

Perspective

This is one of a series of articles where experts in assurance, reporting and regulatory matters discuss recent technical and policy developments in these areas



How to deal with an ethical conflict in your workplace

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The recent disclosures of poor ethical behaviour across the financial services and health care sectors have highlighted that when ethical conflicts occur, the majority of individuals find it challenging to address the situation or had not identified that there was a problem in the first place. As members of a professional accounting body, qualified accountants are expected to act in the public interest. This responsibility carries with it the need to consider how to address ethical misconduct when you come across it.

In this article, APESB Technical Staff highlight how the proposed revised guidance in APES GN 40 *Ethical Conflicts in the Workplace – Considerations for Members in Business* (APES GN 40), including recent developments in the Code and legislative environment for Non-compliance with Laws and Regulations (NOCLAR), inducements and whistleblowing, can assist members in dealing with ethical misconduct and conflicts when they occur.

Guidance on dealing with ethical conflicts

Imagine you have just commenced a job with a new employer and hear a rumour that the company recently paid a bribe to win overseas work. Also, you overhear a discussion with a divisional accountant about the fact that certain information had not been disclosed to the auditors. You haven't developed a strong working relationship with your manager as yet. What would you do and where would you turn to for assistance?

This scenario is hopefully not something you would have to deal with in your professional career, but if you do encounter it, there are resources and tools available to help you.

APES GN 40 was developed to provide Members with guidance on how to apply the fundamental principles of APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* (the Code) and use professional judgement to address ethical issues. The guidance note includes 21 case studies (including the scenario above) to illustrate the application of the conceptual framework approach in the Code and to guide Members in developing potential solutions to ethical issues.

When a member encounters ethical conflicts, they should use the conceptual framework in the Code to identify, evaluate and respond to threats to compliance with the fundamental principles (i.e., integrity, objectivity, professional competence and due care, confidentiality and professional behaviour). Members are required to address threats to compliance with the fundamental principles by either eliminating the threats or reducing them to an acceptable level where compliance with the fundamental principles is not comprised.

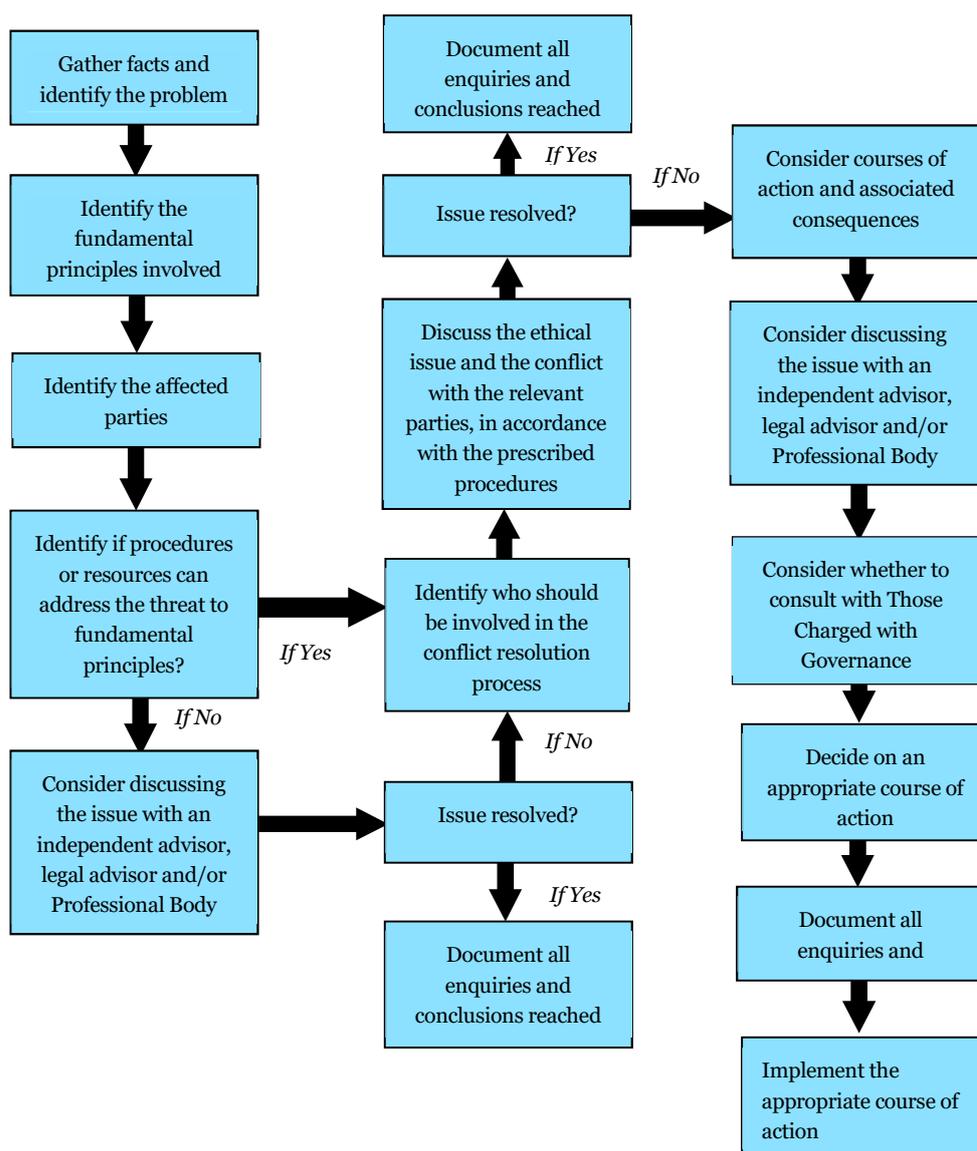
When addressing ethical matters, Members need to retain their objectivity and consider the framework for addressing ethical matters as soon as the conflict or issue arises. This is to allow the Members to adopt appropriate strategies to address the relevant threat and circumstance as early as possible.

Ethical decision-making process

To assist members in dealing with ethical issues, the guidance note sets out a structured approach to ethical decision making (as illustrated in the flowchart below).

The course of action to be taken to address ethical conflicts can vary significantly and will depend on the circumstances. It is important, therefore, that a Member documents the substance of the issue, details of any discussions held and conclusions reached concerning the issue. This will be of importance if the Member needs to undertake a reassessment of the issue or to justify the approach they have taken.

It may also be likely that after undertaking an ethical decision-making process and implementing the appropriate course of action, the ethical issues remain unresolved. In those circumstances, the Member should, where possible, refuse to remain associated with the matters creating the conflict. This may mean considering whether to refuse to perform the duties in question or being associated with the information the Member knows is misleading or even considering whether to resign from the organisation. Members who may have reached this position are strongly encouraged to consult with an independent adviser, legal adviser or their professional body.



Revisions for restructured Code, inducements and NOCLAR

Currently, APESB is proposing several revisions to APES GN 40, issued as part of Exposure Draft 02/19 *Revisions to APESB Pronouncements* (ED 02/19) which are expected to become effective in January 2020. The revisions include:

- **Revisions to align with the restructured Code**

APESB issued a restructured Code in November 2018. The Code included significant structural changes with a number of parts and sections being reordered. For example, the extant Part C *Members in Business* is now Part 2 of the Code. Other changes in the restructured Code included an enhanced conceptual framework, strengthened inducement provisions, revisions to requirements when preparing and presenting information and a new section on the pressure to breach the fundamental principles. The changes to the restructured Code are explained in more detail in our previous article [Code Essentials for Professional Accountants](#) (Perspectives, March 2019).

- **Revisions for NOCLAR**

The obligation for Members to respond to Non-compliance with Laws and Regulations (NOCLAR) became effective on 1 January 2018. The NOCLAR obligations are in the Code and set out a framework or process to guide Members' conduct when they become aware of suspected or actual NOCLAR committed by a client or employer.

NOCLAR covers a range of relevant laws and regulations, but generally, a Member needs to consider whether the laws and regulations are specific to financial statements or those that would affect the continued operation of the Employer or Client.

APESB Technical Staff are often asked whether the introduction of NOCLAR and whistleblowing legislation means Members should be reporting and disclosing a range of matters to regulators or authorities. Members need to carefully consider the NOCLAR framework and the fundamental principle of confidentiality before making any disclosures. Some of the key considerations are set out below.

Key considerations before disclosing ethical matters

- Is the disclosure precluded by laws and regulations?
- Is there credible evidence of substantial harm to an entity, stakeholders and the general public?
- Is there legislative or regulatory protection of whistleblowing?
- Is there likelihood of physical harm to a Member or other individuals?

The revisions in APES GN 40 provides guidance on the types of laws and regulations that could be covered by NOCLAR and reiterates that Members need to comply with Section 260 *Responding to Non-compliance with Laws and Regulations* of the Code.

- **Revisions for whistleblowing legislation**

APES GN 40 has been updated to incorporate new whistleblowing legislation (*Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2019*) which became effective from 1 July 2019. The legislation applies to the corporate and financial sectors and it provides a broader range of protection to encourage individuals to disclose and report misconduct.

Protection is now legislated for both current and former employees, officers, and contractors, as well as their spouses and dependants, and anonymous disclosures for the reporting of corruption, fraud, tax evasion or avoidance misconduct. Whistleblowers have more options as to whom a matter can be disclosed to, including individuals within a company, regulators, law enforcement bodies, auditors, actuaries and lawyers. In some cases, disclosures are protected if they are made to journalists and parliamentarians but not for tax-related matters.

Another key change is the requirement for all public companies, large proprietary companies (with consolidated revenue of \$50m or more, gross assets of \$25m or more or 100 or more employees), and corporate trustees of registrable superannuation entities to have an internal whistleblower policy. These entities have six months to get these policies in place, and from 1 January 2020, it will be an offense for these companies not to have a whistleblower policy.

Dealing with ethical conflicts

CONSIDER THE FUNDAMENTAL PRINCIPLES IN THE CODE

- Integrity
- Objectivity
- Professional Competence and due care
- Confidentiality
- Professional behaviour





APPLY THE ETHICAL DECISION MAKING APPROACH

- Identify relevant facts
- Identify affected parties
- Determine whether a procedure of conflict resolution exists within the organisations
- Consider who should be involved in the conflict resolution process
- Discuss the ethical dilemma with relevant parties
- Consider possible course of action

- **Is there an internal process for whistleblowing?**
- **Do any confidentiality, privacy or whistleblower constraints prevent or restrict involvement?**
- **Have you considered talking to an independent adviser, legal adviser and/or Professional Body?**



Prepare an ethical tool kit

Analysing ethical conflicts early can prevent matters from getting out of hand or becoming harder to address. Therefore, it is important to be prepared and have an ‘ethical tool kit’ in place in the event you have to deal with an ethical conflict.

This toolkit should consist of:

- Knowledge of the fundamental principles in the Code
- A process for ethical decision-making
- Knowledge of the NOCLAR framework
- Knowledge of your employer’s policies and procedures (including the internal whistleblowing policy), and
- Contact details for your professional body or an independent advisor.

The CA ANZ Professional Standards team can be contacted via phone on 1300 137 322 in Australia or 0800 4 69422 in New Zealand.

Members should also consider refreshing their knowledge of the guidance in APES GN 40 regularly. APESB periodically updates the guidance note and the bibliography includes high-profile examples of poor ethical behaviour in the corporate world.

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