throughout this Guidance Note should be removed.

Paragraphs to be amended:

- 1.7 Members in Business need to be familiar with relevant Professional Standards and Guidance Notes when providing Professional Services performing a Professional Activity.
- 3.3 The term Professional Activity Services is defined as an activity in the Code as services requiring accountancy or related skills performed by a Member, including accounting, auditing, taxation, management consulting and financial management. Whilst a number of these services are typically performed by Members in Public Practice, services performed by Members in Business for the Employer are also captured by the definition of Professional Activity Services. Such activities ~~services~~ typically include those performed by financial

accountants, tax accountants, financial analysts, financial planners, management accountants, internal auditors and financial controllers.

- 3.4 A Member in Business who performs a provides Professional Services Activity is required to comply with *Part A – General Application of the Code* and *Part C – Members in Business* including *Section 100 Introduction and Fundamental Principles* and any relevant law or regulation. Part C is specific to Members in Business and describes the application of the fundamental principles to some of the more commonly encountered situations that may create threats to compliance with the fundamental principles.
- 12.1 In accordance with Section 140 *Confidentiality* of the Code, a Member in Business who acquires confidential information in the course of performing providing a Professional Service Activity is prohibited from disclosing that information without proper and specific authority or unless there is a legal or professional right or duty to disclose it.

Impacted Stakeholders

Members in Business. Employers and Professional Bodies

Recommendation

The references to the term “Professional Services” in APES GN 40 should be removed and consequential amendments to be made to the text of relevant paragraphs as noted above. It is recommended that these changes be processed at the next revision of APES GN 40.

2.3 *Editorial changes required as a result of amended descriptors in sections 310 and 340 of the Code and other amendments*

Issue

The technical review identified that as a result of changes to the descriptors in sections 310 and 340 of the Code editorial amendments are required to APES GN 40 as follows:

- 6.3 APES 110 PART C Sections 310-350 specifies professional obligations of Members in Business in the following circumstances:
- Section 310 – ~~Potential~~Conflicts of Interest;
 - Section 320 – Preparation and Reporting of Information;
 - Section 330 – Acting with Sufficient Expertise;
 - Section 340 – Financial Interests, Compensation and Incentives Linked to Financial Reporting and Decision Making; and
 - Section 350 – Inducements.

- 7.2 Where potential conflicts arise, a Member in Business is required to comply with section 310 *Potential Conflicts of Interest* of the Code. Examples and the potential approaches to resolving such conflicts are shown in Case Studies 1 - 4.
- 10.1 Financial interests of a Member in Business or their immediate or close family members may give rise to threats to compliance with the fundamental principles of the Code. The Member is required to comply with section 340 *Financial Interests, Compensation and Incentives Linked to Financial Reporting and Decision Making* of the Code in such circumstances. The Code requires the Member to evaluate the significance of such a threat, and the appropriate safeguards to be applied. The Member should examine the nature of the financial interest which includes considerations such as the significance of the interest and whether it is direct or indirect, as well as the value of the interest. An example showing considerations which may be applied by Members where financial interests threaten compliance with the fundamental principles of the Code is provided in Case Study 11. An additional example of personal financial gain for a Member is provided in Case Study 13.

A stakeholder raised a minor editorial comment in relation to Case Study 20 of the Guidance Note. In the Case outline, the reference to 'him' should be replaced with 'her'. The Board agreed to this minor editorial amendment when the APES GN 40 six month review was performed.

Impacted Stakeholders

Members in Business, Employer and Professional Bodies

Recommendation

The editorial amendments to paragraph 6.3, 7.2, 10.1 and Case Study 20 be processed at the next revision of APES GN 40.