



Friday, 21 April 2023

Committee Secretary
Finance and Public Administration References Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Via email: seniorclerk.committees.sen@aph.gov.au

Dear Secretary

Inquiry into the management and assurance of integrity by consulting services

We welcome the opportunity to provide input to the inquiry into the management and assurance of integrity by consulting services (**the Inquiry**) of the Finance and Public Administration References Committee (**the Committee**).

There is a close relationship between professionals who are “consultants” and “accountants”. Multi-disciplinary firms, which offer a range of consulting and advisory services, in addition to accounting, tax, audit and assurance services, bring together professionals from various disciplines to collaborate on client engagements. A number of Chartered Accountants Australia and New Zealand (**CA ANZ**) members are consultants who provide a broad range of consulting services to their clients, including government related entities. Consultants who are partners/principals in multi-disciplinary firms are eligible to be admitted as Affiliate Members of CA ANZ. Whilst Affiliate members are not required to complete the traditional education and mentoring requirements applicable to the provision of public accountancy services, they are subject to the same member obligations, standards, including continuing professional development (**CPD**) and conduct oversight as other categories of CA ANZ membership. Some firms have policies to have all partners become members of CA ANZ, either individual members or affiliate members. It is for this reason we are making this submission.

Our submission is presented in four parts:

- A. An outline of consulting in Australia – a brief synopsis of the Australian consulting industry;
- B. The professional and ethical standards framework for consultants who are CA ANZ members;
- C. A summary of the membership obligations of CA ANZ and its members; and
- D. Responses to the Inquiry’s terms of reference.

PART A - An outline of consulting in Australia

The concept of ‘consulting’ is broad. The following definition from consultancy.com.au is instructive:

“Consulting is defined as the practise of providing a third party with expertise on a matter in exchange for a fee. The service may involve either advisory or implementation services. For the consultant, taking an independent and unbiased stance on an issue is central to his/her role. A consultant can, in principle, service any sector. Over

the past few decades, however, the term has become synonymous with business advisory – which focuses mostly on business strategy, management, organisation, operational processes, and technology.”¹

According to information published on consultancy.com.au there are currently hundreds of consulting firms operating in Australia, ranging from global and international firms which serve clients across multiple industries and functions, to mid-size and boutique consultancies that focus on specific industries, functions, or client topics.

The proliferation of consultancy practices in Australia reflects the diverse needs of the business community, and governments, for specialist skills to address complex and niche issues.

Unlike professions such as accounting, law, medicine, and engineering, there is no peak professional association specifically for consultants, nor is there a clearly defined service that is provided by consultants - ...*“being a ‘consultant’ is not a protected professional title like most other professions, making it possible for anyone to title themselves strategy, management, business, finance, HR or IT consultant.”²* Furthermore, there is no specific registration regime for consultants as there is for registered company auditors, registered liquidators, health care professionals, financial advisers, or solicitors so that state-based regulation or oversight of the profession can occur. This can result in some consultants being subject to no oversight and others being subject to multiple oversight and regulatory regimes. A common example of this is a consultant who is a member of CA ANZ, and a legal practitioner, engineer, or a registered tax agent. This individual and their firm are required to adhere to multiple oversight frameworks.

PART B – The Professional and Ethical Standards Framework for Consultants who are members of CA ANZ

What are the ethical standards?

All CA ANZ members, including Affiliate members, are bound by professional and ethical standards, and obligations to complete professional development, which includes mandatory ethics training, as a condition of membership. Consultants who are members of CA ANZ are required to comply with APES 110 Code of Ethics for Professional Accountants (including Independence Standards) (**APES 110**). APES 110 is based on the Code of Ethics for Professional Accountants (including Independence Standards) (**the Code**) issued by the International Ethics Standards Board for Accountants (**IESBA**).

Who sets the ethical standards?

Australia

APES 110 is issued by the Accounting Professional and Ethics Standards Board Limited (**APESB**), a company limited by guarantee. The APESB has three members: CA ANZ, CPA Australia Limited, and the Institute of Public Accountants. In accordance with the APESB’s constitution, each member of APESB funds its operations, nominates Board members, and undertakes to require its members to adopt the APESB’s pronouncements.

Internationally

The Code is set by IESBA. IESBA *“is an independent standard-setting board that develops, in the public interest, high-quality ethical standards and other pronouncements for professional accountants worldwide.”³* IESBA receives operational and funding support from the International Federation of Accountants (**IFAC**). IFAC has 180 members being accounting associations in 130 jurisdictions around the globe. CA ANZ is a member of IFAC. IESBA’s work is subject to the oversight of the Public Interest Oversight Board (**PIOB**). The PIOB nominating committee appoints the IESBA Board members.

¹ <https://www.consultancy.com.au/career/what-is-consulting>, downloaded 6 April 2023

² <https://www.consultancy.com.au/career/types-of-consultants>, downloaded 6 April 2023

³ <https://www.ethicsboard.org/about-iesba>, downloaded 6 April 2023

The PIOB is “an independent oversight body, responsible for overseeing the standard-setting processes by the two standard-setting boards [SSBs]...”⁴. The responsibility of the PIOB is “to ensure the public interest responsiveness of the processes and structures under its oversight, namely:

- (i) to ensure that standard setting follows due process and is responsive to the public interest,
- (ii) to ensure the completeness of the strategies and work plans of the SSBs,
- (iii) to oversee the process of nominations to all SSBs and CAGs under its oversight.”⁵

These relationships are shown diagrammatically in Appendix 1.

How are standards set?

The standard-setting process locally and internationally is robust and transparent. Key elements of this process include:

- All meetings of the standards setters are open to public observers;
- Meeting papers are publicly available;
- Prior to approving a standard or changes to a standard, comments are sought from the public via a published exposure draft;
- Comments to exposure drafts are published by the standard setters; and
- For the IESBA standards, an additional step is the PIOB’s oversight of the standard setting process.

PART C – A Summary of the membership obligations of CA ANZ and its members

What are the membership obligations?

There are two categories of membership obligations relevant to this submission:

- (i) CA ANZ’s obligations as a member of IFAC; and
- (ii) Consultants’ who are members of CA ANZ obligations to CA ANZ.

This is shown diagrammatically in Appendix 1.

CA ANZ’s obligations

CA ANZ is one of 180 accounting associations that is a member of IFAC⁶. As a member, CA ANZ is required to comply with IFAC’s statements of member obligations (**the SMOs**). The “SMOs provide clear benchmarks to current and potential IFAC member organizations of IFAC’s requirements. The SMOs also serve as the global benchmarking framework and represent the core competencies of strong, credible, high-quality professional accountancy organizations (PAO) that most appropriately serve and function in the public interest.”⁷ CA ANZ is subject to periodic review of its compliance with these SMOs by IFAC. The key SMOs relevant to this submission are:

- SMO 1 – Quality Assurance;

⁴ <https://ipiob.org/how/#howModel>, downloaded 6 April 2023

⁵ Standards setting in the public interest: A description of the Model., Public Interest Oversight Board, 15 September 2015.

⁶ IFAC is “the global organisation for the accountancy profession, comprising 180 member and associate organisations in 135 jurisdictions, representing more than 3 million professional accountants”. <https://www.ifac.org/who-we-are/our-purpose>, downloaded 6 April 2023.

⁷ <https://www.ifac.org/knowledge-gateway/supporting-international-standards/publications/statements-membership-obligations-1-7>, downloaded 6 April 2023

- SMO 2— International Education Standards for Professional Accountants and Aspiring Professional Accountants (includes IES 7 Continuing Professional Development);
- SMO 4 – International Code of Ethics for professional Accountants (including International Independence standards) issued by the IESBA; and
- SMO 6 – Investigation and Discipline.

Consultants' (CA ANZ Members') obligations

Consultants who are members of CA ANZ are required to comply with CA ANZ's By-Laws and Regulations (**the CRs**). These are published on our website.

CA ANZ has a range of monitoring activities to assess member compliance with their obligations. The key obligations are summarised in the table below.

Obligation	Description	Reference
Comply with the law	Members are required to comply with relevant laws and regulations.	APES 110 para 115.1 By-Law 40 (2.1(b)(d))
Comply with Standards	Members are required to comply with relevant professional and ethical standards.	APES 110 para 113.1 By-Law 40 (2.1(h))
Complete Continuing Professional Development (CPD)	Members are required to complete 120 hours of CPD every triennium. This includes 2 hours of ethics training.	CR 7
Quality Review	Members may be selected for a quality review. A quality review is a process whereby a member's / firm's system of quality management will be reviewed and assessed for conformity to prescribed standards and requirements.	CR 2 & 3 APES 320 System of Quality Management
Conduct and Discipline	Certain misconduct of members may result in disciplinary action. The By-Laws provide a framework for the investigation of members' misconduct, the consideration of misconduct by an independent disciplinary panel (comprised of CA ANZ members and non-members) and the imposition of sanctions. Sanctions can include fines, reprimands, publication of findings and suspension or termination of membership.	By-Law 40 CR 8
Professional Indemnity Insurance (PII)	All CA ANZ practices are required to hold PII sufficient for their practice. PII is also essential if the practice wishes to claim a benefit under the CA ANZ Professional Standards Scheme. The amount of PII required to be held by a member/practice is determined by reference to the nature and size of the practice's engagements. For consulting engagements this would range from a minimum of \$2 million for engagements with a fee less than \$100,000 to \$20 million where the engagement fee is \$500,000 or more.	CR 2A

Who sets the membership obligations?

For CA ANZ

The IFAC SMOs are set by IFAC.

CA ANZ is also a professional association with a scheme approved by the Professional Standards Council (**PSC**) under professional standards legislation. A requirement for the ongoing operation of the scheme is that CA ANZ undertakes continual improvements to professional standards and completes annual reporting to the PSC. The PSC reviews a number of CA ANZ's membership obligations (specifically professional indemnity insurance, continuing professional development, entrance requirements and conduct and discipline) at least every five years as part of the scheme renewal application process.

For CA ANZ Members

CA ANZ's Regulations are approved by the CA ANZ Board. The Board is comprised of members and non-members with extensive professional and governance experience.

Amendments to CA ANZ's By-Laws are recommended by the CA ANZ Board for approval by CA ANZ Members and, as CA ANZ is a body politic established by Supplemental Royal Charter, become effective only following the assent of the Governor General of Australia.

PART D – Responses to the Terms of Reference

Please find below our responses to the specific matters in the terms of reference.

The management of conflicts of interest by consultants

A consultant who is a member of CA ANZ is required to comply with APES 110 issued by the APESB. In Parts B and C, we have provided information about how APES 110 is enacted and enforced along with other obligations in place for members of CA ANZ, including those who are consultants.

APES 110 requires members to comply with the fundamental principle of objectivity. This requires a member to exercise professional or business judgement without being compromised by: *“(a) bias; (b) conflict of interest; or (c) Undue influence of, or undue reliance on, individuals, organisations technology or other factors”*⁸. Section 310 of the Code sets out the requirements for a member to identify, evaluate and address threats to compliance with those fundamental principles arising from a conflict of interest. Our 2021 publication Conflict of Interest Guide is provided as Attachment 1 to assist in the Committee's understanding of how consultants who are CA ANZ members should manage conflicts of interest.

⁸ APES 110 The Code of Ethics for Professional Accountants (including Independence Standards), paragraph R112.1

Measures to prevent conflicts of interest, breach of contract or any other unethical behaviour by consultants

CA ANZ has implemented a range of measures to educate all members (including those who are consultants) about the risks to ethical conduct and which, if observed, should prevent members engaging in unethical behaviour.

On admission to membership, all members agree to be bound by CA ANZ's membership rules and ethical conduct obligations, in particular the requirements of our constitutional documents and the Code of Ethics. Membership is renewed annually and is subject to members' declarations of continuing fitness to practise. The membership obligations, which are contractual in nature, are supported and augmented by our education and information sharing programs.

Membership rules, obligations, and professional standards

As set out in Part C above, members of CA ANZ have a number of professional obligations, including the requirement to comply with APES 110. APES 110's fundamental principles of:

- (i) integrity ("*to be straightforward and honest in all professional and business relationships*"⁹);
- (ii) objectivity (refer above for more detail);
- (iii) professional competence and due care (to "*act diligently and in accordance with applicable technical and professional standards*"¹⁰, and "*the exercise of sound judgement in applying professional knowledge and skill when undertaking Professional Activities*"¹¹); and
- (iv) professional behaviour (to "*(a) Comply with all relevant laws and regulations; (b) ...to act in the public interest...; and (c) Avoid any conduct that the Member knows or should know might discredit the profession*"¹²);

are directed to the prevention of acts and omissions that would knowingly give rise to a conflict of interest, a breach of contract or unethical behaviour.

CA ANZ members are also required to comply with APES 320 System of Quality Management (**APES 320**) issued by the APESB. This standard requires firms to "*establish and maintain a system of quality management for non-assurance services designed to provide it with reasonable confidence that the Firm and its Personnel comply with Professional Standard and applicable legal and regulatory requirements*"¹³. APES 320 requires this system of quality management to address the following elements:

- (i) governance and leadership;
- (ii) professional standards;
- (iii) acceptance and continuance of client relationships and specific engagements;
- (iv) resources;
- (v) engagement performance;
- (vi) information and communication; and
- (vii) monitoring and remediation.¹⁴

⁹ APES 110 The Code of Ethics for Professional Accountants (including Independence Standards), paragraph R111.1

¹⁰ APES 110 The Code of Ethics for Professional Accountants (including Independence Standards), paragraph R113.1(b)

¹¹ APES 110 The Code of Ethics for Professional Accountants (including Independence Standards), paragraph 113.1A1

¹² APES 110 The Code of Ethics for Professional Accountants (including Independence Standards), paragraph R115.1

¹³ APES 320 System of Quality Management paragraph 3.1

¹⁴ APES 320 System of Quality Management paragraph 3.5

This system of quality management will help members prevent conflicts of interest, breach of contract and other unethical behaviour.

The CA ANZ By-Laws require members to comply with professional standards such as APES 110 and APES 320.¹⁵ A member's failure to comply with the By-Laws may result in disciplinary action.

Education and information sharing

CA ANZ's education and information sharing programs assist members to understand and comply with their obligations.

All CA ANZ members are required to comply with CA ANZ Regulation CR 7 Continuing Professional Development (**CR7**). CR 7 requires members to undertake 120 hours of continuing professional development (**CPD**) every triennium. From July 2021 members are specifically required to include the completion of two hours of ethics training in their 120 hours.

CA ANZ offers members several complimentary and paid-for learning modules on professional ethics. In February 2023, a complimentary online learning event covered ethical obligations relating to the identification and management of conflicts of interest. As examples of the complimentary educational content we provide our members, we attach our Conflicts of Interest Guide issued in 2021 (Attachment 1) and our Dispute Prevention Management and Resolution Toolkit issued in 2022 (Attachment 2). The toolkit is designed to assist members with the prevention and resolution of disputes with their clients regarding the engagement contract. Our member magazine, Acuity, frequently includes articles educating members about conflicts of interest. Additional articles are included as part of our series called "[Practical Ethics Advice Series](#)". CA ANZ also provides two free services for members who may be facing an ethical issue: the professional standards line and the [Chartered Accountants Advisory Group \(CAAG\)](#). Both services facilitate member access to experienced professionals who can help them determine an ethical course of action.

Enforcement measures taken in response to integrity breaches, such as the inadequate management of conflicts of interest, breach of contract or any other unethical behaviour by consultants

CA ANZ members who do not comply with the By-Laws are liable to disciplinary action. By-Law 40 (2.1)(h) addresses members' obligations to comply with the Code of Ethics, professional standards and CA ANZ's constitutional documents. Other sections of By-Law 40 (2.1) render a member liable to disciplinary sanctions if they:

- (i) fail to observe a proper standard of professional care, skill, competence or diligence (paragraph 2.1(a));
- (ii) plead guilty to a criminal offence (paragraph 2.1(b));
- (iii) have been found by a court or tribunal to have acted dishonestly (paragraph 2.1(c)); and/or
- (iv) have been the subject of an adverse or unfavourable finding in relation to their professional or business conduct, competence, or integrity (paragraph 2.1(e)).

Any member who has demonstrably failed to appropriately manage conflicts of interest, who is proven to have breached a contract with a client or who has behaved unethically (in contravention of the Code of Ethics) would, prima facie, be liable to disciplinary action under the CA ANZ By-Laws.

CA ANZ typically becomes aware of members who have not complied with the By-Laws in the following ways:

- (i) a formal written complaint from a member of the public (usually a client);

¹⁵ CA ANZ By-Laws para 40 (2.1(e) and (h))

- (ii) self-disclosure of the matter by the member in accordance with the membership obligation to self-disclose Disclosure Events and Notification Events;
- (iii) monitoring activities (generally media monitoring, but occasionally via practice reviews); and
- (iv) notification from other organisations such as other accounting bodies, ASIC, and the Tax Practitioners Board.

Given the propensity for some breaches of the By-Laws and ethical standards to be resolved without being reported to CA ANZ or made public, we do not profess to be aware of all instances where a member does not meet their membership obligations. Nor do the By-Laws currently permit disciplinary action to be taken against former members: CA ANZ is reviewing the By-Laws and may propose amendments to ensure the conduct of former members is examinable. For instances of misconduct that do come to CA ANZ's attention, the Professional Conduct Committee conducts an investigation. If the misconduct is established the Professional Conduct Committee may determine the matter itself. If the matter is sufficiently material, it may be referred to the Disciplinary Tribunal or on occasion to the Appeals Tribunal. A good summary of our conduct program is included at Attachment 3.

The management of risks to public sector integrity arising from the engagement of consultants

No specific comments

The transparency of work undertaken by consultants, and the accountability of consultants for this work

No specific comments

Any other related matters

No specific comments

More information about CA ANZ is provided at Appendix 2.

We look forward to engaging with the Committee in undertaking this important work and would be pleased to follow up with any further information that the Committee may find useful and/or meet to further discuss and explain any aspect of this submission.

Sincerely,

Vanessa Chapman

Group Executive - General Counsel & Corporate Assurance

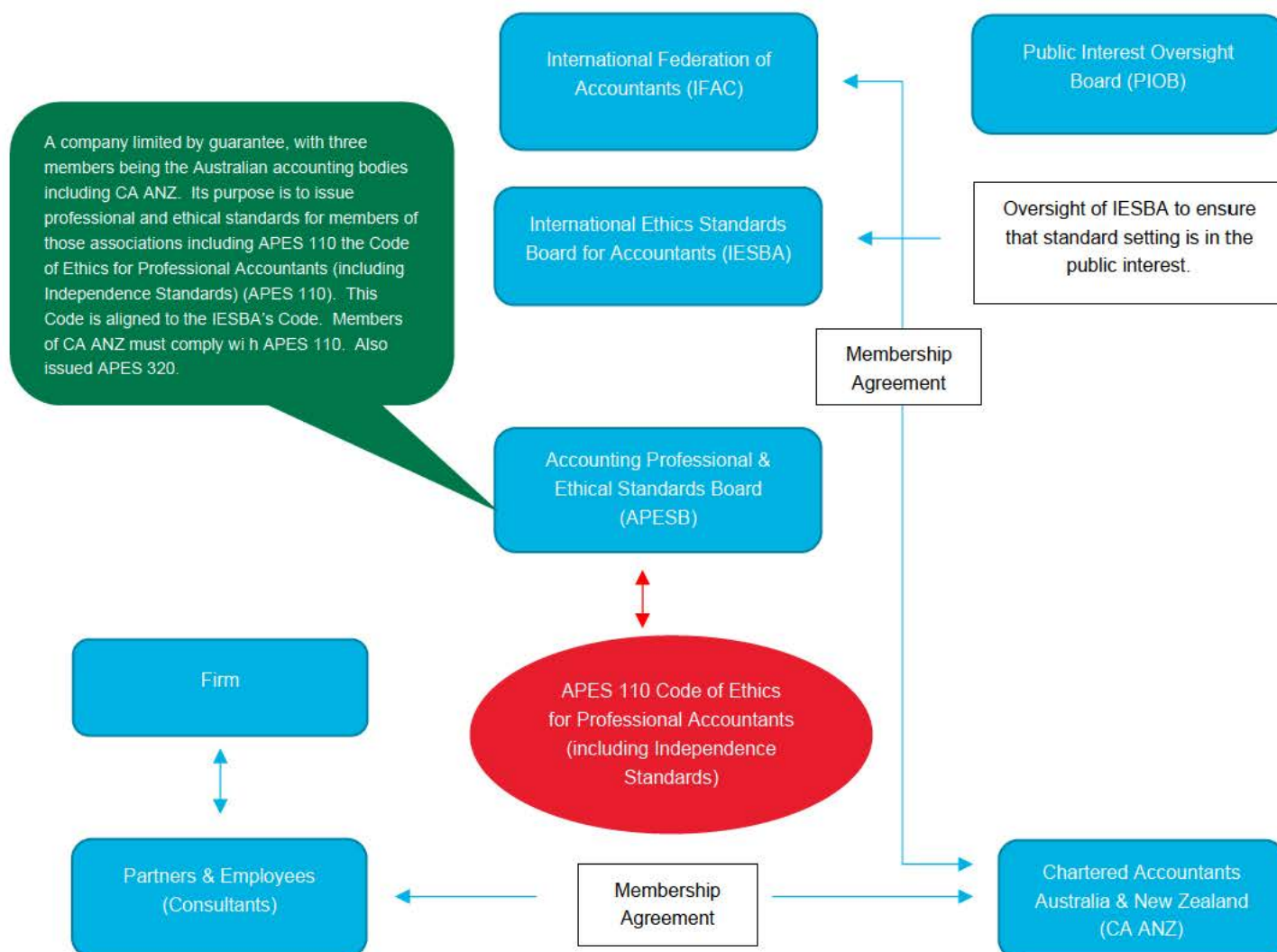
Attachment 1 – Conflicts of Interest Guide

Attachment 2 - Dispute Prevention Management and Resolution Toolkit

Attachment 3 – Summary of CA ANZ's Conduct Program

Appendix 1

Professional and Ethical Standard setting framework and obligations of CA ANZ and its members



Consultants are required to comply with:

- Local laws and regulations
- their Firm's:
 - Policies
 - Codes of Conduct/ Ethics
 - Partnership Agreements
 - Employment Contracts
- Membership obligations to CA ANZ including:
 - Compliance with APES 110 the Code of Ethics
 - Regulations for continuing professional development
 - Regulations for professional indemnity insurance
 - By-laws relating to quality reviews and professional conduct

Appendix 2

About CA ANZ

Chartered Accountants Australia and New Zealand (**CA ANZ**) represents more than 135,000 financial professionals, supporting them to build value and make a difference to the businesses, organisations, and communities in which they work and live.

Around the world, Chartered Accountants are known for their integrity, financial skills, adaptability and the rigour of their professional education and training.

CA ANZ promotes the Chartered Accountant (**CA**) designation and high ethical standards, delivers world-class services and life-long education to members and advocates for the public good. We protect the reputation of the designation by ensuring members continue to comply with a code of ethics, backed by a robust discipline process. We also monitor Chartered Accountants who offer services directly to the public.

Our flagship CA Program, the pathway to becoming a Chartered Accountant, combines rigorous education with practical experience. Ongoing professional development helps members shape business decisions and remain relevant in a changing world.

We actively engage with governments, regulators and standard-setters on behalf of members and the profession to advocate in the public interest. Our thought leadership promotes prosperity in Australia and New Zealand.

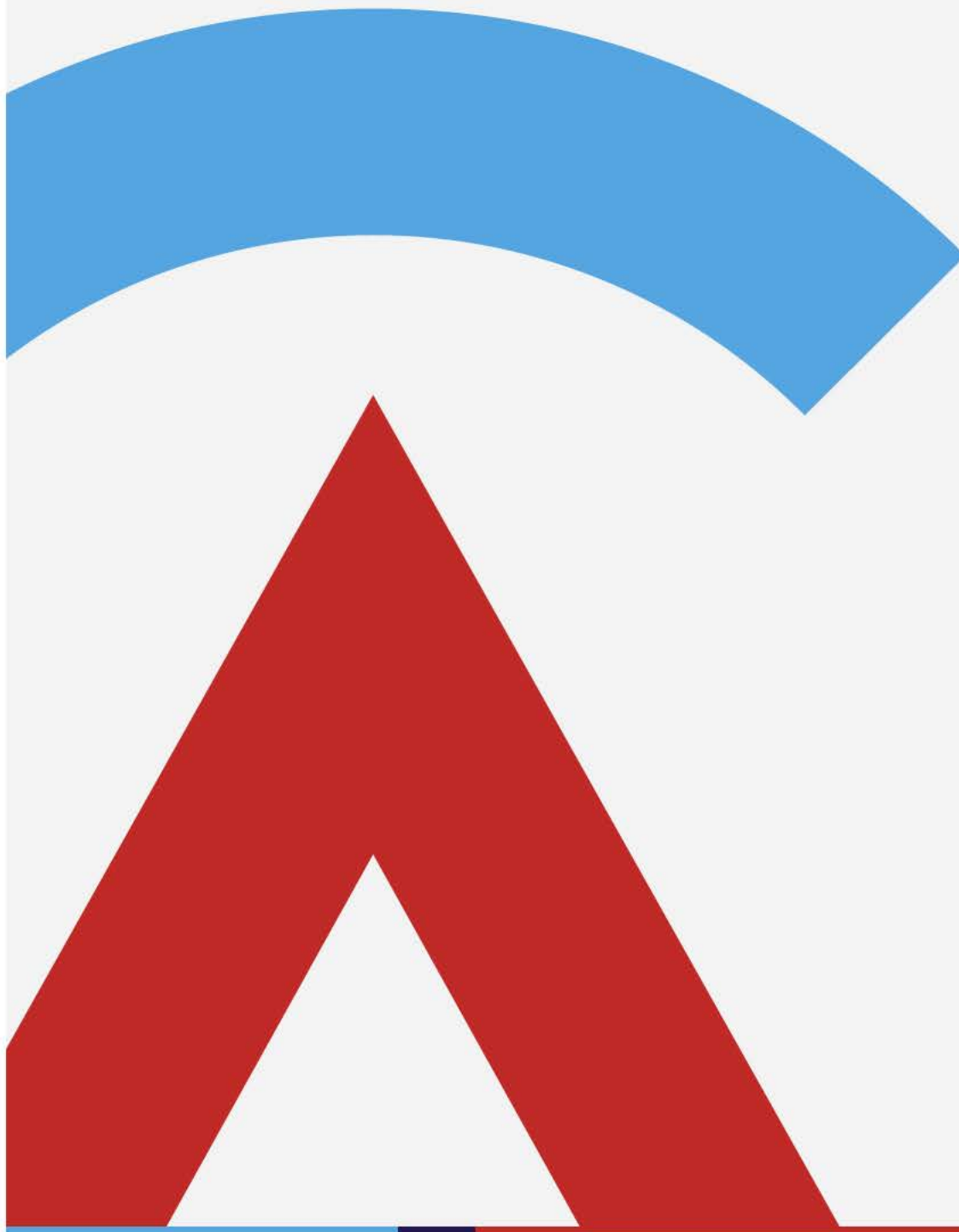
Our support of the profession extends to affiliations with international accounting organisations.

We are a member of the International Federation of Accountants and are connected globally through Chartered Accountants Worldwide and the Global Accounting Alliance. Chartered Accountants Worldwide brings together members of 13 chartered accounting institutes to create a community of more than 1.8 million Chartered Accountants and students in more than 190 countries. CA ANZ is a founding member of the Global Accounting Alliance which is made up of 10 leading accounting bodies that together promote quality services, share information and collaborate on important international issues.

We also have a strategic alliance with the Association of Chartered Certified Accountants. The alliance represents more than 870,000 current and next generation accounting professionals across 179 countries and is one of the largest accounting alliances in the world providing the full range of accounting qualifications.

Conflicts of Interest Guide

2021



Welcome to Chartered Accountants Australia and New Zealand's (CA ANZ) *Conflicts of Interest* guide that is designed to assist members identify, evaluate and address a conflict of interest.

While some of the material in this guide focuses on conflict of interest situations involving members in public practice and their clients, much of the general information provided, including the action flow-chart, is equally applicable to conflict of interest situations involving members in business and their employing organisations.

It is important that you read the information below before you proceed further through the guide.

CA ANZ has created this guide in response to requests from members for more practical assistance with dealing with situations that involve a conflict of interest.

CA ANZ acknowledges the contributions of Hall & Wilcox in developing this guide.

CA ANZ acknowledges and thanks the technical staff of the Accounting Professional & Ethical Standards Board (APESB) for their assistance in reviewing this Guide

IMPORTANT INFORMATION

- This guide focuses on member obligations to manage conflict of interest situations under both APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* (all members except members resident in NZ) and the *NZICA Code of Ethics* (all members resident in NZ). It also provides some information on the TPB Code for Australian tax practitioners. Where members are subject to other legal or professional and ethical requirements in respect to conflicts of interest by virtue of their professional qualifications or the nature of the work they do (i.e. assurance practitioners, insolvency practitioners, lawyers, financial advisors, company directors, trustees, fiduciaries etc.), they must ensure that they gain their own understanding of those other requirements and ensure compliance with them.
- This guide was prepared in October 2021. Laws, regulations, CA ANZ membership obligations and practices may have changed since that time.
- This guide is provided to you on a general basis only and must not be relied on by you or any other person as a substitute for consulting the specific provisions of relevant laws, regulations, CA ANZ / NZICA professional and ethical requirements, and any other conflict of interest requirements you are subject to.
- If you require appropriate professional advice tailored to your specific circumstances, you should seek independent legal advice.

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Why is managing conflicts of interest so important?

Professional ethics, including the management of conflicts of interest, is attracting increased interest worldwide from the public, regulators, standard setters and the profession. Failure to demonstrate ethical behaviour, including responding appropriately to conflict of interest situations, may erode public trust in the accounting profession.

Your membership obligations include abiding by the requirements of the Code. The Code prescribes that members be alert to conflicts of interest and respond appropriately by identifying, evaluating and addressing these conflicts as they arise.

The Code establishes the standard of behaviour expected from you, including how you should address conflicts of interest and threats to objectivity. The Code provides requirements against which your actions are measured in the event that a complaint is received.

Most Chartered Accountants tell us that they can identify, evaluate and address a conflict of interest when one arises. However many complaints received by CA ANZ, involve conflicts that are identifiable to a neutral observer. In these cases, the conflict of interest can often be attributable to a loss of perspective, rationalising the conflict or an inability to identify a conflict of interest due to familiarity with a client or stakeholder.

What this tells us is that Chartered Accountants, regardless of their level of experience, can develop a 'blind spot' when it comes to identifying conflicts of interest.

Irrespective of where you are in your career, it's recommended that you take the time to check your 'blind spot' regularly and implement procedures to minimise the risk of complaints due to an unrecognised or unmitigated conflict of interest.

What are the rules?

The Code requires all members to consider whether their professional relationships create threats to compliance with the fundamental principles prescribed by the Code.

Members of CA ANZ, except New Zealand resident members, are subject to professional and ethical standards issued by the Accounting Professional & Ethical Standards Board (APESB) including APES 110, *Code of Ethics for Professional Accountants (including Independence Standards)*. See <https://apesb.org.au/standards-guidance/apes-110-code-of-ethics>

All New Zealand resident members of CA ANZ are subject to NZICA professional and ethical standards including the *NZICA Code of Ethics (NZICA Code)*. See: <https://www.charteredaccountantsanz.com/member-services/member-obligations/regulations-and-guidance/new-zealand-regulations/nzica-rules-and-code-of-ethics> Assurance practitioners in New Zealand are also subject to PES 1: *International Code of Ethics for Assurance Practitioners (including international independence standards) (New Zealand)* promulgated by the External Reporting Board (XRB). See <https://www.xrb.govt.nz/assurance-standards/professional-and-ethical-standards/pes-1-revised>.

APES 110, NZICA Code and PES 1 prescribe the behaviours expected of members including those relating to conflicts of interest.

APES 110, NZICA Code and PES 1 are essentially equivalent, so we will refer to them generically as 'the Code' throughout this guide. Where the Codes materially differ, we will point differences out in text boxes like this one.

Important section references of the Code will be indicated by the use of a pointing hand. 

In Australia, registered tax practitioners (tax agents, BAS agents and tax (financial) advisers) must also comply with the Code of Professional Conduct prescribed by the Tax Practitioners Board (TPB Code).

Information which is unique to the TPB Code in Australia will be identified in text boxes like this one.

Other professional and ethical standards (and Guidance Notes) issued by APESB and NZICA prescribe additional professional behaviours in the context of accounting disciplines and professional activities. Some of these standards include additional specific requirements members must comply with in respect to managing conflicts of interest that are not specifically covered in this guide.



You should review all professional and ethical standards (and Guidance Notes) that are applicable to your professional activities for any additional requirements in respect to managing conflicts of interest.

Are the rules different for Audit clients?

Audit and assurance engagements are conducted to provide users of the audit/assurance report with an independent assessment of the information contained within the scope of the engagement. Therefore, it is of critical importance that the audit/assurance team demonstrate appropriate levels of professional scepticism which may be threatened by conflicts of interest. Members conducting audits, reviews and other assurance engagements must comply with the Independence Standards contained in the Code to support the credibility of the audit or assurance report. For this reason, the Code sets out rules which are specific to audit, review and other assurance engagements. These rules, contained in Parts 4A and 4B of the Code, are detailed and raise the bar for assessment of conflicts of interest with respect to audit and assurance engagements.

The rules for independence and conflicts of interest are strengthened further where the client is a Public Interest Entity (PIE). A PIE client is not restricted to those entities listed on local stock exchanges, rather PIE clients are deemed as such due to their large number and wide range of stakeholders.

How do other professional registrations impact conflicts of interest?

Many Chartered Accountants are also liquidators, lawyers, company directors, trustees and fiduciaries. Depending on your professional qualifications and the nature of the work that you do, there may be other rules that you must comply with when it comes to identifying and managing conflicts of interest.

Some of the other sources of rules regarding conflicts of interest are described in the table below. This guide will focus on the rules prescribed by the Code.

Australia

Assurance Practitioners, you must comply with

- Divisions 3, 4 and 5 of Part 2M.4 of the Corporations Act
- Audit and Assurance Standards
- APES 110 – Code of Ethics for Professional Accountants (Including Independence Standards)

Directors, you must comply with:

- Sections 180 to 184, and 191 to 195 of the Corporations Act
- The company's constitution

Fiduciaries, you must comply with:

- The terms of the trust deed
- Relevant legislation
- The common law duty of the fiduciary to act in the best interests of those to whom they owe their obligations and to avoid conflicts of interest

Insolvency Practitioners, you must comply with

- The ARITA Code of Professional Practice
- Relevant sections of the Corporations and Bankruptcy Acts
- All of the duties applicable to 'officers' under the Corporations Act (see sections 180 – 184)
- The duty to act in the best interest of creditors
- APES 330 Insolvency Services

Lawyers, you must comply with:

- The applicable solicitor's rules in the jurisdiction of your practice
- The contents of your client retainer
- Your duties as an officer of the Court
- The common law duty to act in the best interests of your client

Financial Advisers, you must comply with:

- The common law duty to act in the best interests of the principal and to avoid conflicts
- The Financial Adviser Standards and Ethics Authority (FASEA) Code of Ethics
- Chapter 7 of the Corporations Act
- APES 230 Financial Planning Services

New Zealand

Assurance Practitioners, you must comply with

- Financial Reporting Act 2013, Financial Markets Conduct Act 2013, Public Audit Act 2001 and other laws & regulations governing the entity under audit
- Professional & Ethical Standards PES 1, PES 3 and PES 4
- Auditing Standards

Directors, you must comply with:

- Part 8 of the Companies Act 1993 or equivalent provisions of the relevant laws and regulations governing the entity (eg Crown Entities Act 2004) or its conduct (eg NZX listing Rules), Financial Markets Conduct Act 2013
- The company's constitution

Fiduciaries, you must comply with:

- The terms of the trust deed
- Section 34 of the Trusts Act 2019
- The common law duty of the fiduciary to act in the best interests of those to whom they owe their obligations and to avoid conflicts of interest

Insolvency Practitioners, you must comply with

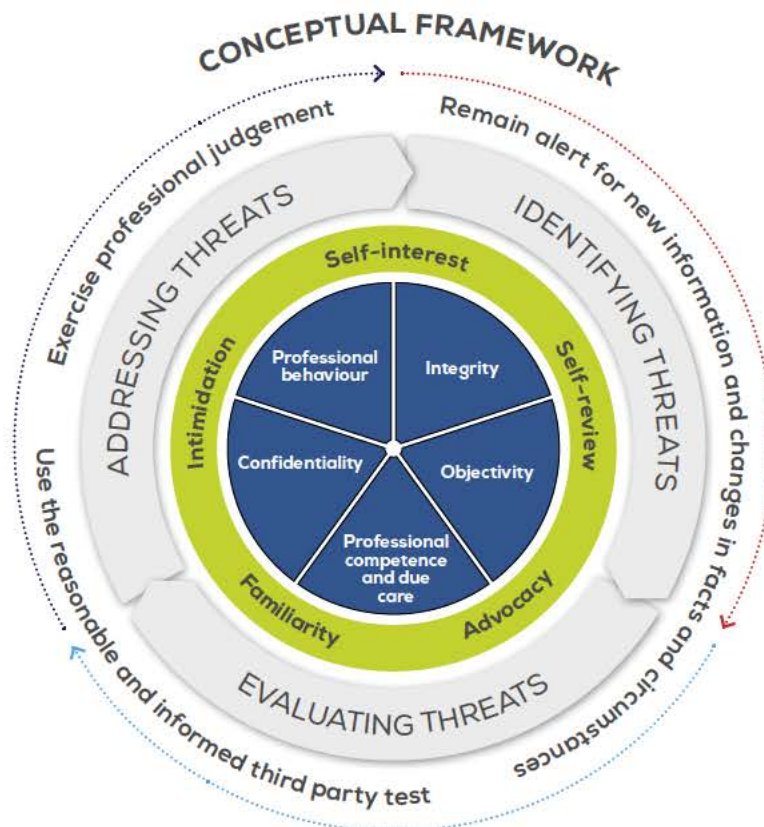
- Parts 14-16 of the Companies Act 1993, the Receivership Act 1993 or any other laws, regulations or instruments applicable to the appointment of an insolvency practitioner
- Insolvency Practitioners' Regulation Act 2019
- NZICA Insolvency Services Standard
- RITANZ Code of Professional Conduct (if a member of RITANZ)
- The duty to act in the best interest of creditors

Lawyers, you must comply with:

- The applicable solicitor's rules in the jurisdiction of your practice (eg Lawyers: Conduct and Client Care Rules 2008 pursuant to Lawyers and Conveyancers Act 2006), specifically Chapter 6
- The contents of your client retainer
- Your duties as an officer of the Court
- The common law duty to act in the best interests of your client

Financial Advisers, you must comply with:

- Financial Markets Conduct Act 2013, Financial Service Providers (Regulation and Dispute Resolution) Act 2008
- NZICA Financial Advisory Services Standard
- Code of Professional Conduct for Financial Advice Services
- Regulatory provisions of other bodies if applicable



What does the Code say?

The Code establishes five fundamental principles of professional ethics:

- Integrity;
- Objectivity;
- Professional competence and due care;
- Confidentiality; and
- Professional behaviour.

 (Section 110)

The Code also includes a conceptual framework that sets out the approach required to **identify, evaluate and address** threats to compliance with those fundamental principles and, for assurance engagements, threats to independence.

 (Section 120)

Threats to the fundamental principles (and independence) are:

- Self-interest.
- Self-review.
- Advocacy.
- Familiarity and
- Intimidation.

 (paragraph 120.6 A3)

Parts 2 and 3 of the Code apply the conceptual framework to a range of facts and circumstances that members might encounter. Section 200 explains how members in business should apply the conceptual framework and section 210 provides specific requirements and guidance material regarding how members in business should manage conflicts of interest. Similarly, section 300 explains how members in public practice should apply the conceptual framework and section 310 provides specific requirements and guidance material for managing conflicts of interest.

Addressing the Fundamental Principles

Generally, a conflict of interest arises where an accountant has a relationship or interest which may create, or have the appearance of creating, a threat to his or her objectivity. Conflicts of interest may also create threats to the other Fundamental Principles including Confidentiality, Integrity, Professional Competence and Due Care and Professional Behaviour. It is just as important to consider potential or perceived conflicts of interest as it is to consider actual conflicts of interest.

The Code requires that a member must not allow a conflict of interest to compromise their professional judgment.

It is convenient to think of conflicts of interest as falling into two different categories:

- 1 conflicts between the interests of the accountant and the interest of the client or stakeholder; and
- 2 conflicts between the interests of two or more clients or other parties.

The fundamental principle of 'objectivity' imposes an obligation on you not to compromise professional or business judgement because of bias, conflict of interest or undue influence of others, such as individuals, organisations, technology or other factors.

When identifying, evaluating and addressing threats to the fundamental principles by applying the conceptual framework, accountants are specifically required to:

- Exercise professional judgement;
- Remain alert for new information and to changes in facts and circumstances; and
- Use the reasonable and informed third party test.

A conflict of interest will have been reduced to an acceptable level if a reasonable and informed third party would be likely to conclude, weighing all the relevant facts and circumstances, that the member knows, or could be reasonably expected to know, at the time the conclusions are made, that compliance with the fundamental principles is not compromised.

It is important to consider that circumstances between the member and client or stakeholder can change over time. It is imperative that the member remains alert to new or emerging information which may change the facts, circumstances and prevailing threats. An assessment of threats to the fundamental principles and an analysis of whether safeguards are available, is not an activity that is completed once at the commencement of the engagement or stakeholder relationship, rather it is an ongoing member obligation. Failing to regularly review threats and safeguards, can create a 'blind spot'.

Where the member is unable to:

- eliminate the circumstances, interests or relationships that are creating the threat or;
- apply safeguards to reduce the threat to an acceptable level; the member is required to decline or end the engagement.

Members are reminded that considering themselves 'objective' is not a safeguard in and of itself to manage a conflict of interest. A member's self-assessment as being 'objective' often results in complaints to CA ANZ's Professional Conduct and Complaints unit due to the subjectivity and bias of the self-assessment. Safeguards are actions, individually or in combination, that the professional accountant takes that effectively reduce threats to compliance with the fundamental principles to an acceptable level. This is the reason that the fundamental principles are assessed using a reasonable and informed third party test.



A conflict does not need to result in harm or prejudice to the client to be a breach of the Code. The perception of conflict must also be managed. It is not sufficient for you to simply consider yourself "objective" to address the conflict of interest.

The obligations under the TPB Code are expressed a little bit differently to the Code and require registered tax practitioners to have adequate arrangements in place to identify and manage conflicts of interests. The steps that are recommended for managing conflicts of interest include:

- DISCLOSE the conflict,
- CONTROL the conflict and
- AVOID the conflict.

See <https://www.tpb.gov.au/code-professional-conduct-managing-conflicts-interest-tpb-information-sheet-tpbi-192014>

What is the relationship between objectivity, integrity and independence?

Independence is closely related to the fundamental principles of integrity and objectivity. Independence comprises:

- a Independence of mind – the state of mind that permits the expression of a conclusion without being affected by influences that compromise professional judgement, thereby allowing an individual to act with integrity, and exercise objectivity and professional scepticism.
- b Independence in appearance – the avoidance of facts and circumstances that are so significant that a reasonable and informed third party would be likely to conclude that a firm's or engagement team member's integrity, objectivity or professional scepticism has been compromised.

Independence is critical for audits, reviews and other assurance engagements as it underpins the credibility of the resulting report. For this reason, the Code sets out specific rules regarding independence for audits, reviews and other assurance engagements that might impact whether an otherwise planned response to a conflict of interest remains appropriate. These rules, contained in Parts 4A and 4B of the Code, can be paraphrased as describing the facts, circumstances, activities, interests and relationships that create or might create threats to independence, and prescribing potential actions, including safeguards that might be appropriate to address any such threats and indicating situations where threats cannot be eliminated or there are no safeguards available to reduce threats to an acceptable level.

Laws, regulations and other professional and ethical standards also require members to be independent to perform certain other types of professional activities (for example, insolvency services) or provide specific requirements that members must comply with in order to describe themselves as independent (for example, financial planning/financial advice or valuation).

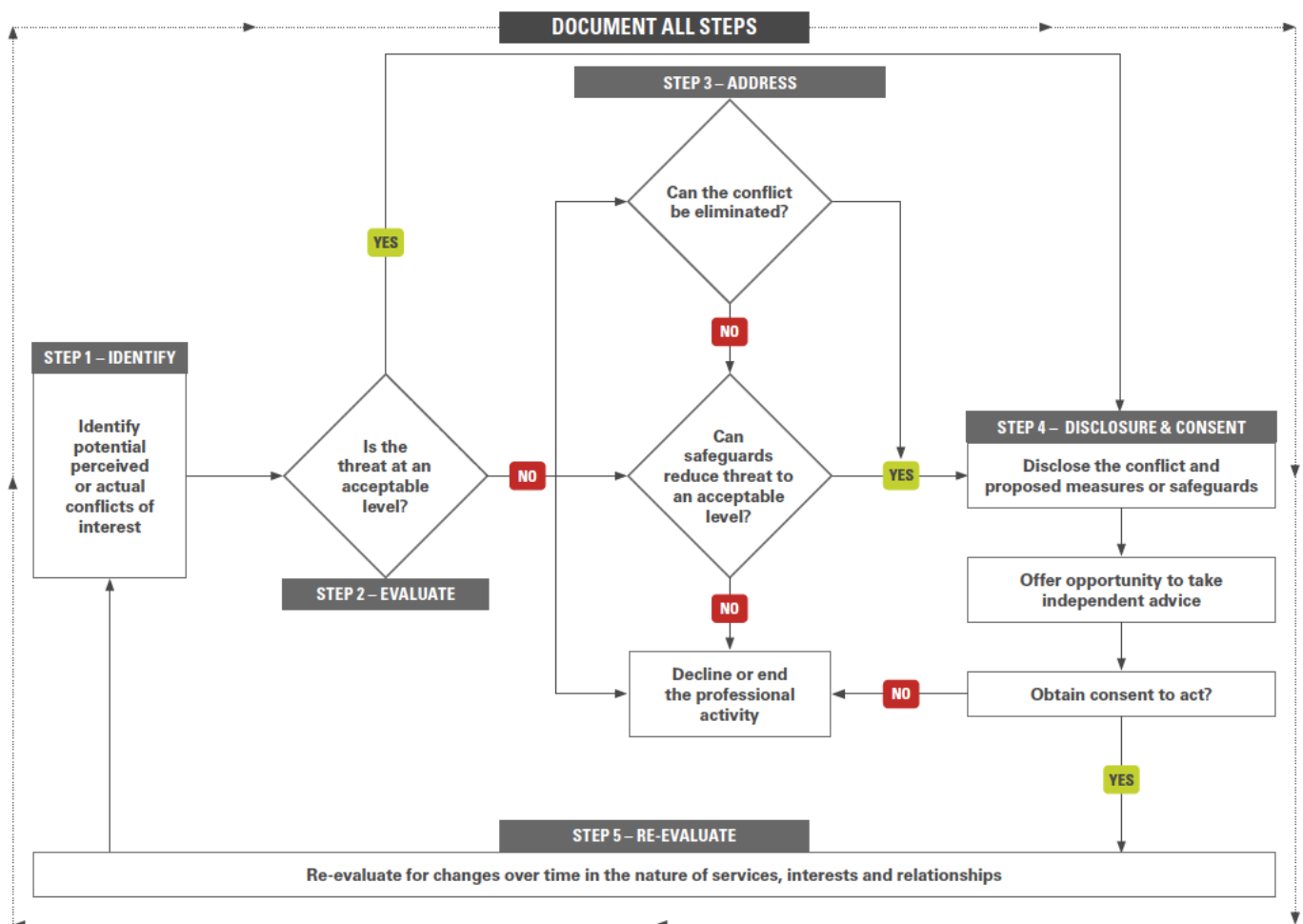


Compliance with Parts 4A and 4B of the Code is a requirement for members who perform audit, review and other assurance engagements.

Members who perform other professional activities should review any relevant laws, regulations, professional and ethical standards (and guidelines) to understand any additional independence requirements.

Steps for identifying, evaluating and addressing conflicts of interest

This flow chart has been prepared by CA ANZ to assist its members to identify, evaluate and address potential, perceived or actual conflict of interest situations.



1. IDENTIFY

Some conflicts of interest will be clear, such as advising two parties on either side of the same contract or business transaction. Some conflicts of interest, however, are more difficult to identify or emerge over time. Implementing good policies and procedures for identification and management of conflicts helps reduce the risk of blind spots.



Your risk tolerance when it comes to identifying conflicts should be low. Just because you have identified a conflict does not mean that you must end or decline an engagement provided the threats can be appropriately addressed.

What is a conflict of interest?

A conflict of interest occurs when you have multiple interests (or roles) in a situation, such that, how you act in one role **will, might or be perceived** to impact (bias) how you act in another role.

Common examples of situations that might give rise to a conflict of interest include:

- Personal relationships with clients/customers, vendors, lenders, shareholders etc. including via close and immediate family members.
- A falling out between partners/shareholders etc.
- Clients experiencing matrimonial disputes such as divorce proceedings.
- Clients/customers/employing organisations that propose to transact with each other such as negotiating major contracts, sale and purchase of assets, and the valuation of assets.
- Undertaking multiple roles such as shareholding/trustee/executor/director relationships with clients/customers, vendors, lenders, shareholders etc while also undertaking a professional engagement.
- Undertaking business ventures with or soliciting investments from clients/employing organisations for you or close or immediate family members or any entity you or your family hold a financial interest in.



(See also paragraphs 210.4 A1 and 310.4 A1)

Please note that this is not an exhaustive list and members should take care not to overlook other situations in which a conflict of interest might occur. To objectively assess a situation for potential conflict, members should ask themselves:

"Do I have other loyalties, priorities or interests which might prevent me from acting in this client's best interests?"

"Do I have other loyalties, priorities or interests which might give the appearance of preventing me from acting in this client's best interests?"

"Do I have clients whose interests are conflicted?"

2. EVALUATE

How do I evaluate a conflict of interest?

Once a conflict of interest situation has been identified, evaluate whether the threat is at an “acceptable level”.

This evaluation should occur as soon as possible after you identify the conflict and before the engagement or further work commences.

An “acceptable level” is a level at which a member using the “reasonable and informed third party test” would likely conclude that the member complies with the fundamental principles.

The “reasonable and informed third party test” is a consideration by a member about whether the same conclusions would likely be reached by another party. Such consideration is made from the perspective of a reasonable and informed third party, who weighs all the relevant facts and circumstances that the member knows, or could reasonably be expected to know, at the time the conclusions are made.



A conflict of interest situation is unlikely to be at an “acceptable level” (without further action being taken) unless:

- It is only a potential conflict of interest situation (i.e. an interest or relationship exists that could give rise to an actual conflict in the future); or
- There are safeguards (or other measures) already in place.

Where a conflict of interest situation is at an “acceptable level”, members should disclose to the affected party or client, the conflict of interest situation and the proposed safeguards on which they will rely upon. Members should recommend the affected party or client take independent advice (if appropriate) and obtain written consent to continue to act.

These actions ensure that clients/your employing organisation are aware of the situation, are satisfied with your assessment, can make an informed decision and puts them on notice that they should proactively update you on changes in facts and circumstances.



If the conflict of interest situation arises in respect to your relationship with your employer organisation / firm, your employer organisation / firm should have policies and procedures that prescribe how the conflicts of interest situation should be managed including disclosure and consent obligations.

3. ADDRESS

What do I do next?

Where the conflict of interest threat is evaluated as not being at an “acceptable level”, the Code requires that you address the threat by eliminating it or reducing it to an “acceptable level” by either:

- Eliminating the circumstances, including interests or relationships, that are creating the threats;
- Applying safeguards, where available and capable of being applied to reduce the threats to an “acceptable level”; or
- Declining or ending the specific professional activity.

Determining how you will address the conflict should occur as soon as possible after you identify the conflict and before the engagement is accepted or further work commences.

Eliminating the circumstances creating the conflict of interest threat.

Depending on the facts and circumstances, you may be able to address a threat by eliminating the circumstances creating the threat. Please note that the following examples may not resolve Independence issues as prescribed by Part 4A of the Code.

Common examples of elimination include:

- Selling shares that you hold in the prospective supplier or client.
- Disengaging from one party to the transaction.
- Resigning as a Trustee / Director.



(see also paragraph 210.7 A2)

Where a conflict of interest creates a threat to one or more of the fundamental principles that cannot be eliminated or reduced to an acceptable level through the application of safeguards, you must resign from or not accept the engagement.

These situations are sometimes referred to as ‘irreconcilable conflicts’ and include acting for two parties on either side of a dispute (such as a divorce between clients where separate engagement teams are not available) or providing advice to two clients who are on either side of a transaction, such as purchasing and selling a company.

In order to identify if an irreconcilable conflict of interest exists, members should ask themselves:

“Is the conflict so fundamental that there is an unmanageable and unacceptable risk that I can’t objectively act or be seen to objectively act in the best interests of the client or public?”

Another way of considering this question is to consider whether the conflict is so profound that it can’t be managed by adopting the safeguards and disclosures set out below.



Are you prone to pleasing your clients? Are you swayed by the loudest voice in the room? Do you have loyalties that mean that you will not act in the best interests of all the parties? Will you put your own interests ahead of others? These are potential irreconcilable conflicts.

Applying safeguards

Safeguards are actions, individually or in combination, that you take to effectively reduce threats to compliance with the fundamental principles to an “acceptable level”.

These actions need to be specific to the facts and circumstances giving rise to the conflict. Where you are unable to be objective in a situation, it is unlikely that you will be able to put in place sufficient safeguards to reduce threats to an “acceptable level”. In these circumstances, members are required to eliminate the threat or end the professional activity/engagement (discussed further below).

Common examples of possible safeguards include (without limitation):

- Requiring the client to obtain independent advice on contentious matters giving rise to the conflict.
- Having an appropriate reviewer, who was not a member of the team, review the work performed and advise as necessary. The appropriate reviewer must not be affected by the conflict and they must assess the appropriateness of judgements and conclusions.
- Using separate engagement partners and teams (where the conflict is between two clients) including having clear policies and procedures regarding issues of security and confidentiality.
- Requiring all correspondence to be shared with all directors (where there is a shareholder dispute) and all contentious transactions to be dealt with by full board meeting.
- Regular review of the application of safeguards by senior professional staff not involved with relevant client engagements.
- Withdrawing from the decision-making process related to the matter giving rise to the conflict.

Whether safeguards are appropriate, and reduce threats to an “acceptable level” will depend on the exact facts and circumstances of the conflict of interest situation you face. You will need to use your own professional judgement, including the reasonable informed third-party test, to assess whether the safeguards you propose to put in place will be adequate in the circumstances. As well as using your own professional judgement, in some more complex situations it may be sensible to obtain guidance or the opinion of an objective third party with the appropriate skills and experience to objectively weigh up the facts and circumstances and determine whether safeguards are appropriate and sufficient to reduce threats to an “acceptable level”.

If the safeguards you have proposed to put in place do not reduce the threat to an “acceptable level” you must resign from or not accept the engagement.

The TPB Code requires tax agents to have in place “adequate arrangements for the management of conflicts of interest”. This is conceptually similar to the process of selecting and applying safeguards under the Code. Rule 66 of the TPB guidance, TPB (EP) 01/2010: Code of Professional Conduct, specifies that the following factors will be relevant to determining whether a tax agent’s conflict management arrangements are sufficient:

- The nature, scale and complexity of the registered tax practitioner’s business.
- The nature of the services provided by the registered tax practitioner.
- Any information the registered tax practitioner obtains that is relevant to the actual or potential conflict of interest.



How do I design safeguards to address my situation?

In designing appropriate safeguards – where disclosure and consent are not sufficient by themselves – you should consider whether you can:

- Introduce another objective party to the situation to review/advise on the conflicted matter – if you are a sole practitioner this will need to be an objective third party; or
- subject to confidentiality requirements, where the issue involves potential disputes between partners/ shareholders etc. (i.e. within the “client”), design processes and protocols that can be put in place to ensure the parties are included in all discussions, disclosures and decisions including agreeing with the parties what will happen where the parties fail to agree (i.e. disengagement); or
- re-scope the professional activities so that you withdraw from providing advice on conflicted matters.

Other general guidance material available that is relevant to your conflict of interest situation may also assist you to identify appropriate safeguards. Refer to the resources section at the end of this guide for further references.



“This is all too hard – so I would prefer to just disengage the client”

“I can put safeguards in place that will be sufficient for now – but I foresee problems down the track – it would be better to disengage the client now”

Generally, subject to the terms of your engagement letter, you are free to disengage a client at any time provided you do not put them in an unacceptable position (i.e. they will suffer a loss because of sudden cessation of services). You will also need to consider any legal or regulatory requirements which may prevent an unplanned withdrawal from the engagement. Refer to paragraphs 44 and 45 of APES 320 – Quality Control for Firms (AUS) and paragraphs 34 and A28 of PS-1 Quality Control (NZ) regarding withdrawal from an engagement.

See further information about disengagement overleaf.

Declining or ending the professional activity

There are some situations in which threats can only be addressed by declining or ending the specific professional activity. This occurs where the circumstances, including interests and relationships that created the threats, cannot be otherwise eliminated (for instance, you are biased or acting under the undue influence of another) and sufficient safeguards are not capable of being applied to reduce the threat to an “acceptable level”.

Conflicts involving actual or perceived self-interest threats are often found to be the most serious conflicts dealt with by the disciplinary tribunals of professional accounting bodies. This is because preferring your own interest ahead of your client is contrary to the public interest responsibilities of Chartered Accountants and the fundamental principles of the Code. Often these issues arise in joint ventures or investment relationships with clients where a professional accounting engagement is also being performed.

Where the conflict or objectivity threat involves a risk that you will favour your own interests over that of your client or other stakeholder, you should carefully consider whether suitable safeguards can be implemented or whether your only option is to disengage entirely from the professional activity. If you are unsure or uncertain as to whether suitable safeguards can be implemented to protect your client or stakeholder in this situation, best practice would be to disengage entirely from the professional activity.

Chartered Accountants sometimes suggest that declining the engagement lets down the client or other stakeholder and this can be particularly difficult to manage when it is a longstanding relationship. However, the opposite is true, declining the engagement often better serves the interests of the client as well as protects the Chartered Accountant. It is important that members explain to their clients how their obligations under the Code are designed to protect the public interest above their own. Where the client’s interests are contrary to the public interest, the Chartered Accountant must place the public interest before that of their client’s interests.

4. DISCLOSURE AND CONSENT (WHERE IT’S APPROPRIATE TO CONTINUE TO ACT)

How do I protect myself and my client/employer?

If you are a NZ member in public practice, the NZICA Code prescribes that where you have a conflict of interest, but you can apply safeguards to eliminate the threat or reduce it to an “acceptable level”, you are required to:

- Disclose, in writing, the nature of the conflict of interest and the related safeguards, if any, to all clients or potential clients affected by the conflict (paragraph NZ R 310.9.1); and
- Obtain, in writing, the client’s consent to you performing the professional services (paragraph NZ R 310.9.2).

In addition, in circumstances where adequate disclosure is not possible by reason of constraints of confidentiality, you must end or decline the relevant engagement (paragraph NZ R 310.12.1).

Further, if you are a NZ member in business, the NZICA Code specifically recommends that you also undertake these disclosure and consent procedures in writing (paragraph NZ 210.8 A1).

Although not prescribed and subject to confidentiality considerations, the Code states that it is “generally necessary” to disclose the conflict, describe how the conflict is being evaluated and/or addressed, and, obtain the employing organisations’ or clients’ consent to continue to act.



Is there a template for disclosing a conflict of interest and getting consent to act?

How you decide to disclose a conflict of interest in writing will depend on the facts and circumstances you face. Considerations will include whether the conflict is present at the start of the engagement/relationship or if the conflict becomes apparent after the engagement/relationship has commenced.

Best practice disclosure should cover these elements:

- Description of the potential, perceived or actual conflicts of interest.
- Explanation of why the threat is at an "acceptable level" or description of the circumstances you will eliminate/safeguards that you intend to put in place to reduce the threat to an "acceptable level".
- Suggestion that the client (or employing organisation, where appropriate) obtain independent advice (where obtaining independent advice is not already a safeguard).
- Consequences of non-compliance with any safeguards (i.e. disengagement) and request to be advised immediately of changes to facts and circumstances including withdrawal of consent.
- Request the client (or employing organisation) confirm consent in writing to continue to act.
- Timeframe for review of the conflict, the efficacy of the safeguards and the consent to act, particularly for long or recurring engagements.

The TPB states that where there is a conflict of interest, registered agents should disclose the conflict to their clients. This disclosure should be made at the earliest opportunity, should occur before the tax advice/service is provided, and should be specific and meaningful to the client.

If the client/employing organisation refuses to give you consent to continue to act:

- End or decline to perform professional activities that would result in the conflict of interest; or
- End relevant relationships or dispose of relevant interests to eliminate the threat or reduce it to an acceptable level.



Disengage a client to address a conflict of interest situation?

There will be situations where you may choose or will be required to disengage a client to address a conflict of interest situation i.e. where:

- you choose to eliminate the client relationship.
- you are unable to put in place sufficient safeguards to reduce the threat to an "acceptable level".
- the client fails to comply with the safeguards that you have put in place to address the conflict of interest (and you consider this failure means that the threat is no longer at an "acceptable level").
- events or circumstances have changed during the engagement such that safeguards that were previously sufficient are no longer adequate and further appropriate safeguards applicable to changing events or circumstances are not available.
- the client does not give you consent to continue to act. (despite your view that sufficient safeguards can be put in place to reduce the threat to an "acceptable level")

In these situations, you should advise the client, in writing, of your decision/requirement to disengage them and request that they obtain a new accountant. You should then assist the client to facilitate the transfer of their business to the new accountant as soon as practicable. If there are urgent deadlines, it might be appropriate, with the client's permission, to assist the client in the meantime to meet those deadlines rather than cause them to be placed in an unfavourable position.

If no alternative advisor is engaged by the client, you should write a further letter to the client detailing upcoming filings, payments or other matters that the client should attend to together with documents belonging to the client and any other information that you would typically provide to the incoming accountant.

5. RE-EVALUATION

What do I do when the relationship or engagement changes?

The nature of services, interests and relationships with clients and stakeholders continually change and requires members to remain alert to changes over time that may create conflicts of interest. This means that conflicts of interest situations can appear over time where none were initially present. Alternatively, a minor conflict that was appropriately managed by safeguards can become more serious and require re-evaluation. It is usually small and subtle changes in these existing relationships that catch members unaware – a ‘blind-spot’ rather than a conflict of interests that existed at the beginning of a relationship.

Under the Code, members are required to “have an inquiring mind” (paragraph R120.5). “Having an inquiring mind” includes remaining alert for new information and changes in facts and circumstances over time that might create a conflict of interest for the engagement. Where you become aware of new information that might create threats or increase existing threats, you are required to re-evaluate and address changes in those threats.

For this reason, you should take particular care to systematically and periodically review all on-going relationships for conflict of interest situations. You should also take particular care to systematically and periodically review any safeguards you have in place to address any threats, which may be affected by new information.



APES 320 (all members except members resident in NZ) and PS-1 (members resident in NZ) require members in public practice to (amongst other things) have policies and procedures that address conflicts of interest as part of their client acceptance and client continuance processes. These policies and procedures include how to appropriately withdraw from a client engagement.

While there is no similar Professional Standard requiring members in business to develop policies and procedures regarding conflicts of interest, members in business should consider developing and applying their own policies and procedures.

DOCUMENTATION

What records should I keep?

Documenting all matters regarding a conflict of interest is key to ensuring compliance with the Code and defending any potential complaint made to your Professional Body. Matters to document include (without limitation):

- The nature and the circumstances of the conflict, including the role that the member is to undertake.
- Initial assessment of the threat.
- Any specific measures relied upon in assessing the threat (e.g. compliance with firm/ employing organisation’s established conflict of interest policies and procedures).
- Any actions considered necessary to retain confidentiality including when seeking advice from third parties.
- Specific measures put in place to prevent disclosure or information between engagement teams when serving two conflicted clients.
- Any actions taken to eliminate the threat.
- Any safeguards required to reduce the threat to an “acceptable level”.
- An ongoing assessment of whether any safeguards applied are effective in reducing the threat to an acceptable level.
- Communications with parties affected by the conflict; and
- Why it is appropriate (or not) to accept or continue the engagement/professional activity?

Insurance Considerations

Members are encouraged to check and understand any requirements and/or exclusions contained in their Professional Indemnity (PI) Insurance coverage. Some policies include requirements for notification of conflicts of interests. Insurance policies may require notification at the time circumstances arise that could result in a claim. Familiarity with the terms and conditions of the member’s PI Insurance policy is imperative to prevent prejudice to the member’s cover. CA ANZ refers members to their insurer for further information specific to their policy.

Need more help?

Members who are faced with a complex ethical situation that they are having difficulty working through and addressing themselves are encouraged to contact the [Chartered Accountants Advisory Group \(CAAG\)](#). The CAAG offers free, confidential support and guidance to help members navigate a course of action. The CAAG may be able to provide a view about what a reasonable and informed third party might conclude about a conflict of interest situation. Members are advised, however, that the CAAG cannot provide any assurance that an investigation by Professional Conduct and Complaints would form the same view or arrive at a similar conclusion about the conflict of interest. In some situations, such as where the conflict of interest involves fiduciary responsibilities it may be advisable to take independent legal advice.

Examples of conflicts of interest

The following examples have been prepared to demonstrate when you may and may not act in the presence of a conflict, and if you can act, how threats can be reduced to an 'Acceptable Level'. The examples apply the process detailed on page 11 of this guide. Members are reminded that it is imperative to document the outcomes of each step in the process.

Example 1: "My word is my bond."

Sarah is a chartered accountant and tax agent. She is also a non-executive director of a publicly listed company called Adventure Group. Sarah receives fixed director's fees and has a small, nominal shareholding in Adventure Group.

Some time ago, Sarah had an accounting client called Bob. Bob was looking to invest in Adventure Group and asked Sarah for advice about the most tax effective way that he could purchase and own the shares. Sarah provided the advice, and Bob purchased shares in the company.

Bob's investment in Adventure Group did not perform well and he has now made a complaint to CA ANZ claiming that he would not have invested in Adventure Group if Sarah had properly explained the nature and extent of her interest in the company. Sarah's recollection is that she verbally told Bob about the existence of a potential conflict (given she was a director of the company in relation to which she was to provide tax advice to Bob) and that Bob told her to proceed. Sarah did not record this conversation in writing.

STEP 1 – IDENTIFY

Whether Sarah is in a position of conflict will depend on the facts. By the application of the reasonable and informed third party test, Sarah appears to have a conflict of interest between her duties as a non-executive director of Adventure Group and her duties to her client, Bob, which could potentially result in Sarah's actions being in breach of the Code.

There may be a conflict between Sarah's financial interests, her duties to Adventure Group and her client's interests.

STEP 2 – EVALUATE

This is an example of a self-interest threat to the fundamental principles of Objectivity, Confidentiality and Integrity. It is possible that Sarah has an interest in securing further equity funding for the company, or she may be in possession of confidential information about Adventure Group that impacts her ability to advise Bob without breaching her duties to Adventure Group. Self-interest threats to Objectivity, Confidentiality and Integrity are not at an acceptable level for Sarah to proceed without investigating whether threats can be addressed to reduce them to an acceptable level.

STEP 3 – ADDRESS

If Sarah did have a financial interest in Adventure Group, such as a significant shareholding, she shouldn't have agreed to act for Bob. However, as Sarah receives fixed directors fees and only has a very small interest in Adventure Group,

she could have acted for Bob provided that the appropriate safeguards were implemented.

Assuming that Sarah did not have a financial interest in Bob's decision to invest in the company, Sarah should have disclosed the circumstances of the conflict of interest in writing, offered Bob the opportunity to take independent advice, and obtained Bob's written consent to proceed. In addition, if the nature of Sarah's practice permitted, it would be prudent for another partner in the firm to provide the advice to safeguard Sarah from the conflict (provided this other partner is not conflicted).

STEP 4 – DISCLOSURE AND CONSENT

Sarah contends that she did disclose the conflict to Bob, but she has no records to substantiate it. This is an example of why accountants are recommended to fully document the disclosure of conflicts to their clients and obtain consent from their clients to proceed.

STEP 5 – RE-EVALUATE

Should Sarah have requested another partner in the firm to provide the advice to Bob, this does not preclude Sarah and her partner from needing to re-evaluate the engagement for changes to the nature and circumstances of the engagement. Where a conflict of interest has been identified, these engagements must be re-evaluated periodically and the outcomes of the re-evaluation must be documented.

Example 2: "I have known this family for many, many years."

Basil is a very competent accountant. He is a fellow of CA ANZ and is respected in the profession. Basil prides himself on his ability to retain good clients.

For over 40 years, Basil has been the accountant for several members of the Thyme family. He also regularly prepares the financial accounts for the Thyme family business. Basil considers himself to be a trusted advisor and friend to Ms Eleanor Thyme, the 'head' of the Thyme family.

Basil is approached by Eleanor's granddaughter, Jessica Thyme, who is looking to pay-off a loan that she received from the Thyme family business. Basil suggests that Jessica sells some of her shares in the Thyme family business to Eleanor, who in turn would pay off the loan. Both Eleanor and Jessica agree with the proposal, and Basil organises the relevant paperwork.

Basil briefly considers whether he is conflicted from acting for Jessica, but he has known Jessica for many years, so he is satisfied that she is aware that he acts for Eleanor and the Thyme Family Business. In his mind, this is a 'win/win' situation.

STEP 1 – IDENTIFY

Basil is in a position of conflict as he is advising two parties on either side of a transaction. This is a conflict between the interests of different clients.

Basil is proposing to act for Jessica in a share sale transaction where he is also engaged to act for the share purchaser and the share issuer. Basil's objectivity, integrity, and confidentiality in representing Jessica may be threatened by the fact that he is also required to act in the interests of Eleanor and the Thyme family business.

STEP 2 – EVALUATE

Basil's relationship with Eleanor and the Thyme family business will make it very difficult for him to act in Jessica's best interest, particularly where her interests are not aligned with the interests of Eleanor and/or the company. Basil has formed the view that the situation is 'win/win', but objectively Eleanor and Jessica have conflicting interests regarding the terms on which the debt is to be extinguished and the shares sold. They both deserve to have someone who will advise them impartially about the most favourable terms on which the transactions should occur. Familiarity threats to Basil's Integrity, Objectivity and Confidentiality are not at an acceptable level. It would be necessary to explore whether threats can be addressed to reduce them to an acceptable level.

STEP 3 – ADDRESS

It may have been possible for two different partners within Basil's firm to each act for Eleanor or Jessica, provided that a disclosure of the potential conflict and written consent from all parties was obtained (including the Thyme Family Business), different engagement teams were used and a confidentiality protocol put in place.

STEP 4 – DISCLOSURE & CONSENT

It is possible that disclosure of the conflict can be implied from Basil's long-standing involvement with the Thyme family, but in a case like this where the potential harm to Jessica is significant, express disclosure of the conflict and consent by the clients is warranted to safeguard all parties' interests.

Regardless of the fact that the parties involved are known to each other and may appear to have interests that are aligned, Basil should not have acted on both sides of this transaction due to the conflict of interest.

STEP 5 – RE-EVALUATE

This is an example of a client situation where relationships and obligations are continually changing therefore requiring regular review of the nature and circumstances particular to the engagement. In family businesses where children become adults, it is important that they seek independent advice.

Example 3: "I made a mistake, but it's all under control."

Andrew Smith is the managing partner of Smith Accounting. Smith Accounting is responsible for lodging the tax returns for several corporate clients, including ABC Business.

Before the end of the financial year, ABC Business disclosed some information to Andrew Smith which was material to the draft tax return that Smith Accounting had prepared. This occurred during Smith Accounting's busiest time of year. By mistake, Smith Accounting forgot to amend ABC Business' draft tax return before submitting it to the tax regulator.

Some months later, the tax regulator launched an investigation into ABC Business noting the irregularities in its most recent tax return.

As soon as Smith Accounting received notice of the investigation, it sent a letter to ABC Business which contained a proposed response to the tax regulator's investigation. In the letter, Smith Accounting offered to reimburse ABC Business in respect of any penalties imposed by the tax regulator as a result of the incorrect form of the lodged tax return. ABC Business agreed with the proposal set out in the letter.

STEP 1 – IDENTIFY

Andrew Smith, in his position of managing partner of Smith Accounting, and being responsible for the engagement with ABC Business, is in a position of conflict once the error is discovered. There is a self interest threat to objectivity, integrity and professional competence and due care.

This is a conflict between the interests of Andrew Smith and the interests of his client.

By acting on Andrew Smith's advice, ABC Business could inadvertently forego other legal rights and remedies that are available to it and it may miss out on the opportunity to obtain independent advice about the predicament Andrew Smith has placed it in.

STEP 2 – EVALUATE

Smith Accounting has made a mistake that may result in tax penalties to the client. Consequently, Andrew Smith has a clear interest in correcting his error in a way that reduces his own and the firm's exposure and potential liability for penalties. That interest is in conflict with the client's interest in exploring the rights that it may have against Andrew Smith and the firm and ensuring the issues with the tax regulator are resolved by an objective accountant. The self-interest threat to objectivity, integrity and professional competence and due care is not at an acceptable level. Andrew Smith would need to consider whether self-interest threats can be reduced to an acceptable level by the application of the conceptual framework.

STEP 3 – ADDRESS

With the appropriate safeguards in place Andrew Smith and Smith Accounting could have continued to act for ABC Business.

Andrew Smith should have disclosed his conflict to ABC Business in writing, obtained ABC Business' written consent, and suggested that ABC Business obtain independent legal and/or accounting advice before continuing to engage Andrew Smith and Smith Accounting.

STEP 4 – DISCLOSURE & CONSENT

The fact that Andrew Smith showed some awareness of his mistake is not the same as disclosing the existence of a conflict of interest.

STEP 5 – RE-EVALUATE

Hopefully, it may be unlikely that errors such as those described in this example would occur frequently, therefore, once the conflict has been addressed by the application of safeguards or by disengaging the client, there may not be a need to review for this specific conflict of interest. That does not preclude the engagement from ongoing review for other conflicts of interest should the client remain with Smith Accounting.

Example 4: "I thought the clients' interests were aligned even though they were in the process of obtaining a divorce."

Brooke is the accountant for Jenny and David, a married couple who are each 50% shareholders and directors of the company they own called JD Co.

When Jenny and David apply for a divorce, both parties insist that Brooke continue to act for them. Jenny and David meet with Brooke and ask her to dissolve the company so that they each receive 50% of its assets. Brooke raises the possibility of a conflict and recommends that Jenny and David obtain independent accounting and legal advice. Jenny and David say that because it was a simple transaction and there was no acrimony between them, there was no 'actual' conflict.

To be safe, Brooke issues a new engagement agreement in which she discloses the possible conflict of interest. Jenny and David sign the agreement without comment.

Throughout the course of the engagement, Brooke notices some irregular accounting entries involving large sums of money leaving JD Co since Jenny and David decided to divorce. Brooke raises the matter with David who tells her that the withdrawals are to repay a business loan that David obtained from a friend. However, David has not produced any documentation to verify the existence of the loan. Brooke does not raise the issue with Jenny.

STEP 1 – IDENTIFY

Brooke is representing two parties involved in the same legal proceeding. This is a conflict between the interests of two clients on either side of a transaction. There is a potential self-interest threat to Brooke's Objectivity, Integrity and Confidentiality.

STEP 2 – EVALUATE

Jenny and David's interests in dissolving the company and realising their final respective entitlements may potentially be opposed regardless of their intent to be amicable. It was in David's best interests that the irregular payments be ignored for the purpose of dissolving the company, but it was in Jenny's best interests that they be considered. Jenny and David's individual interests may also not align with the interests of JD Co.

Jenny, David or both Jenny and David may be deprived of their full entitlements to the assets held by the company if they do not receive impartial advice as to the terms on which JD Co should be dissolved. The self-interest threat to objectivity, integrity and confidentiality are not at an acceptable level. Brooke must consider whether, by application of the conceptual framework, self-interest threats can be reduced to an acceptable level.

STEP 3 – ADDRESS

If this was a straightforward transaction where Brooke's role was limited to dissolving the company on terms that had been agreed, it may have been appropriate to act with appropriate safeguards put in place. However, by Brooke not raising the issue of the irregular payments with Jenny, she

failed to consider Jenny's interests and to properly inform a director which potentially breaches the fundamental principles of Objectivity and Integrity. As soon as it became clear that there may no longer have been agreement regarding the terms on which the company should be dissolved based on the irregular payments, Brooke needed to consult with both directors to discuss the irregular payments. If after this discussion, the directors no longer agreed on the terms of the dissolution of the company, Brooke should have re-evaluated the conflict of interest and disclosed the change of circumstances to both Jenny and David. With adequate disclosure of the irregular payments, it may have been possible to continue to act for either Jenny or David but not both. This is due to Jenny and David becoming two parties to a transaction where there is no longer agreement.

STEP 4 – DISCLOSURE & CONSENT

Brooke disclosed the existence of the specific conflict of interest and did so in writing. However, Brooke failed to disclose changes in circumstances which were identified as a result of her learning new information about the irregular payments.

STEP 5 – RE-EVALUATION

Brooke did a good job of applying the conceptual framework at the beginning of the engagement but failed to re-evaluate the engagement when the nature of the conflict changed. By not disclosing the irregular payments, Brooke favoured David's interests and prejudiced Jenny's interests, resulting in an acute and irreconcilable conflict. Consequently, Brooke was required to cease acting for both Jenny and David.

Example 5: "Maybe there was a conflict, but it was all upside"

James is an accountant in a regional town. His friend Sam, who is also a client, is a wealthy farmer and regularly trades shares on the stock market. James and Sam like to discuss their personal investments and share insights on the market.

In addition to being an accountant, James owns a company that has developed software that can enhance the way people trade futures. Over dinner one night at the pub, Sam asks James, "Do you think I should use the software?"

James tells Sam that he can get Sam a free licence to use the software, saving him many thousands of dollars. James does not disclose that he will also receive a commission for bringing in Sam as a new subscriber.

STEP 1 – IDENTIFY

This is a conflict between James' personal interests and the interests of his client. A self-interest threat exists to the fundamental principles of integrity and objectivity.

STEP 2 – EVALUATE

James has a personal financial interest in obtaining a commission. This interest conflicts with his obligation to give Sam objective advice regarding the use of the software.

The potential harm to Sam is that he will not receive objective advice from James about subscribing to the software. This potential for harm is not 'netted off' or 'cancelled out' by the fact Sam will also be receiving a benefit in the form of free software.

The conflict was not disclosed, and it cannot be implied from Sam and James' relationship that Sam knew James would receive a commission as a result of the transaction. The self-interest threat to James' integrity and objectivity is not at an acceptable level. James needs to determine whether, by application of the conceptual framework, threats can be reduced to an acceptable level.

STEP 3 – ADDRESS

Regardless of whether accountants are in the office or out of the office, receiving fees for advice or working pro-bono, they are always required to comply with the Code. Accordingly, the fact that Sam and James met informally does not change the fact that James was required to evaluate and address the conflict. In this case, disclosing the conflict in writing (including the terms of the commission) and obtaining James' consent to act would likely be sufficient.

STEP 4 – DISCLOSURE & CONSENT

With the appropriate safeguards in place and documented disclosure to and consent from Sam, James could have continued to act in this engagement.

STEP 5 – RE-EVALUATE

Should Sam decide to enter a contract with the software company for the ongoing use of the product, this relationship between Sam, James, James' practice and the software company owned by James would need regular re-evaluation. Should Sam decide to discontinue his use of the software and not obtain an ongoing licence, then the conflict may be eliminated resulting in there not being a need to review the engagement for this specific conflict. That does not preclude the ongoing client engagement/relationship from ongoing review for conflicts of interest.



The Code requires specific disclosure of commissions and referral fee income at AUST/NZ R330.5.1.

How did you go?

If, like Sarah, Basil, Smith Accounting, Brooke or James, you require more guidance and information when it comes to identifying and managing conflicts, we have links to additional resources and reading materials which cover the topics addressed in this guide in more detail.

Additional material

Codes and Standards

- 1 [The Code of Ethics for Professional Accountants \(Including Independence Standards\)](#)
- 2 [The NZICA Code of Ethics](#)
- 3 [PES 1 : International Code of Ethics for Assurance Practitioners \(including international independence standards\) \(New Zealand\)](#)
- 4 [Tax Practitioners Board Code of Professional Conduct \(TPB Code\)](#)

Articles

- 1 [How CAs can avoid conflicts of interests in joint ventures with clients](#)
- 2 [Chartered Accountants working closely with family members or family businesses](#)
- 3 [How acting for families can go wrong](#)
- 4 [Conflicts of interest and accountants – Getting it right](#)
- 5 [Disciplinary Cases](#)

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Dispute Prevention, Management and Resolution Toolkit

3rd edition



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Foreword

Client disputes arise in all professions, and accountancy is no different.

What can set Chartered Accountants apart, is how we reduce the risk of disputes occurring and how we manage disputes when they arise.

This toolkit assists Members by offering practical strategies and guidance for building dispute resolution processes based on applicable standards, regulations, laws, experiences from members and our professional conduct teams.

This toolkit includes a pro-forma 'Client Information and Assessment Questionnaire' that might assist members to simplify and standardise client acceptance and continuance procedures. It can be used or adapted to ensure that there is clarity on what a client requires and that there is the capacity and expertise in a member's practice to meet those requirements.



Chartered Accountants Australia and New Zealand (CA ANZ) is committed to assisting members in public practice to provide the highest quality professional services and to manage ongoing relationships with their clients.

Why use this toolkit?

Setting a consistent approach to managing disputes positively promotes the reputation of the profession, which benefits all members and practices.

CA ANZ members in public practice are required to establish policies and procedures to deal appropriately with complaints and allegations regarding the work performed by the practice entity, in particular, where that work has failed to comply with professional standards, regulatory or legal requirements.



It is not uncommon to consider dispute management only when a dispute occurs. This toolkit helps members to establish a framework for preventing and managing disputes before they arise.

This toolkit is designed to help members establish and maintain mutually beneficial and productive relationships with clients and to prevent and manage disputes before they arise.

CA ANZ has produced this toolkit to assist members to:

- understand, prevent, and navigate disputes with clients.
- explore ethical and professional responsibilities when issues arise.
- examine strategies and processes for avoiding potential disputes.
- comprehend the benefits of clear communication and maintaining professional relationships with clients.
- understand ethical requirements which need to be applied and may assist in preventing and managing disputes with clients.

Many new clients are referred to a practice by existing clients. Therefore, satisfied clients are the best marketing tool a business can have. In contrast, dissatisfied clients can cause irreparable damage to a business' reputation particularly since the introduction of social media and internet review platforms. Even when a negative review is not based on factual content, it can be very difficult and costly to mitigate damage caused by such reviews.

Key pillars to dispute prevention, management and resolution

Many disputes can be avoided or mitigated by using the following strategies:

- Knowing your client and their requirements before you enter an engagement. Where the engagement has been accepted, regularly reviewing the engagement for changes in requirements that may indicate the need to re-evaluate ongoing acceptance of the engagement.
- Communicating adequately and effectively with clients about the services to be provided, the deliverables of those services, the terms on which fees are calculated and payable and what happens to books and records when the relationship concludes.
- Maintaining ongoing communications with clients about progress, difficulties, or delays with work – and the impact, if any, on the fees originally quoted.
- Providing adequate explanation of relevant matters on invoices about actual fees charged compared to estimated fees.
- Establishing a process for when disputes arise, to ensure quick resolution and to maintain the client relationship.



Pillar 1 Knowing your Client

- Identify who your client is and the interrelationships with other clients such as directors, trustees, family members and beneficiaries of trusts.
- What is their history?
- How organised, detailed and up to date are their records?
- Relevant ethical information from their previous accountant?
- Do you understand all related relationships and interests?
- Are there any potential conflicts of interest or objectivity threats that need to be managed?
- Are you checking in regularly to identify changes to the client's circumstances or requirements?
- Are there any Anti-Money Laundering or Counter-Terrorism Financing (AML/CTF) requirements that apply to the engagement?



Pillar 2 Being Upfront

- Terms of engagement.
- Scope of services provided.
- Expectations of clients including the provision of information and timeframes.
- Fees, billing & payment terms.
- Documentation, agreement and signing the terms of engagement.
- Written disclosures of potential conflicts and safeguards.
- Written informed consent obtained where conflicts are being managed.
- What happens to books, records and data files at conclusion of the engagement/policy re liens



Pillar 3 Communicating Effectively

- Expected response times.
- Client obligations.
- Progress.
- Any changes in scope, timing and fees.
- Any changes to conflicts of interest or safeguards?
- Involvement of third parties.



Pillar 4 Being Transparent

- What work has been done.
- Calculation of fees.
- Payment terms.
- Consequences of delays in payment.
- Consequences if conflicts of interest cannot be managed.



Pillar 5 Managing Complaints

- Document practice's procedures.
- Communicate complaints procedures to clients.
- Follow procedure.
- Be both proactive and responsive.
- Use an appropriate tone.
- Consider appropriate communication methods in person to discuss a dispute and confirmation of outcomes via email.

What are the applicable professional requirements?

Prevention is always better than cure. Minimising disputes can be achieved by adopting appropriate risk, quality control and client relationship practices. These practices begin with the expected behaviours of members. Members of CA ANZ, except New Zealand resident members, are subject to professional and ethical standards (AU standards) issued by the Accounting Professional and Ethical Standards Board (APESB), including APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* (AU Code).

All New Zealand members of CA ANZ are subject to NZICA professional and ethical standards (NZ standards), including the NZICA Code of Ethics (NZ Code); Assurance practitioners resident in New Zealand are also subject to ethical and professional standards (XRB standards) issued by the New Zealand External Reporting Board (XRB) including PES 1: *International Code of Ethics for Assurance Practitioners (including international independence standards)* (New Zealand) (XRB Code).

The Codes are essentially the same in both Australia and New Zealand and will be referred to throughout this toolkit as 'the Code'. Requirements specific to New Zealand or Australia will be denoted by 'NZ' or 'AU' prefixes.

The professional standards expand on the requirements of the Code. The most relevant paragraphs in the professional standards that are applicable to dispute resolution will be further explored throughout this toolkit and referred to as "the standards".

Members should take care to review all professional standards relevant to their jurisdiction to ensure that they fully comply with all relevant requirements.

At the time this toolkit was published (June 2022) the following standards were revised and re-issued:

- APES 320 *Quality Control for Firms* will be superseded by APES 320 *Quality Management for Firms that provide Non-Assurance Services* (Australia) (effective January 2023)
- ASQC 1 *Quality Control for Firms that Perform Audits and Other Financial Information, Other Assurance Engagements and Related Services Engagements* will be superseded by ASQM 1 – *Quality Management for Firms that Perform Audits or Reviews of Financial*

Reports and Other Financial Information, or Other Assurance or Related Services Engagements (Australia) (effective December 2022)

- PS-1 *Quality Control and PES-3 Quality Control for Firms that Perform Audits and Reviews of Financial Statements, and Other Assurance Engagements* will be superseded by PS-1 *Quality Management and PES-3 Quality Management for Firms that Perform Audits or Reviews of Financial Statements, or Other Assurance or Related Services Engagements*. (New Zealand) (both effective December 2022).

For the purposes of this Toolkit, the current operative standards have been referenced. This Toolkit will be updated for reference changes in January 2023 when new standards become operative.

Applicable Professional Requirements for addressing disputes

The Code¹ provides the fundamental principles that establish the standard of behaviour expected of Members. The five fundamental principles are:

- a Integrity** – to be straightforward and honest in all professional and business relationships.
- b Objectivity** – to exercise professional or business judgement without being compromised by bias, conflicts of interest or undue influence or reliance on individuals, organisations, technology or other factors.
- c Professional Competence and Due Care** –
 - 1 To attain and maintain professional knowledge and skill at the level required to ensure that a client or employing organisation receives competent Professional Activities based on current technical and professional standards and relevant legislation.
 - 2 To act diligently and in accordance with applicable technical and professional standards.
- d Confidentiality** – to respect the confidentiality of information acquired as a result of professional and business relationships.
- e Professional Behaviour** – to comply with relevant laws and regulations, behave in a manner consistent with the profession's responsibility to act in the public interest and avoid any conduct that the Member knows or should know might discredit the profession.

¹ Paragraph 110.1 A1 of the Code. Subsections 111 – 115 of the Code sets out requirements and application material related to each of the fundamental principles.

All other professional standards complement the requirements of the Code. Professional standards which include requirements for managing disputes include:

- 1** APES 320 – *Quality Control for Firms (AU)*
- 2** APES 325 – *Risk Management for Firms (AU)*
- 3** ASQC 1 – *Quality Control for Firms that Perform Audits and Reviews of Financial Reports and Other Financial Information, Other Assurance Engagements and Related Services Engagements (AU)*
- 4** PS-1: *Quality control (NZ)*
- 5** PES-3: *Quality Control for Firms that Perform Audits and Reviews of Financial Statements, and other Assurance Engagements (NZ)*

The Code includes a Conceptual Framework designed to assist with addressing threats to the Fundamental Principles. The Code specifies the approach to identifying, evaluating and addressing threats. When applying the Conceptual Framework, the accountant is required to have an inquiring mind, exercise professional judgement and use the reasonable and informed third party test.²

These professional standards will be further explored throughout this toolkit.

² Paragraphs R120.3 and R120.5 of the Code

Pillar 1 – Knowing your Client

Early detection and warning of potential issues

Knowing your client is the best way to identify and address any potential issues which may result in disputes.

- **How easy is it to identify the client?**

If the client's identification documentation is out of date, it may be an oversight, but it may also be a cause for concern relating to the integrity of the client. Any unexplained difficulty or delay in identifying the client gives cause to declining the engagement until the situation can be rectified by the client.

- **If the client already has an accountant, what are their reasons for changing?**

There may be a perfectly valid reason (such as the imminent retirement of the previous accountant, illness, injury or a relocation of the client or accountant) but other reasons such as "the fees charged were too high", "they just didn't understand what I needed" or "my tax bill was too high" may be cause for concern and warrant further investigation by the incoming accountant before accepting the engagement.



Careful consideration must be given by the member before taking on a new client. Members must give due consideration to all relevant laws, regulations, Codes and professional standards that are relevant to the engagement.

- **Does the client have a history of frequently changing their accountant?**

Again, there may be a valid reason for a few changes along the way, but it is also possible that the client is "opinion shopping" for an accountant who may overlook unethical behaviour or one that charges lower fees. It is expected that clients want and deserve to receive value for the fees they pay to their accountant, however if the lowest fees are a priority for the client, extra care should be taken when explaining the scope of work and any variation to that scope. The level of fees to be charged to a client is a matter for the client and accountant to agree upon, however regardless of the level of fees charged, members are required by the Code to perform the engagement in accordance with all relevant standards, regulations, and requirements.

- **Is the client behind with their tax returns and other statutory obligations?**

If so, this may be a function of extenuating circumstances. Being behind in paying tax may be an indicator that the client is facing financial stress, which may give rise to the potential for other disputes such as payment of fees.

- **What is the state of the client's records?**

If they are in disarray, there might simply be a need to educate the client on how to manage their documentation and records. However, this may also be a sign that the potential client does not understand or respect the need for handling financial affairs properly. A failure or an unwillingness to keep proper records can lead to additional work being required to rectify the situation and the client needs to understand and accept this. Currency of records is critically important for statutory obligations relating to knowing your client. Client identification documents should be current at the time of onboarding and kept up to date as their circumstances change.

- **Will all the information you need to perform the engagement be available?**

Sometimes the previous accountant may withhold information that you need to perform the service – regardless of the legitimacy of their right to do so. While this is a matter for the prospective client and their former accountant, it can take time to resolve and may not always result in required information becoming available. It's worth establishing what documentation you will have access to prior to accepting the engagement so that you are aware of any additional time required resulting from missing documentation.

- **What are the client's objectives and the nature of their business?**

Most clients want to maximise their success while meeting their compliance obligations. Clients with unrealistic expectations of business growth or disparaging views on their compliance obligations may have objectives which are inconsistent with members' professional obligations. It is worth conducting searches on relevant statutory websites as well as general internet searches on both the client and their business to establish whether the nature of their business and the work you would be required to do is consistent with your values and ethical and professional obligations.

- Are there any conflicts of interest between the member, new client or existing client?

A significant proportion of complaints received about members, involve a conflict of interest. This does not always mean you need to cease acting, but a careful, considered, and transparent response is essential if you want to do so. A conflict of interest is likely to create threats to compliance with the fundamental principles of the Code and must be addressed through application of the conceptual framework contained in the Code.



For more information on addressing Conflicts of Interests, refer to CA ANZ's *'Conflicts of Interest Guide 2021'*. This Guide includes information for Australian members on their obligations to manage conflicts of interest under the Code of Conduct for Tax Agents.

What the Code and Standards say.

The Code requires that a Member in Public Practice shall determine whether there are any reasons for not accepting an engagement when the Member:

- a Is asked by a potential client to replace another accountant.
- b Considers tendering for an engagement held by another accountant; or
- c Considers undertaking work that is complementary or additional to that of another accountant.³

The standards⁴ require a Firm⁵ to establish policies and procedures for the acceptance and continuance of Client relationships and specific Engagements that are designed to provide the Firm with Reasonable Assurance that it will only undertake or continue relationships and Engagements where the Firm:

- Is competent to perform the Engagement and has the capabilities, including time and resources, to do so.
- Can comply with Relevant Ethical Requirements.
- Has considered the integrity of the Client and does not have information that would lead it to conclude that the Client lacks integrity.

The standards⁶ also require a Firm to establish policies and procedures that require:

- a The Firm to obtain such information as it considers necessary in the circumstances before accepting an Engagement with a new Client, when deciding whether to continue an existing Engagement, and when considering acceptance of a new Engagement with an existing Client.
- b If a potential conflict of interest is identified prior to accepting an Engagement from a new or an existing Client or during the conduct of an Engagement, the Firm to determine whether it is appropriate to accept or continue the Engagement.
- c If issues have been identified, and the Firm decides to accept or continue the Client relationship or a specific Engagement, the Firm to document how the issues were resolved.

³ Paragraph R320.4 of the Code.

⁴ Paragraph 38 APES 320 (AU), paragraph 32 PS-1 (NZ) and paragraph 26 of ASQC 1 (AU) and PES-3 (NZ XRB)

⁵ The definition of a Firm includes a sole practitioner, partnership, corporation, corporate practice or other entity through which a member undertakes engagements. Refer to paragraph 2(f) APES 320 (AU), paragraph 15 PS-1 (NZ) and paragraph 12 of ASQC 1 (AU) and PES-3 (NZ XRB)

⁶ Paragraph 42 of APES 320 (AU), paragraph 33 of PS-1 (NZ) and paragraph 27 of ASQC 1 (AU) and PES-3 (NZ XRB)

Checking with the incumbent practitioner

What the Code says

The Code does not impose an absolute obligation on Members in Public Practice to communicate with the Existing or Predecessor Accountant when they replace them, except for the requirements in respect to the audit or review of financial statements (see below).

Making appropriate enquires with the Existing or Predecessor Accountant is both consistent with professional behaviour and may be the best way of determining whether there are any reasons for not accepting an engagement as required by the Code⁷. Where the Member is unable to communicate with the Existing or Predecessor Accountant, the Code⁸ requires that Members take other reasonable steps to obtain information about any possible threats.

You should obtain the client's permission to initiate discussions with the Existing or Predecessor Accountant⁹, in fact the NZ Code¹⁰ requires you to. Where a client does not give permission for such communication, the incoming accountant should investigate further the client's reasons for objecting.

Further, the Code¹¹ requires the Existing or Predecessor Accountant to respond to the communication (mindful of confidentiality¹²) in a manner that both complies with laws and regulations governing the request and provides any information honestly and unambiguously.

Members should respond promptly to communication from the prospective accountant and advise whether there are professional reasons why the Member should not accept the appointment¹³.

Audit and review appointments

In the case of an audit or review of financial statements, the Code¹⁴ requires a Member in Public Practice to request the Existing or Predecessor Accountant to provide known information regarding any facts or other information of which, in the Existing or Predecessor Accountant's opinion, the proposed accountant needs to be aware before deciding whether to accept the engagement. Except for circumstances involving non-compliance or suspected non-compliance with laws and regulations¹⁵:

- a If the client consents to the Existing or Predecessor Accountant disclosing any such facts or other information, the Existing or Predecessor Accountant must provide the information honestly and unambiguously; and
- b If the client fails or refuses to grant the Existing or Predecessor Accountant permission to discuss the client's affairs with the proposed accountant, the Existing or Predecessor Accountant must disclose this fact to the proposed accountant, who must carefully consider such failure or refusal when determining whether to accept the appointment.



Outstanding fees payable to the predecessor accountant is not considered a professional or ethical reason for the incoming accountant to not accept the engagement.

Defamation Risk

When discussing the details of a client engagement with their new accountant, you should consider whether there is any risk of your comments being held to be defamatory and, if in doubt, seek legal advice on the matter.



Establishing a procedure to regularly review the entire client base pays off. It ensures that problems or potential issues are identified early on and, if necessary, engagements ended in a positive manner.

Regular review of client engagements

Periodic reviews should assess the practice's capabilities, to ensure it can still adequately service its clients' requirements. During this review, particular attention should be given to the engagement document between the practice and the client – does it still reflect the outputs and expectations for the client and the practice?

Regular review is imperative for engagements where there exists potential or identified threats to the fundamental principles of the Code. Where the conceptual framework has been applied to address these threats by eliminating the threats or reducing them to an acceptable level by the application of available safeguards, regular review is required by the Code to assess changes in circumstances. Any changes in circumstances may have an impact on the level of the threat and affect the member's conclusions about whether safeguards applied continue to be appropriate to address identified threats. Further, new information may result in the identification of new threats which the member is required to evaluate and, as appropriate, address. This assessment may impact whether the member can continue the engagement.¹⁶

The Client Assessment Questionnaire (at Appendix 1) can assist in these reviews.

7 Paragraph R320.4 of the Code

8 Paragraph R320.6 of the Code

9 Paragraph 41 of APES 320 (AU); Paragraph 320.5 A1 of AU Code; Paragraph A26 of PS-1 (NZ) and paragraph A20 of ASQC 1 (AU) and PES-3 (NZXRB)

10 Paragraph NZ R320.5 of NZ Code.

11 Paragraph R320.7 of the Code

12 Subsection 114 and Paragraph 320.7 A1 and A2 of the Code

13 Paragraph NZ R320.71 of the NZ Code and CA ANZ Regulation CR 3 at paragraph 3.8.

14 Paragraph R320.8 of the Code

15 Paragraphs R360.21 and R360.22 of the Code

16 Section 120 and Paragraph R120.9, 120.9 A1, 120.9 A2 of the Code.

What the Code and Standards say.

The Code requires a Member in Public Practice to, for a recurring client engagement, periodically review whether to continue the engagement.¹⁷

The standards¹⁸ require a Firm to establish policies and procedures on continuing an Engagement and the Client relationship, addressing the circumstances where the Firm obtains information that would have caused it to decline the Engagement had that information been available earlier. Such policies and procedures must include consideration of:

- a The professional and legal responsibilities that apply to the circumstances, including whether there is a requirement for the Firm to report to the person or persons who made the appointment or, in some cases, to regulatory authorities; and
- b The possibility of withdrawing from the Engagement or from both the Engagement and the Client relationship.

APES 325 (AU) expect that policies relating to APES 320 (AU) be embedded in the Firm's Risk Management Framework.¹⁹

Anti-Money Laundering (AML) and Counter Terrorism Financing (CTF) Legislation in Australia and New Zealand

Anti-money laundering and counter-terrorism financing legislation is being implemented in New Zealand and Australia in two phases. Phase 1 is now in effect in both countries and applied to certain services provided by banks, financial institutions, casinos and financial services licensees.

New Zealand

Phase 2 of the regime commenced in New Zealand for accountants performing captured activities from 1 October 2018. Generally, these captured activities involve dealing with client's assets on their behalf. This might involve conducting transactions for the client or giving instructions to a third party to conduct the transactions. Either way, the business or practice entity undertaking captured activities will be a 'reporting entity' for AML purposes and subject to full compliance requirements under legislation.

Reporting entities are required to know their customer before conducting captured activities. This means conducting customer due diligence (CDD) according to the level of risk posed by each customer. Where CDD cannot be conducted satisfactorily, reporting entities must not undertake a captured activity for that customer.

More information about the regime in New Zealand, including guidance on CDD and other obligations can be found here (<https://www.charteredaccountantsanz.com/member-services/technical/business-issues/anti-money-laundering/anti-money-laundering-regime-in-new-zealand>).

Australia

Services provided by the accounting profession are not currently captured under the AML regime in Australia. It remains unclear when Phase 2 will come into effect and how it may capture the accounting profession though there are many ongoing conversations and consultations on the issue. The legal and Constitutional Affairs References Committee provided its final report on the adequacy of the AML regime and recommended timely implementation of Phase 2. With the recent change of Government, it remains unclear when Phase 2 may be implemented.

In the interim, CA ANZ strongly recommends that our members begin to transition now to more detailed client verification processes in preparation for Phase 2. This may be as simple as checking through records to ensure proof of identity documents for each client remain current. Where they have expired, request updated documents be provided at the next consultation.

For members that are tax or BAS agents, the Australia Taxation Office has strengthened its voluntary client verification guidelines that can be found here: [Strengthening Client Verification Guidelines](#).

¹⁷ Paragraph R320.9 of the Code

¹⁸ Paragraph 44 of APES 320 (AU) and paragraph 34 of PS-1 (NZ) and paragraph 28 of PES 3 (NZ XRB)

¹⁹ Paragraph 3.3 of APES 325 (AU)

Pillar 2 – Being Upfront

Terms of Engagement and Fees

The engagement document forms a legal contract between the practice and the client and sets out the expectations, responsibilities, and deliverables of the engagement. The engagement document should provide clarity to both parties and will be the primary reference should a dispute arise. It is best practice that the engagement document be signed by both parties to acknowledge receipt, understanding and acceptance of the terms contained in the document.^{20,21}

The engagement document can also be used to disclose any identified conflicts of interest, if applicable the safeguards proposed to manage them, and to obtain the client's written informed consent. For further information about managing conflicts of interests, please refer to the '*Conflicts of Interest Guide 2021*' issued by CA ANZ.



Terms of Engagement are required to be established in writing in the form of an engagement document to clarify responsibilities on both sides. An engagement document does not have to take the form of a letter.

Besides setting out the practice's responsibilities, the engagement document should also state what is NOT included in the engagement and the client's obligations (particularly in relation to providing information in a timely manner). It is best practice to identify precisely who the practice is acting for including who the practice can receive instructions from – this is particularly relevant if the client is a group of entities and/or individuals. Finally, it should be explained to the client what they should do in the event of any dissatisfaction, however trivial, with the services provided by the practice.



For further information on Terms of Engagement refer to the Engagement Letter Tools (AU and NZ). These tools provide an overview of the matters that are required to be addressed in Terms of Engagement including the scope of the service, client obligations, fees and billing, outsourced services, conflicts of interest, books and records and the Firm's complaints process.

Who will do the work?

During initial discussions with prospective clients, it is beneficial to explain who within the practice will handle the client's work. If possible, provide assurances about continuity of key staff or the process used by the firm in the event of staff changes.

Regular review of Terms of Engagement

The engagement document should be revisited on a regular basis, to ensure it continues to reflect the client relationship and current laws, regulations, standards, and guidance notes. In this way, any changes in the scope of the work undertaken for the client, can be reflected, and clarified with them. It is important that changes to the practice's fee structure are immediately communicated to clients, and not left until their next invoice is presented.²²

The client relationship can be irreparably damaged if clients are invoiced an unexpected fee account without warning or explanation. If there is significant additional work beyond that originally agreed in the Terms of Engagement, the engagement terms are required to be amended and/or a new engagement document prepared and agreed to by the client.

20 APES 305 Terms of Engagement and NZ standards set out the requirements of the engagement document. It documents the terms of engagement and must be communicated to and agreed with the client, but a signature is not explicitly required under the Standards.

21 CA ANZ Regulation CR 3.10 (a) requires that before undertaking an engagement, members in Public Practice must: (i) advise the client of the basis on which fees will be calculated; and (ii) clearly define the billing arrangement.

22 CR3 Public Practice Regulations Paragraph 3.10 (b)

What the standards say

The AU standards²³ require:

- a** A Member in Public Practice to document and communicate to the Client the Terms of Engagement.
- b** A Member in Public Practice to document the Terms of Engagement in the Engagement Document.

The NZ standards do not currently include an overarching terms of engagement standard. However, written engagement documents are required by individual professional standards.²⁴ Further, where an engagement is not covered by an individual professional standard, failure to issue a written engagement document might cause the member to be in breach of the fundamental principle of professional behaviour in the NZ Code²⁵.

CA ANZ Regulation CR 3²⁶ (that provides the public practice rules for all members **except** members practicing in New Zealand) requires in relation to professional fees:

- a** Before undertaking an engagement, a Member in Public Practice must:
 - i** advise the client of the basis on which fees will be calculated; and
 - ii** clearly define the billing arrangement.
- b** The Member must advise the client without delay of any changes to the fee structure or billing arrangements which may become necessary during the course of an engagement or between engagements.

NZICA Rules (that include the public practice rules for members practicing in New Zealand) **and NZ Standards** are currently not as prescriptive as CR 3 regarding professional fees. However, failure to take the actions described by CR 3 might cause the member to be in breach of the fundamental principles of Integrity and/or professional behaviour of the NZ Code²⁷.

²³ Paragraphs 3.1 and 3.8 of APES 305 (AU)

²⁴ NZ Standards SES-2; IS; FAS; AES-1; AES-2; TG-1 and XRB Standards ISA (NZ) 210, ISRE (NZ) 2400, ISRS (NZ) 4400

²⁵ Subsection 115 of the Code

²⁶ Paragraph 3.10 of CA ANZ regulation CR 3

²⁷ Subsections 111 and 115 of the Code

Pillar 3 – Communicating Effectively

Regular Communication

Regular communication needs to be carefully balanced and purposeful. If clients feel they are not gaining any benefit from the ongoing communication or that this communication creates additional fees for them, it can be counter-productive to the client relationship. From the outset, it can be worthwhile establishing the basis and regularity for ongoing communications with clients. For example, this may be monthly, bi-monthly, quarterly, half-yearly or annually (and in addition to the agreement when extenuating or urgent circumstances arise).



With the increasing pressures of professional practice, it's easy to overlook ongoing communications with clients. Regular communication, however, is key to building relationships, giving your clients confidence that their interests are paramount and allows them to raise any issues that might be troubling them.

Extenuating or urgent circumstances should be communicated to the client immediately. This communication should include what action the practice intends to take to remediate the situation and a request for any consent required from the client to take the proposed remedial action. Extenuating or urgent circumstances may include:

- Any delay in meeting a lodgement or other deadline agreed in the terms of engagement.
- Any significant changes in the threats to the fundamental principles for example conflicts of interest.
- Any significant changes to the terms of engagement such as charge rate increases, changes to the scope of work resulting in additional fees or outsourcing arrangements.

Given the rise in cyber-criminal activity and business email compromise scams, it is prudent that clients know and understand the practice's methods of communication. Cyber criminals often masquerade as legitimate regulators or financial institutions. Should clients need to transfer money for transactions other than fees, be clear about the details of the practice's trust account. If the practice does not operate a trust account, be sure to advise clients that the practice will never request a transfer of money other than for invoiced fee payments which contain the details of the practice's financial institution account.

Response times

A practice should have a policy for returning client queries. This policy may include minimum response times and how these performance benchmarks will be communicated with clients. If the unforeseen happens (sudden illness or other emergency in the practice) and a client's query cannot be managed within expected timeframes, the client should be informed and provided with the contact information of an appropriate member of staff to contact if the matter is urgent. Processes that are useful in managing client expectations include:

- out of office notifications;
- automatic forwarding of email communications to a centrally managed practice account; or
- proactively notifying clients via usual communications channels.

When circumstances arise that result in the practice not meeting these response times, the practice should own and address any breakdowns in communication. Most clients understand that regardless of best intentions, sometimes processes do break down. Owning and taking responsibility when these situations occur engenders greater respect than attempting to make excuses for the situation. Always take responsibility before attempting to explain any legitimate reasons for the situation and go on to explain how the practice intends to reduce the likelihood of similar problem occurring in future.



While it may not always be possible to respond immediately to a client, it is imperative that their accountant is responsive.

What the standards say

CA ANZ Regulation CR 3²⁸ (that prescribe the public practice rules for all members except members practicing in New Zealand) requires members to respond to professional correspondence expeditiously.

The NZ Code²⁹ requires all members to act with courtesy, consideration and on a timely basis.

²⁸ Paragraph 3.8 of CA ANZ Regulation CR 3

²⁹ Paragraphs 113.1A3 and NZ R115.3 of the NZ Code

Communicating change

All practices will have changes to staff from time to time. Be sure to communicate clearly if/when new personnel are assigned to the engagement and take the time to explain that time spent familiarising new staff with an engagement won't be at the client's expense. Changes to staff can be disconcerting for clients, particularly if those staff were key contacts for the engagement. For this reason, where the practice structure and number of partners allow, the key client contact is preferably the engagement partner. Where it is not possible for the engagement partner to act as the key client contact, it is important that the engagement partner communicates with the client periodically to:

- build rapport,
- avoid disconnect and
- provide reassurance in the event of staff changes.

When client-facing staff exit the practice, you should:

- inform clients promptly,
- discuss any concerns they have, and
- agree an interim plan for managing the engagement.

When a new staff member is assigned to the engagement, ideally, the client and staff member would be introduced, and the practice would define the parameters of that relationship such as whether the new staff member is the key contact. Failing to manage this process well may result in the loss of a client, particularly if the client has formed a strong professional relationship with the exiting staff member. It may also create unnecessary cause for concern by the client regarding their importance to the firm. The practice should initiate communication regarding staff changes rather than the client becoming aware of the changes via other channels.

If there is a delay in meeting a deadline, this should be communicated with the client immediately. Similarly, significant changes to the terms of engagement such as charge rate increases or changes to the scope of work resulting in additional fees should be communicated and agreed prior to fee accounts being submitted. The client relationship can be irreparably damaged if clients are invoiced an unexpected fee account without warning or explanation. If there is significant additional work beyond that originally agreed in the engagement document, the engagement terms are required to be amended and/or a new engagement document prepared and agreed to by the client as described in Pillar 2. Where possible this should happen BEFORE the work is commenced.

Client obligations

It is important that the client understands the consequences (such as financial penalties) of not meeting deadlines, particularly when these deadlines relate to lodgements with regulatory authorities. It should be explained to the client that they are responsible for the completeness and accuracy of the information supplied to the accountant. It is advisable that such consequences are explained in writing. Some practices offer mailing house services or are the registered address for notices to the client or entities connected with them. This service can assist clients manage documentation requirements as can software which provides access to client records. Members are reminded to be mindful of confidentiality requirements in the Code and applicable privacy requirements when offering these services to clients.



It is important that clients understand the information required of them and due dates for this information to be received to ensure that lodgements are met, or reports are prepared without placing undue pressure on the practice

Pillar 4 – Being Transparent

Penalties

If there are deadlines relating to lodgements with regulatory authorities, you must take extra care to ensure that they are met. If you miss a lodgement deadline you may be legally liable to the client for any damage caused. You could also be subject to a complaint to CA ANZ or NZICA.

If a regulatory lodgement date is missed through no fault of the client, penalties should be managed and paid by the practice. This includes informing the regulator of the oversight to ensure that fault is not attributed to the client in any way. To manage the conflict of interest that will arise from the practice paying penalties on behalf of the client, it is important that:

- the client is immediately informed of the matter;
- the practice explains how the incident has been managed; and
- the client is informed that payment of penalties by the practice does not preclude them from seeking their own professional or legal advice on the matter.



All practices should have procedures in place to ensure compliance with regulatory lodgement dates. These procedures should provide contingencies to manage the risk of unforeseen circumstances such as injury, illness or circumstances outside the control of the practice (such as natural disasters).

Note that accountants can also be liable for their professional work under the general law of negligence and for misleading and deceptive conduct too.

Billing

Billing should be done in a timely manner with sufficient detail, including reference to the terms of engagement, so that the client understands what they are being charged for. Where additional work has been performed which relates to the scope of work outlined in the terms of engagement, the invoice should clearly identify and quantify this variation. Reference should be given to where the client agreed to the additional work, such as the date of an email where the client agreed to the variation. If the client requested the additional work during a telephone conversation or in person at a meeting, the member should follow this up with an email or other written correspondence confirming what was agreed and request that the client confirm the member's understanding by return email or other written correspondence.

Client billing may include charges for items such as:

- telephone and electronic communications,
- document management,
- face-to-face meetings,
- copying costs,
- over-head levies, or
- engagement team travel related expenses.



It is important that clients understand the practice's fee structure and how communication with the client will be charged. Be sure to explain the consequences for delayed receipt of payments which may include suspension of services, application for a lien or collection action.

These charges should be described in the engagement document. CA ANZ has limited jurisdiction over fee-related matters, and cannot intervene in these disputes.

Where an invoice is presented to the client in person, it is helpful to go through the details with the client at the time so that questions can be raised and dealt with immediately.

When an invoice is sent by post or via email, the client should be encouraged to contact the practice should they need to raise any questions about the invoice. Clients should be made aware that time spent explaining an invoice or providing further details on the fees will not incur a cost. Such expenses to the practice may be accounted for in an overhead allocation rate which is built into the fee structure.

It is not unreasonable for a client to request copies of a member's time and cost records to understand an invoice if fees have been charged on that basis. While members are under no obligation to provide these records, members may wish to consider such a request as it may help with resolving the dispute quickly.

Additional Resources: Fees

CA ANZ Guidance Note N8 – Fees (Australia) and Help sheet: Fees, Invoices and Disputes (New Zealand) provides useful general guidance on setting fees and billing practices.

Pillar 5 – Managing Complaints

The firm's complaints process

Be decisive. "Nipping the issue in the bud" where possible, can prevent it from escalating into a dispute. In addition, the passage of time can cause confusion over what actually happened and what may have been agreed in the past.

Apart from the risk of potentially irrevocable damage to the client relationship, failure to act when a client raises an issue will almost inevitably result in more time being spent resolving the dispute. If it ultimately becomes necessary to take legal action to recover unpaid fees, further costs and loss of productive time will be incurred which may not be recoverable.



Members must advise clients how to raise concerns about services provided. Members must also take steps to investigate and resolve any complaints or allegations about services. When a client raises concerns with fees charged or key deliverables of the engagement, steps should be immediately taken to address these concerns.

Often managing concerns or a dispute in person or by telephone can resolve the matter quickly, promote compromise and preserve the client relationship. If it is necessary to communicate via email or letter in the first instance, members should be careful with their tone and content to ensure their professionalism is maintained and they put themselves in the best position to achieve a good result for both parties. It can be useful to have another person in the practice, or a trusted colleague, read over the correspondence to determine if it is appropriately constructed. After a solution is negotiated with the client, the agreed actions should be documented and sent to the client. The client should be encouraged to clarify or further discuss any points negotiated if they do not reflect the intentions or understanding of what was agreed.

Members should always be as transparent as possible about all other matters that will be important to the client, such as:

- the service that will be provided (what is included; what is not);
- complaints procedures;
- conflicts of interest;
- outsourcing (including any use of the "cloud");
- commissions;
- the member's professional obligations including exceptions to confidentiality;
- ownership of workpapers/transfer of records on termination.

The more the client understands and accepts the parameters of the relationship, the less likely a dispute will arise.

If, in all fairness an apology and/or a credit is due to the client, then it should be given promptly and with best intentions. Taking responsibility for errors and misunderstandings when they occur and demonstrating a willingness to rectify the matter is an investment in the client relationship which is, more often than not, respected and appreciated by clients.

What the standards say.

The standards and CA ANZ Regulations³⁰ require the firm to establish policies and procedures that ensure complaints and allegations are dealt with appropriately where the complaint relates to work failing to comply with standards and applicable laws/regulations.

³⁰ Paragraph 119 and 129 of APES 320 (AU), paragraph 3.3 of APES 325 (AU), paragraph 3.12 of CA ANZ regulation CR 3, paragraphs 61 and 66 of PS-1 (NZ), paragraphs 55 and 59 of ASQC 1 (AUS) and PES 3 (NZXRB).

Members should be aware that other registrations, licences and membership of other professional bodies may include ethical obligations for managing disputes. There are a plethora of government agencies and professional bodies that clients may lodge a complaint with. Members should familiarise themselves with the requirements of the organisations of which they hold registrations and licences.

Addressing Conflicts of Interest

Conflicts of interest that arise during an engagement can be a source of significant dispute, for example where clients divorce or corporate clients are in a shareholder disagreement.



CA ANZ has prepared a guide for members on managing conflicts of interest. Find the 'Conflict of Interest Guide 2021' on the Tools and Resources Hub on CA ANZ's website

To avoid being drawn into such disputes, it is important to apply the conceptual framework contained in the Code³¹ to determine whether the conflict of interest exists and can be eliminated, or the threat can be reduced to an acceptable level as determined by the application of the reasonable and informed third party test. It is important to be very clear with all affected clients about the conflict and how it will be managed or if the engagement will be discontinued. Being transparent and considering the interests of all affected parties and the professional obligations owed to each, serves the member well if the matter escalates.

Getting resolution

It may become clear at some point during the dispute that the matter is not going to be resolved amicably.

Before taking more formal action (and incurring the costs of collection if it's a fee dispute), consider proposing a compromise, such as a payment plan or discount. This is particularly important if it is possible that the quantum of fees had not been clearly or adequately communicated to the client at the time of engagement or there was a variation of the scope of the engagement.



CA ANZ Public Practice Regulations (all members except members practising in New Zealand) requires members to respond to professional correspondence expeditiously. The NZICA Code requires all members to act with courtesy, consideration and on a timely basis.³²

Emotions can easily cloud good judgement and clear thinking. It can be useful to discuss the matter with an independent person who may be able to help you understand the matter from a different perspective and help you assess whether you are acting objectively.

Depending on the type of dispute and/or the amount of fees involved, it may be worth proposing to the client that an external dispute resolution or mediation service be utilised to resolve the dispute, rather than going through the legal process.

Managing late payments

Your normal terms of payment should be clearly set out in the engagement documents and on your invoices.

If payment is not received in compliance with those terms, contacting the client by telephone to enquire if there is a problem making payment can be the best way to manage the issue. This may also highlight other issues and risks for the engagement. If a client is experiencing financial hardship or pressure, receiving a reminder, often worded quite directly, may result in the client responding defensively rather than proactively. It is significantly more difficult to negotiate a positive outcome with a defensive or aggressive client.

If a client wants to discuss their account, make the time to do so. When talking to the client, try to see things from their perspective. Many clients do not understand what is involved in carrying out a particular engagement, so explaining the level of work required can help (e.g., some clients perceive that the effort expended to prepare their tax return is directly related to the level of their taxable income).

If there are issues that resulted in additional fees being charged, this should be explained and the earlier the better. Above all, do not refuse to take the client's calls, or fail to reply to written correspondence from the client, as this only escalates the problem and is inconsistent with the fundamental principle of professional behaviour.

³¹ Section 310 of the Code

³² Paragraph 3.8 of CAANZ Regulation CR 3, Paragraphs 113.1A3 and NZ R115.3 of the NZICA Code.

Managing non-payment

Unfortunately, despite taking all possible precautions, there may come a point where the client is either unable or unwilling to pay. You still have some options for action to take.

Payment by instalments

If the client is in genuine financial difficulty, payment by instalments over a specified period may be a solution, but the terms of any such arrangement should be clearly set out, and action taken immediately if there is a failure by the client to make a payment under this arrangement.

Collection action

If compromise and negotiation has failed to resolve a fee dispute, then a decision should be taken to either write off the fee, or initiate collection action without delay. Where collection action may be required, it is advisable for practitioners to take legal advice on the best method of recovery, particularly if the outstanding fees are significant. Choosing the appropriate method to enforce outstanding fees will depend on consideration of different factors such as:

- An assessment of the cost benefit. Proceeding to Court will usually incur legal fees, and these can be significant particularly if proceedings are strenuously defended or there are appeals. Court proceedings may not be worthwhile if the debtor has limited funds or is impecunious.
- Consideration of time and stress that may be involved.
- Whether the debt is in dispute. If it is in dispute, using a debt collection agency is not appropriate.
- Whether an informal approach or alternative dispute resolution such as mediation, or arbitration could be effective.
- Any litigation risk including the litigiousness of the client and risks to the practitioner such as possibility of a counter claim or reputational or financial implications if unsuccessful.
- The age of the debt and whether any limitation periods apply, meaning a legal claim can no longer be brought.

Following debts up in a timely way often provides the best outcome to ensure you recover your fees. It can be helpful to develop a relationship with a lawyer or legal firm you will work with for debt recovery. It may be possible to agree a retainer or special rate to assist with advice or claims. Lawyers can also help to develop or review engagement letters or other contracts and debt recovery processes and templates to ensure fee terms can be efficiently enforced.

Withholding Client Documentation

The ownership of engagement documentation results in a significant number of member queries received by CA ANZ, particularly where a client is exiting the practice and fees are still outstanding.

Handy tip

CA ANZ Guidance Note N1 – Books and Records (Australia) and Help sheet: Books and Records (New Zealand) provides useful general guidance on the ownership, possession and disclosure of books and records.

Members sometimes withhold engagement output documents until bills are paid by seeking to exercise a lien. As Guidance Note N1 Books and Records (Australia) and Help sheet: Books and Records (New Zealand) make clear, the exercise of a lien is not straightforward and should be approached with caution. CA ANZ recommends that legal advice should be taken if a member is considering a lien. Apart from the need to make sure the lien can be properly exercised over particular client records, doing so improperly or incorrectly can not only further aggravate the situation, but also expose the member to ethical and legal risks. In any event, it is not appropriate to simply advise the client that a lien is being exercised, and their records will not be released until all outstanding fees have been paid.

Certain books and records, such as deeds, mortgages and wills, and other original source documents and those pertaining to lodgements, filings, or records in compliance with Corporations' legislation will always remain the property of the client and cannot be withheld.

The inappropriate retention of client property may breach both the Code and CA ANZ regulations.³³ Prior to retaining any client property, members should take legal advice.

Refusing to complete further work

Where there are fees outstanding and it is decided not to complete the engagement or undertake further work until the fees have been paid, ensure that this is communicated to the client, and that any possible consequences (such as late lodgement penalties) are clearly stated and explained to the client that they will be responsible for potential penalties. Care should be taken with such communications; it is recommended the member telephone the client or initiate a meeting to discuss the issue. Outcomes of a meeting or telephone conversation should be documented and sent to the client. The client should be invited to confirm the outcomes of the meeting or clarify their understanding via a written response.

³³ CR3 Public Practice Regulations Paragraph 3.9

Appendix 1

Client Information and Assessment Questionnaire

As noted in this Toolkit, careful selection of new clients and regular review of the continuing suitability of existing clients should reduce the risk of disputes occurring. These assessments are also required by professional and ethical standards prescribed by the APESB and NZICA.

This questionnaire is for information purposes only and should not be seen as a substitute for referring directly to applicable laws, by-laws, standards, guidance notes and regulations. This questionnaire was prepared in June 2022. Laws, regulations, standards, and guidance notes may have changed since then.

Practitioners are encouraged to amend the questionnaire to reflect their particular practice/client circumstances.

Due to the sensitive information contained in the checklist, it should be considered a working paper which is the property of the firm and not for further distribution to a third party or the client. Please also ensure that the information is collected, used and disclosed only in accordance with applicable privacy laws.

Name of client(s):				
Address:				
Principal contact(s)				
Telephone No:				
Facsimile No:				
Email Address:				
Website:				

1	Client(s) occupation(s)/business(es):	
2	List any legal entities associated with client (companies, partnerships, trusts, super funds etc):	
3	List key management, owners, officers etc	
4	What services would our firm be expected to perform? What would be the timing of these services?	
5	Does our firm have the necessary expertise, experience, competencies and staff to perform the engagement properly? Does our firm have the capabilities, including time and resources, to perform the engagement?	
6	<p>If it will be necessary to outsource any services either because the skills are not available within the firm or to satisfy independence requirements (e.g., audit), do we have arrangements in place?</p> <p>If no, how is it proposed to address this?</p>	Yes/No/NA
7	<p>Has any need for, and implications of, outsourcing services been explained to the client?</p> <p>[Australian members – have professional obligations been considered such as the guidance outlined in APES GN 30 – Outsourced Services issued by the APESB?]</p>	Yes/No/NA
8	How did we become aware of this potential client and his/her/their need for services?	
9	<p>Do we have prior knowledge of the client?</p> <p>If no, list references checked and any comments:</p>	Yes/No
10	<p>Are accounting services now being performed by another firm?</p> <p>If yes:</p> <p>the name of the firm?</p> <p>how long were they the client's accountants?</p> <p>client's stated reason for changing accountants.</p>	Yes/No

11	<p>Have we contacted the previous firm?</p> <p>If yes, list their comments.</p> <p>If no, describe why this was not possible and what substitute actions we have taken</p> <p>Note: Where an audit or review engagement is involved, under paragraph R320.8 of the Code, contact with any existing accountant on an audit or review appointment must be made if the client consents.</p>	Yes/No
12	<p>Does the client owe fees to the previous firm?</p> <p>If yes, what is the client's explanation for outstanding fees?</p>	Yes/No
13	<p>Are the client's taxation and other statutory obligations up to date?</p> <p>If no, what is the reason?</p>	Yes/No
14	<p>Are there disagreements with the present firm over accounting and tax principles?</p> <p>If yes, please describe:</p>	Yes/No/NA
15	<p>Are we aware of any independence problems or potential for conflicts of interest because of relationships with other clients, partners or staff?</p> <p>If yes, is it possible to take steps to eliminate the threats or reduce the threats to an acceptable level to ensure compliance with the Code or if not, the engagement should be declined.</p>	Yes/No
16	<p>Does the firm act for any major competitors of the potential client?</p> <p>If yes, has this been explained to the potential client and current client? Has either the current or potential client objected to the firm acting for both clients.</p>	Yes/No/NA
17	<p>Has the integrity of the potential client been considered?</p> <p>(See paragraph 40 of APES 320 or paragraph A25 of PS-1: Quality control for examples of matters to consider)?</p> <p>Please describe steps proposed to address any potential concerns.</p>	Yes/No

18	<p>Is there anything particular about the engagement that might subject the practice to undue exposure to third parties, or would cause the practice to be uncomfortable about being associated with the engagement?</p> <p>If yes, please record details and how it is proposed they be addressed</p>	Yes/No
19	Has the firm's policy about Terms of Engagement been explained to the client?	Yes/No
20	<p>Has an estimate of the net fees and explanation of billing arrangements been discussed with the potential client? Has the client raised any concerns about these arrangements?</p> <p>If yes, please record details and whether the firm can address these concerns</p>	Yes/No
21	<p>Have we explained the firm's charges to the client?</p> <p>Has the client raised any concerns about these arrangements?</p> <p>If yes, please record details and whether the firm can address these concerns</p>	<p>Yes/No</p> <p>Yes/No</p>
22	<p>Has the client expressed any reservations about the level of fees or billing arrangements?</p> <p>If yes, have these been resolved to both the client's and the firm's satisfaction?</p>	Yes/No
23	<p>Are we aware of any potential fee collection problems?</p> <p>If yes, please comment on how this is to be addressed?</p> <p>[Options may include smoothing of bills, payment/instalment plans, fees received in advance. Australian members, please note that fees received in advance without a present entitlement and depending on engagement terms may trigger obligations under APES 310 – Client Monies].</p>	<p>Yes/No</p> <p>Yes/No</p>
24	Has the firm's structure and details of the personnel who will/would be carrying out the engagement been explained to the client?	Yes/No
25	Has the firm's policies and procedures to deal with any complaints or dissatisfaction about the firm's services been explained to the client, including who the client should contact about any concerns?	Yes/No

26	<p>Have we satisfied the customer due diligence (CDD) requirements for the AML/CFT regime, and do we have records to this effect? (Members practicing in New Zealand)</p> <p>Have we confirmed documents on file that verify a clients identify are current? (Members practicing in Australia)</p> <p>Note – do not accept/continue engagement until CDD completed</p>	Yes/No
27	Any other comments:	
28	<p>Overall assessment</p> <p>Note: If the answer to any question results in uncertainty about whether or not the engagement should be accepted, explain the steps planned to mitigate the situation to the extent necessary to enable the engagement to be accepted, e.g.</p> <p>closer supervision</p> <p>a substantial fee deposit before work can start</p> <p>assistance from another firm, etc.</p>	
	Accept Engagement:	Yes/No
	Recommended by: Date:	
	Accepted by: Date:	

Disclaimers

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The Complaints Process for Complainants

What happens when a complaint is made about a Member of Chartered Accountants Australia and New Zealand (CA ANZ)?

NB this guide does not relate to complaints made about Members of NZICA

What is CA ANZ's role and purpose?

- CA ANZ's role in relation to complaints is to investigate under the By-Laws, and take appropriate disciplinary action.
- CA ANZ's purpose is to ensure that Members uphold the highest ethical and technical standards, in the public interest.
- CA ANZ cannot require Members to:
 - take a particular course of action or
 - make restitution for any financial loss which it is claimed was caused by Members.
- CA ANZ cannot make payments for any financial loss claimed to be caused by Members and does not have a fidelity fund. Any claims that Members have caused financial loss may need to be pursued through the court system.

How CA ANZ investigates complaints

- For full details of the rules that govern the CA ANZ professional conduct process, see section 5 of the [By-Laws](#) on our website (particularly [By-Laws](#) 40(1) to 40(13)).
- The Professional Conduct Committee (PCC) is responsible for investigating your complaint. The PCC is assisted by CA ANZ's Conduct & Discipline staff (Staff). The Staff are your principal point of contact during the investigation of your complaint.

What happens when CA ANZ receives a complaint?

Registration

- Every complaint received is registered on our system.
- The Staff will acknowledge receipt of your complaint and provide you with this information sheet.

Initial Review

- The Staff will check that:
 - you have fully completed the complaint form
 - everyone who you wish CA ANZ to communicate with or receive information from has signed the complaint form.
- Your complaint will not be investigated until these steps have been completed.
- Each complaint is examined to ensure that it is a matter that the PCC can investigate. If the PCC cannot investigate the complaint you will be notified in writing.

Investigation

- If the PCC can investigate your complaint, it is provided to the Member for response.
- The Member generally has 14 days to respond to the complaint. If additional time to respond is required an extension may be granted in appropriate circumstances (and in the discretion of CA ANZ).
- You will usually receive the Member's response for comment, unless it is not appropriate to do so. If the response satisfies your concerns, you may choose to withdraw your complaint.

- Further information may be requested from either party until there is sufficient information for a decision to be made.
- The PCC may wish to meet with the parties to discuss the complaint or to obtain further information.

Decision

- The PCC can make the following decisions about a complaint:
 - take no further action
 - convene a case conference
 - require the Member or the Member's practice entity to submit to a review or reviews
 - issue the Member with a professional reminder that the Member's conduct has fallen short of best practice
 - caution the Member
 - seek the Member's consent to enter into a consent agreement
 - refer the complaint to the Disciplinary Tribunal for hearing.

What you need to provide

- You need to provide enough information for your complaint to be investigated.
- You may wish to provide:
 - a detailed timeline/chronology of events
 - copies of communications (letters, emails and faxes)
 - any agreement/s between you and the Member
 - any additional information you feel is relevant to support your complaint.

Complaints CA ANZ can investigate

- CA ANZ can only investigate complaints which could be a breach of the By-Laws (refer to [By-Law](#) 40(2.1) on our website)

Complaints CA ANZ cannot investigate

- CA ANZ may not be able to investigate your complaint if the PCC considers that it:
 - cannot result in disciplinary sanctions under the By-Laws
 - is trivial, vexatious or in bad faith
 - is lacking in substance, vague, imprecise or unsupported by evidence
 - is, or may be, an abuse of process
 - relates to matters of historical issues which would not be practical to investigate
 - is of an insufficient nature to warrant investigation
 - falls within the jurisdiction of another forum and it is reasonable to be determined there.

How often will CA ANZ update you?

- You will be contacted by CA ANZ if the PCC needs further information.
- CA ANZ will let you know when a decision has been made by the PCC.
- If you wish to receive any more updates during the investigation of your complaint, please contact the Staff.

When will you be informed of the outcome?

- CA ANZ will tell you the PCC's decision and the reasons for the decision within 21 days of the decision being made.

- If the PCC has decided to take no further action, to issue the Member with a professional reminder, to caution the Member or if the Member has entered into a consent agreement with the PCC, the complaint will be closed.
- If a case conference has been convened, the investigation moves to the next stage.
- If the Member is referred to the Disciplinary Tribunal for hearing, you will be informed of the outcome following the hearing.

What if you are dissatisfied with the PCC's decision?

- If you are dissatisfied with the PCC's decision not to investigate the complaint or to finalise it after it has been investigated, you have 21 days after notification of that decision to request a review of the decision (although this period may be extended in exceptional circumstances).
- You must request this review by using the proper form, signing the costs agreement and paying the application fee. Further details and copies of these documents are on our website.
- The review will be conducted by an independent reviewer (Reviewer). The Reviewer will consider whether the PCC's procedure and decision were appropriate.
- The Reviewer will not review a decision if it considers that the application is frivolous, vexatious, in bad faith or not made in accordance with the By-Laws.
- The Reviewer will also consider whether you should pay the costs and expenses of the review.
- The Reviewer will report to you, the Member, the PCC and the Professional Conduct Oversight Committee and may direct the PCC to reconsider the decision made in relation to the complaint.
- The Member you have complained about is also able to request a review in certain circumstances.

Procedural fairness

- In dealing with a complaint the PCC will observe procedural fairness to ensure that its decision-making is fair and impartial. This means that both sides get to tell their story.
- The PCC will generally give any information or documents it receives from one party to the complaint to all other parties. The PCC need not do so if the information or documents are irrelevant, are already in the possession of the parties or in circumstances where the PCC is unable to investigate the complaint.
- The PCC will ensure that:
 - the parties are informed about the issues being considered, so that they can respond to those issues properly
 - information received from the complainant and Member is exchanged between the parties where appropriate
 - all information is received and considered before a decision is made.

How long will the investigation take?

- Investigations will usually be completed within 4 - 9 months if all relevant information is provided. This may take longer if the complaint is complex or if relevant information is not provided.
- If your complaint is referred to the Disciplinary Tribunal then it may take approximately 12 months to complete.

Confidentiality

- Please remember that all information, correspondence and other documentation sent or received by CA ANZ or disclosed or made available to you in connection with the complaint and its outcome, including the investigation and, if applicable, review is confidential.
- If you do not comply with this requirement, investigation of your complaint may cease.

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