

4 March 2020

### **APESB issues revised APES GN 40 *Ethical Conflicts in the Workplace – Considerations for Member in Business***

Accounting Professional & Ethical Standards Board Limited (APESB) today announced the issue of the revised APES GN 40 *Ethical Conflicts in the Workplace – Considerations for Member in Business* (APES GN 40) to replace the existing APES GN 40 (Issued October 2015).

The key changes in the revised APES GN 40 consist of:

- Revisions to reflect the restructured APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)*, issued in November 2018;
- Amendments to the Scope and Application section to align with other APESB pronouncements;
- Inclusion of guidance which refers Members to requirements in relation to responding to Non-compliance with Laws and Regulations (NOCLAR) in the Code;
- Inclusion of references and guidance on the updated whistleblowing legislation;
- Inclusion of guidance for Members when they face pressure to breach the fundamental principles; and
- An updated layout for the case studies within Section 14 for improved readability.

Please refer to Appendix 1 of this technical update for details of all the revisions. The revised APES GN 40 will be effective as of the date of issue.

APESB has incorporated the following interactive PDF features within the revised APES GN 40:

- Bookmark tab section for contents page;
- Dynamic links to sections and paragraphs;
- Pop-up definitions upon mouse rollover for defined terms; and
- Links to external websites.

The revised standard is available from APESB's website: [www.apesb.org.au](http://www.apesb.org.au)

– ENDS –

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## Appendix 1

### Revision to APES GN 40 (Issued October 2015)

Accounting Professional & Ethical Standards Board Limited (APESB) has approved the following revisions to APES GN 40 *Ethical Conflicts in the Workplace – Considerations for Member in Business* which was originally issued in March 2012 and revised in October 2015 (extant APES GN 40).

Paragraph/Section Reference	Revisions
1.1	<p>The objectives of APES GN 40 <i>Ethical Conflicts in the Workplace – Considerations for Members in Business</i> are to provide guidance to a Member in Business in respect of:</p> <ul style="list-style-type: none"> <li>• fundamental responsibilities of the Member in Business when dealing with ethical conflicts in the workplace;</li> <li>• the application of the conceptual framework in the Code to identify, evaluate and address ethical issues;</li> <li>• specific circumstances such as dealing with conflicts of interest, reporting of information, acting with sufficient expertise, financial interests, <del>and inducements, responding to non-compliance with laws and regulations and pressure to breach the fundamental principles;</del> and</li> <li>• the disclosure of confidential information of an Employer to a third party and whistleblowing.</li> </ul>
1.2	<p>Accounting Professional &amp; Ethical Standards Board Limited (APESB) has revised professional guidance note APES GN 40 <i>Ethical Conflicts in the Workplace – Considerations for Members in Business</i> (the Guidance Note). This Guidance Note <u>is effective from the date of issue and supersedes APES GN 40 issued in March 2012 October 2015.</u></p>
1.3	<p>APES GN 40 provides guidance to Members in Business on the application of the fundamental principles contained within <del>Part A: General Application</del> <u>Part 1 Complying with the Code, Fundamental Principles and Conceptual Framework</u> and <del>Part C: 2 Members in Business (including employment relationships of Members in Public Practice) of APES 110 Code of Ethics for Professional Accountants</del> (the Code). The Guidance Note provides examples for Members in Business of situations that require professional judgement in the application of the principles of the Code.</p>
<u>1.4</u>	<p><u>Members in Business using this Guidance Note should refer to APESB's <i>Due process and working procedures for the development and review of APESB pronouncements</i> (APESB's Due Process document). The APESB's Due Process document provides the meaning of the term 'should' used in this Guidance Note.<sup>1</sup></u></p>
<u>Footnote 1</u>	<p><u>Refer to APESB's Due Process document, Section 5, Paragraph 5.2(e).</u></p>
<u>1.54</u>	<p>Members in Business working in Australia should follow the guidance in APES GN 40 when they provide <del>services</del> <u>Professional Activities</u> to their Employer.</p>
<u>1.65</u>	<p>Members in Business <del>working</del> outside of Australia should follow the guidance in APES GN 40 to the extent to which they are not prevented from so doing by specific requirements of local laws and/or regulations.</p>

Paragraph/Section Reference	Revisions
1.76 to 1.87	[Paragraphs 1.6 to 1.7 of extant APES GN 40 remain unchanged, but have been renumbered as paragraphs 1.7 to 1.8.]
1.98	Members in Business <del>should be familiar</del> <u>are required to comply with relevant other applicable Professional Standards and be familiar with relevant guidance notes when performing Professional Activities for Employers. All Members are required to comply with the fundamental principles outlined in the Code.</u>
1.109 to 1.110	[Paragraphs 1.9 to 1.10 of extant APES GN 40 remain unchanged, but have been renumbered as paragraphs 1.10 to 1.11.]
2	<u>Defined terms are shown in the body of the Guidance Note in title case.</u> For the purpose of this Guidance Note:
2	<b>Acceptable Level</b> means a level at which a <u>Member using the reasonable and informed third party test would be likely to conclude, weighing all the specific facts and circumstances available to that the Member at that time, that compliance complies with the fundamental principles is not compromised.</u>
2	<b>Close Family</b> means a <u>parent, child or sibling who is not an Immediate Family member.</u>
2	<b>Code</b> means APES 110 <i>Code of Ethics for Professional Accountants (including Independence Standards)</i> .
2	<b>Employer</b> <del>within the context of this Guidance Note</del> means an entity or person that employs, engages or contracts a Member in Business.
2	<b>Immediate Family</b> means a <u>spouse (or equivalent) or dependant.</u>
2	<b>Inducement</b> means <u>an object, situation, or action that is used as a means to influence another individual's behaviour, but not necessarily with the intent to improperly influence that individual's behaviour.</u>
2	<b>Member in Business</b> means a Member <del>employed or engaged working in an executive or non-executive capacity in such areas such as commerce, industry, service, the public sector, education, the not-for-profit sector, or in regulatory bodies or professional bodies, who might be an employee, contractor, partner, director (executive or non-executive), owner-manager or volunteer or a Member contracted by such entities.</del>
2	<b>Professional Activity</b> means an activity requiring accountancy or related skills undertaken by a Member, including accounting, auditing, <del>taxation</del> , management consulting, and financial management.
2	<b>Those Charged with Governance</b> 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 <del>may</del> <u>might</u> include management personnel, for example, executive members of a governance board of a private or public sector entity, or an owner-manager.

Paragraph/Section Reference	Revisions
3.1	The Code is the conceptual framework and foundation on which all APESB pronouncements are based. Compliance with, and application of, the Code is fundamental to the ethical behaviour of Members in Business. Non-compliance with the Code can lead to disciplinary proceedings being initiated by the Professional Body to which the Member belongs.
3.3	The term Professional Activity is defined as an activity requiring accountancy or related skills performed by a Member including accounting, auditing, taxation, management consulting and financial management services. Activities performed by Members in Business for the an Employer are captured by the definition of Professional Activity. Typically, this includes activities performed by financial accountants, tax accountants, financial analysts, financial planners, management accountants, internal auditors and financial controllers.
3.4	<p>A Member in Business who performs a Professional Activity is required to comply with:</p> <ul style="list-style-type: none"> <li>(a) <del>Part A – General Application 1 Complying with the Code, Fundamental Principles and Conceptual Framework</del> of the Code;</li> <li>(b) <del>and Part C 2 – Members in Business (including employment relationships of Members in Public Practice) of the Code including Section 100 Introduction and Fundamental Principles;</del> and</li> <li>(c) any relevant applicable laws or regulations.</li> </ul> <p>Part C 2 of the Code 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.</p>
4.1	<p>Members in Business may encounter situations that give rise to threats to compliance with the fundamental principles. This Guidance Note uses the framework in the Code to assist Members to identify, evaluate and respond to threats to compliance with the fundamental principles. Members are required to <del>implement safeguards to eliminate</del> <u>address threats to compliance with the fundamental principles by either eliminating the threats or reduce reducing them to an Acceptable Level</u> so that compliance with the fundamental principles is not compromised. The Guidance Note provides a range of examples dealing with a variety of circumstances in which threats may arise and provides guidance on <del>safeguards that may be adopted</del> <u>how these threats may be addressed</u>. Members should use the framework to address ethical issues arising from their work at an early stage to enable them to adopt appropriate <del>safeguards methods</del> <u>which are suitable to the circumstance and address the relevant threats</u>.</p>
4.2	<p>When considering situations that threaten compliance with the fundamental principles, Members in Business need to retain their objectivity and should use the following structured approach to ethical decision-making:</p> <ul style="list-style-type: none"> <li>i. (a) Gather the facts and identify the problem or threat;</li> <li>ii. (b) Identify the fundamental principles involved;</li> <li>iii. (c) Identify the affected parties;</li> <li>iv. (d) Determine whether established organisational procedures and conflict resolution resources exist to address the threat to</li> </ul>

Paragraph/Section Reference	Revisions
	<p>compliance with the fundamental principles;</p> <p>v. <del>(e)</del> Identify the relevant parties who should be involved in the conflict resolution process;</p> <p>vi. <del>(f)</del> Discuss the ethical issue and the conflict with the relevant parties, and in accordance with the prescribed procedures evaluate the significance of the threats identified and <del>safeguards</del> <u>actions</u> available <u>to address these threats</u>;</p> <p>vii. <del>(g)</del> Consider courses of action and associated consequences;</p> <p>viii. <del>(h)</del> Consider whether to consult confidentially with external advisers such as an independent adviser, legal advisor and/or the Professional Body to which the Member belongs;</p> <p>ix. <del>(i)</del> Consider whether to consult Those Charged with Governance;</p> <p>x. <del>(j)</del> Decide on an appropriate course of action;</p> <p>xi. <del>(k)</del> Document all enquiries and conclusions reached; and</p> <p>xii. <del>(l)</del> Implement the appropriate course of action. In the event that the Member believes that the threat to compliance with the fundamental principles has not been satisfactorily resolved, the Member should determine whether it is appropriate to resign.</p> <p>The process to be followed as indicated above may vary with each particular circumstance and a flow diagram is set out below to provide guidance to a Member on how to arrive at an appropriate course of action:</p> <p><i>[The flow chart in Paragraph 4.2 has been amended, but is not replicated in this Technical Update.]</i></p>
4.3	<p>When resolving an ethical issue, a Member in Business should document the substance of the issue and details of any discussions held and conclusions reached concerning that issue. The Member should take qualitative as well as quantitative factors into account when evaluating the significance of an ethical issue, and be alert to the fact that reassessment of the issue may need to occur on an ongoing basis. If, after exhausting all relevant possibilities, the ethical issue remains unresolved, the Member should, where possible, refuse to remain associated with the matter creating the conflict. The Member should determine whether, in the circumstances, it is appropriate to refuse to perform the duties in question or be associated with information the Member knows is misleading, or whether it is appropriate to resign altogether from the employing organisation.</p>
4.4	<p>The case studies in Section 14<del>3</del> illustrate the application of the fundamental principles and <del>the types of safeguards that can be implemented</del> <u>how threats to the fundamental principles can be addressed</u>. The case studies follow the structured approach noted above in analysing the relevant ethical considerations. These case studies are not intended to be, nor should they be interpreted as, an exhaustive list of all circumstances likely to be experienced by Members in Business that create threats to compliance with the fundamental principles of the Code. Consequently, it is not sufficient for Members to seek compliance in situations corresponding with these case studies. Members need to apply the principles of the Code to all situations facing them in which compliance with the fundamental principles of the Code are at risk.</p>
5.	<p><b>Threats and <u>safeguards</u> to the fundamental principles</b></p>

Paragraph/Section Reference	Revisions
5.1	Compliance with the Code may be threatened by a broad range of circumstances and relationships. Any given circumstance may create more than one threat, and the threats that arise may affect compliance with more than one fundamental principle. A Member in Business is required to <del>implement safeguards to eliminate</del> <u>address threats not an Acceptable Level by eliminating the threats or reduce</u> reducing them to an Acceptable Level so that compliance with the fundamental principles is not compromised.
5.2	Threats to the fundamental principles are discussed in Part A— <del>General Application—1 Complying with the Code, Fundamental Principles and Conceptual Framework</del> of the Code. Threats fall into one or more of the following categories: (a) Self-interest – the threat that a financial or other interest will inappropriately influence <del>the a Member in Business’</del> judgement or behaviour <del>of a Member in Business</del> ; (b) Self-review – the threat that a Member in Business will not appropriately evaluate the results of a previous judgement <u>made</u> , or <u>a</u> Professional Activity performed by the Member, <u>or by</u> another individual within the <del>Employer</del> <u>employing organisation</u> , on which the Member <del>in Business</del> will rely when forming a judgement as part of providing a current Professional Activity; (c) Advocacy – the threat that a Member in Business will promote the Employer’s position to the point that the Member’s objectivity is compromised; (d) Familiarity – the threat that due to a long or close relationship with the Employer, a Member in Business will be too sympathetic to the Employer’s interests or will accept the Employer’s view on certain matters without sufficient scrutiny; and (e) Intimidation – the threat that a Member in Business will be deterred from acting objectively because of actual or perceived pressures, including attempts to exercise undue influence over the Member.
	<b><u>Safeguards Addressing threats</u></b>
5.3	The Code <del>classifies safeguards that may</del> <u>requires</u> Members in Business to <u>address threats that are not at an Acceptable Level by eliminating or reducing</u> threats faced by Members in Business to an Acceptable Level <del>into two broad categories. This may be done by:</del> <ul style="list-style-type: none"> <li>• <del>safeguards created by the profession, legislation or regulation; and</del></li> <li>• <del>safeguards in the work environment</del></li> <li>• <u>eliminating the circumstances, including interests and relationships, that are creating the threats;</u></li> <li>• <u>applying safeguards, where available and capable of being applied, to reduce threats to an Acceptable Level; or</u></li> <li>• <u>declining or ending the specific Professional Activity.</u></li> </ul> <del>Examples of such safeguards are outlined in paragraphs 100.14 – 100.16 and 300.14 – 300.15 of the Code.</del>
5.4	<del>In addition to the categories above, Examples of actions that might address threats (including eliminating circumstances and applying relevant safeguards) are outlined in Sections 210 to 270 of the Code may also be created by the Member in Business. Such safeguards may include but are not restricted to:</del> <ul style="list-style-type: none"> <li>• <del>keeping records of contentious issues and the action taken to resolve them;</del></li> </ul>

Paragraph/Section Reference	Revisions
	<ul style="list-style-type: none"> <li>• <del>maintaining a broader perspective on how similar organisations function through establishing business relationships with other professionals; and</del></li> <li>• <del>using an independent advisor.</del></li> </ul>
5.5	<p><u>In extreme situations where threats cannot be eliminated or safeguards are not available or cannot be applied to reduce the threats to an Acceptable Level, it might be appropriate for a Member in Business to resign from the employing organisation.</u></p>
5.65	<p><i>[Paragraph 5.5 of extant APES GN 40 remains unchanged, but has been renumbered as paragraph 5.6]</i></p>
5.712.1	<p><b>Disclosure of Information</b></p> <p>In accordance with <u>Subsection 114 140 Confidentiality</u> of the Code, a Member in Business who acquires confidential information in the course of performing a Professional Activity is prohibited from disclosing that information without proper and specific authority or unless there is a legal, <u>regulatory</u> or professional <del>right or</del> <u>duty or right</u> to disclose it.</p>
5.812.2	<p>The <i>Privacy Act 1988 (Cth)</i> (Privacy Act) prohibits the disclosure of personal information about an individual, other than in certain limited circumstances including circumstances where the individual has consented to the disclosure or the disclosure is required or authorised by or under law.<sup>2</sup></p>
Footnote 2	<p><u>Members in Business may be subject to other prohibitions under the Privacy Act, including prohibitions in relation to the collection, use and storage of personal information.</u></p>
5.912.3	<p>Whistleblower laws at Federal, <del>and</del> State and Territory levels prohibit the disclosure of certain information obtained from and about a whistleblower unless such disclosure is required or authorised by such laws.</p>
5.1012.4	<p>Examples of the disclosure of information that may in certain circumstances be required or authorised by the law include:</p> <ul style="list-style-type: none"> <li>• reporting of suspected money laundering activities to AUSTRAC<sup>43</sup> in accordance with the <i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)</i>; and</li> <li>• where a Member in Business is authorised by the Member's Employer to receive whistleblower information, disclosure by the Member of such information to an <u>eligible recipient</u> <del>authorised person</del> under the <i>Corporations Act 2001 (Cth)</i> (the Corporations Act).</li> </ul>
Footnote 34	<p>AUSTRAC is Australia's anti-money laundering and counter-terrorism financing regulator and specialist financial intelligence unit.</p>
6.	<p><b>Overview of APES 110 Part C: <u>Members in Business 2 of the Code</u></b></p>
6.1	<p><del>APES 110 Part C 2</del> <u>Members in Business (including employment relationships of Members in Public Practice) (Part 2) of the Code</u> illustrates how the conceptual framework <del>contained in APES 110 Part A 1</del> <u>Complying with the Code, Fundamental Principles and Conceptual Framework of the Code</u> is to be applied by Members in Business.</p>

Paragraph/Section Reference	Revisions
6.2	<p><del>APES 110 Part C</del> Section <del>3200</del> <u>of Part 2</u> provides an overview of the various types of threats encountered by Members in Business in their work environment and <del>appropriate safeguards that can be considered how to address threats that are not at an Acceptable Level.</del> In certain circumstances, there may be no <u>actions or available</u> safeguards to reduce the threats to an Acceptable Level and the Member may need to consider refusing to perform the duties in question or resigning from the employing organisation (e.g. paragraphs <del>300.15, 320.7 and 330.4</del> <u>200.8 A2, R220.8 and R230.4</u> of the Code).</p>
6.3	<p><del>APES 110 Part C</del> Sections <del>3210 - 35270</del> <u>of Part 2</u> specifies professional obligations of Members in Business in the following circumstances:</p> <ul style="list-style-type: none"> <li><del>•(a)</del> Section <del>3210</del> – <i>Conflicts of Interest</i>;</li> <li><del>•(b)</del> Section <del>3220</del> – <i>Preparation and <del>Reporting</del> <u>Presentation</u> of Information</i>;</li> <li><del>•(c)</del> Section <del>3230</del> – <i>Acting with Sufficient Expertise</i>;</li> <li><del>•(d)</del> Section <del>3240</del> – <i>Financial Interests, Compensation and Incentives Linked to Financial Reporting and Decision Making</i>; <del>and</del></li> <li><del>•(e)</del> Section <del>3250</del> – <i>Inducements, Including Gifts and Hospitality</i>;</li> <li><u>(f) Section 260 – Responding to Non-Compliance with Laws and Regulations; and</u></li> <li><u>(g) Section 270 – Pressure to Breach the Fundamental Principles.</u></li> </ul>
7.2	<p>Where potential conflicts arise, a Member in Business is required to comply with <del>§</del>Section <del>3210</del> <i>Conflicts of Interest</i> of the Code. Examples and the potential approaches to resolving such conflicts are shown in Case Studies 1 – 4.</p>
<b>8.</b>	<b>Preparation and <del>reporting</del> <u>presentation</u> of information to be used by internal and external parties</b>
8.1	<p>Members in Business are often involved in the preparation and <del>reporting</del> <u>presentation</u> of information that may either be made public or used by others inside or outside the Employer. When preparing and <del>reporting</del> <u>presenting</u> such information, Members are required to comply with <del>§</del>Section <del>3220</del> <i>Preparation and <del>Reporting</del> <u>Presentation</u> of Information</i> of the Code.</p>
8.2	<p>A Member in Business is required to prepare or present information fairly, honestly and in accordance with relevant Professional Standards so that the information will be understood in its context. Threats to the Member's ability to do so may arise from pressure (intimidation or self-interest) to become associated with misleading information. Where the threats have been evaluated, <del>safeguards</del> <u>appropriate actions</u> such as those discussed in <del>§</del>Section <del>3220</del> <i>Preparation and <del>Reporting</del> <u>Presentation</u> of Information</i> of the Code should be <del>applied</del> <u>undertaken</u>. Examples addressing the analysis of threats and <del>application of</del> <u>appropriate actions</u> are shown in Case Studies 5 - 9 and 20 - 21.</p>
<b>9.</b>	<b>Member in Business's responsibility to <del>Act</del> <u>act</u> with sufficient expertise</b>
9.2	<p>Where the ability of a Member in Business to perform duties with the appropriate degree of professional competence and due care is</p>

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	<p>threatened by factors such as insufficient time, inadequate information, inadequate resources or insufficient knowledge, <u>safeguards appropriate actions</u> such as those in <del>§</del><u>Section 3230 Acting with Sufficient Expertise</u> of the Code should be <del>applied</del> <u>undertaken</u>. The <u>appropriate actions</u> include the application of safeguards or declining to perform the duties in question. Examples addressing the need to act with sufficient expertise are provided in Case Studies <u>10</u> and <u>19</u>.</p>
10.1	<p>Financial interests of a Member in Business or their <del>i</del><u>Immediate</u> or <del>e</del><u>Close</u> <del>f</del><u>Family</u> members may give rise to threats to compliance with the fundamental principles of the Code. <u>In such circumstances,</u> <del>T</del><u>the</u> Member is required to comply with <del>§</del><u>Section 3240 Financial Interests, Compensation and Incentives Linked to Financial Reporting and Decision Making</u> of the Code, <u>and in such circumstances.</u> <del>The Code requires the Member</del> to evaluate the significance of <del>such a</del> <u>any identified</u> threat, and <del>the</del> <u>undertake</u> appropriate <del>safeguards to be applied</del> <u>actions</u> to reduce the threat to an Acceptable Level.</p>
<p><u>10.2</u> [part of paragraph 10.1 in extant APES GN 40]</p>	<p>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. <del>An a</del><u>Additional</u> examples of personal financial gain for a Member is provided in Case Studies <u>9</u> and <u>13</u>.</p>
11.	<p><b>Inducements offered <u>by or to</u> a Member in Business</b></p>
11.1	<p>Inducements refer to both the <del>receiving</del> <u>acceptance</u> of offers and <u>the</u> making <u>of</u> offers. <u>Inducements may take many different forms, for example:</u></p> <ul style="list-style-type: none"> <li>• <u>Gifts.</u></li> <li>• <u>Hospitality.</u></li> <li>• <u>Entertainment.</u></li> <li>• <u>Political or charitable donations.</u></li> <li>• <u>Appeals to friendship or loyalty.</u></li> <li>• <u>Employment or other commercial opportunities.</u></li> <li>• <u>Preferential treatment, rights or privileges.</u></li> </ul>
11.2	<p>A Member in Business or an <del>i</del><u>Immediate</u> or <del>e</del><u>Close</u> <del>f</del><u>Family</u> member may be offered an <del>i</del><u>Inducement</u> <del>such as gifts, hospitality, preferential treatment and inappropriate appeals to friendship or loyalty</del> <u>to influence their behaviour</u>. Alternatively, a Member may experience pressure to offer <del>i</del><u>Inducements</u> to subordinate the judgement of another individual or organisation, influence a decision-<del>m</del><u>aking</u> process or obtain confidential information.</p>
11.3	<p><u>In addition to complying with relevant laws and regulations, a Member in Business is required to assess whether the offering or acceptance of an Inducement is made with the intent to improperly influence the behaviour of the Member or another individual. This includes the consideration of how others would perceive the offering or acceptance of an Inducement (i.e. what would a reasonable and informed third party think is the intent of the Inducement).</u></p>

Paragraph/Section Reference	Revisions
11.43	Where threats to the fundamental principles arise from <del>inducements</del> , the Member in Business is required to <del>follow</del> <u>comply with</u> the <del>principles requirements</del> and guidance in Section <del>3250</del> <u>Inducements, Including Gifts and Hospitality</u> of the Code. Examples showing approaches that can be adopted by the Member where <del>inducements</del> threaten compliance with the fundamental principles of the Code are provided in Case Studies 12 - 14 and 18.
12.	<b><u>Disclosure of information and whistleblowing Member in Business's responsibility to respond to non-compliance with laws and regulations</u></b>
12.1	<p><u>Members in Business may suspect or be aware that their Employer has done something illegal and is not complying with laws and regulations. This could be in relation to laws and regulations specific to financial statements or those that would affect the continued operation of the Employer. Examples of relevant laws and regulations include:</u></p> <ul style="list-style-type: none"> <li>• <u>Fraud, corruption and bribery.</u></li> <li>• <u>Money laundering, terrorist financing and proceeds of crime.</u></li> <li>• <u>Securities markets and trading.</u></li> <li>• <u>Banking and other financial products and services.</u></li> <li>• <u>Data protection.</u></li> <li>• <u>Tax and pension liabilities and payments.</u></li> <li>• <u>Environmental protection.</u></li> <li>• <u>Public health and safety.</u></li> </ul>
12.2	<p><u>In the circumstances when a Member suspects or is aware of non-compliance with laws and regulations (NOCLAR), the Member is required to comply with Section 260 Responding to Non-Compliance with Laws and Regulations of the Code. Section 260 sets out a framework to assist Members to respond to the suspected or actual NOCLAR, including considering relevant laws and regulations, reporting to management or the board, and disclosing to an appropriate authority if it is appropriate.</u></p>
12.35	<p>Whistleblower laws in Australia provide whistleblowers with certain legal protection against liability for making certain disclosures and a specific process to follow when disclosing such information which may include, for example, information about a breach of the law by the business or persons in the business for or in which the whistleblower works. For example, under the Corporations Act whistleblowers will generally qualify for the protection if:</p> <p><u>(a) the whistleblower is (or was) an officer, employee or, associate, contractor or employee of a contractor of the company, suppliers and their employees, as well as relatives or dependents of these parties;</u></p> <p><del>the whistleblower first identifies themselves before making the disclosure (anonymous reports are not protected);</del></p> <p><u>(b) the report is made by the whistleblower to a prescribed entity or person (such as the Australian Securities and Investments Commission or the Australian Prudential Regulation Authority), an eligible recipient, legal practitioner, a company auditor or member of an audit team conducting an audit of the company, a director,</u></p>

Paragraph/Section Reference	Revisions
	<p>secretary or senior manager of the company or other person authorised by the company to receive such disclosure. <u>Disclosures to Members of Parliament and journalists are permissible under limited circumstances. Members in Business are strongly advised to obtain legal advice before making such a disclosure;</u></p> <p>(c) • the whistleblower had reasonable grounds to suspect that the information indicates that the company or an officer or employee of the company has or may have contravened a provision of the Corporations Act; and</p> <p>(d) • the report is <del>made in good faith</del> <u>not related to a personal work-related grievance.</u></p>
12.46	[Paragraph 12.6 of extant APES GN 40 remains unchanged but has been renumbered as paragraph 12.4]
	<b>Decision-making process</b>
12.57	Sometimes confidentiality, privacy and whistleblowing are the subject of internal business policies and procedures. <sup>4</sup> In circumstances where a Member in Business is considering disclosing information, the Member should follow any relevant internal policies and procedures of the business which employs the Member. In addition to these requirements, where the Member is employed by a government entity or in the public sector, the Member is required to consider any public sector rules to which the Member is bound prior to disclosing confidential information.
<u>Footnote 4</u>	From 1 January 2020, all public companies, large proprietary companies and other specified entities are required under law to have a whistleblower policy.
12.68	<p>If the Employer does not have internal policies, procedures or rules that deal with the matter, a Member in Business should, amongst other things, consider the following when considering disclosing information about the Member's Employer or persons in the Employer's business in circumstances which would otherwise be a breach of their professional obligation of confidentiality:</p> <ul style="list-style-type: none"> <li>(a) Statutory constraints and obligations on disclosure including those contained in Federal, <del>and</del> State and Territory privacy and whistleblower laws;</li> <li>(b) Statutory protection for whistleblowers contained in Federal, <del>and</del> State and Territory whistleblower laws;</li> <li>(c) Whether the information relates to conduct which constitutes a breach of, or an offence under, any laws;</li> <li>(d) Whether members of the public are likely to be adversely affected by the disclosure or non-disclosure of the information;</li> <li>(e) The gravity of the matter, such as the size and extent of likely financial loss;</li> <li>(f) The possibility or likelihood of repetition;</li> <li>(g) The reliability and quality of the information available;</li> <li>(h) The reasons for the Employer's unwillingness to disclose matters to the relevant authority;</li> <li>(i) When the Employer gives authorisation to disclose information, whether or not the interests of all parties, including third parties</li> </ul>

Paragraph/Section Reference	Revisions
	<p>whose interests might be affected, could be harmed;</p> <p>(j) Whether or not all the relevant information is known and has been substantiated. Where the situation involves unsubstantiated or incomplete information and conclusions, professional judgement should be applied to determine the appropriate type of disclosure to be made, if any. The Member requires a reasonable belief that wrongdoing has occurred, before disclosure can be made;</p> <p>(k) The type of communication that is expected and to whom it is addressed. In particular, the Member should be satisfied that the parties to whom the communication is addressed are authorised recipients; and</p> <p>(l) The possible implications of disclosure for the Member and the Member's reputation.</p>
12.79	Examples that address <u>NOCLAR and</u> whistleblowing are included in Case Studies 15 - 17.
12.840	<i>[Paragraph 12.10 of the extant APES GN 40 remains unchanged, but has been renumbered as paragraph 12.8.]</i>
<b>13.</b>	<b><u>Pressure to breach the fundamental principles</u></b>
13.1	<p>At times, a Member in Business may be under pressure to act or behave in ways that could directly or indirectly threaten compliance with the <u>fundamental principles of the Code. The pressure might be explicit or implicit and might come from:</u></p> <ul style="list-style-type: none"> <li>• <u>Within the employing organisation, for example, from a colleague or supervisor.</u></li> <li>• <u>An external individual or organisation such as a vendor, customer or lender.</u></li> <li>• <u>Internal or external targets and expectations.</u></li> </ul>
13.2	<p><u>Where threats to the fundamental principles arise from pressure, the Member in Business is required to comply with the requirements and guidance in Section 270 Pressure to Breach the Fundamental Principles of the Code, and also in Sections 210 to 260 of the Code. Examples showing approaches that can be adopted by the Member to address pressure to breach the fundamental principles of the Code are provided in Case Studies 2, 5, 7, 9, 13, 14, 20 and 21.</u></p>
<b>143.</b>	<p><b>Case Studies</b></p> <p><i>[Within this Section all case studies have been reformatted to improve readability. The introduction and case studies do include minor editorial amendments but have not been replicated in this Technical Update]</i></p>
<b>Acknowledgements</b>	Amended
<b>Bibliography</b>	Amended
<b>Appendix 1</b>	<b>Summary of revisions to the previous APES GN 40 (Issued in October 2015) – Amended</b>