

CODE OF ETHICS

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New Zealand Institute of Chartered Accountants¹

CODE OF ETHICS

Notice of legal status of the Code of Ethics

The Code of Ethics of the New Zealand Institute of Chartered Accountants is made pursuant to section 7 of the Institute of Chartered Accountants of New Zealand Act 1996. The Act states, in section 8, that the Regulations (Disallowance) Act 1989 applies to the Code of Ethics as if they were regulations within the meaning of the Regulations (Disallowance) Act 1989.

The Council of the New Zealand Institute of Chartered Accountants has prescribed the following Code of Ethics to be binding on all members of the Institute.

This Code of Ethics replaces all previous Codes of Ethics issued by the Council of the Institute.

This Code of Ethics is effective from 1 July 2003.

¹ The New Zealand Institute of Chartered Accountants is the operating name of the Institute of Chartered Accountants of New Zealand, a body established under the Institute of Chartered Accountants of New Zealand Act 1996. All references to the New Zealand Institute of Chartered Accountants or to the Institute in the document means the Institute of Chartered Accountants of New Zealand.

CODE OF ETHICS

FUNDAMENTAL PRINCIPLES

The Code of Ethics is based on a number of Fundamental Principles that express the basic tenets of ethical and professional behaviour and conduct. Observance of these Fundamental Principles is central to the public interest. All *members* must abide by these Fundamental Principles at all times. The Fundamental Principles are:

| | |
|--|----------------------|
| Integrity | Paragraphs |
| Members must behave with Integrity in all professional and business relationships. Integrity implies not merely honesty but fair dealing and truthfulness. | 16 to 30 |
| Objectivity and Independence | |
| Members must be fair, impartial and intellectually honest, and must not allow prejudice or bias, conflict of interest or influence of others to override Objectivity. Members undertaking certain types of engagements must be, and be seen to be, Independent. | 31 to 81 |
| Competence | |
| Members must only undertake professional work in which they have the Competence necessary to perform the work to the technical and professional standards expected. | 82 to 91 |
| Quality Performance | |
| Members must perform their professional work with due care and diligence, ensuring that all professional obligations are completed in a timely manner and are carried out in accordance with the relevant technical and professional standards appropriate to that work. | 92 to 105 |
| Professional Behaviour | |
| Members must act in a manner consistent with the good reputation of the profession and refrain from any conduct which might bring discredit to the profession. | 106 to 177 |
| Other Content | |
| Introduction | Paras 1 to 15 |
| Appendix 1: Applicability of the Code of Ethics | App 1 |
| Appendix 2: Resolving Conflicts of Loyalties – Members in Employment | App 2 |
| Appendix 3: Comparison of Code of Ethics with International and Australian Codes | App 3 |
| Definitions | Definitions |
| Index | Index |

Note: Defined words appear in *italics* the first time they appear in a section

CODE OF ETHICS

INTRODUCTION

- 1 The Code of Ethics recognises that the objectives of the accountancy profession are to work to the highest standards of professionalism, to attain the highest levels of performance and generally to meet the public interest requirement. This Code is designed to provide members with authoritative guidance on minimum acceptable standards of professional conduct. The Code focuses on essential matters of principle and is not to be taken as a definitive statement on all matters.
- 2 Members are recognised as trusted expert business professionals, probably more so than any other professional group. Ask someone what sets an *Institute* member apart from other “professional” groups that provide services to business and the community, and the responses you get will likely include competence, integrity, objectivity, quality and professionalism. These are the key concepts or principles that you will find throughout this Code of Ethics.
- 3 Your clients and employers and others who rely on your work expect these ethical principles to be a fundamental part of your *professional work* and behaviour every day. This is all part of being a member and is a positive “point of difference” in a competitive marketplace.
- 4 What does this mean to you as a member? It means that you must not only be familiar with the content of this Code, you must also apply it routinely in your day-to-day actions and conduct. The Fundamental Principles of Integrity, Objectivity, Competence, Quality Performance and Professional Behaviour must be second nature to you in all your dealings. You should be, and are expected to be, familiar with the content of this Code and you should retain it for reference when you encounter an ethical issue, as you surely will.

Compliance

- 5 Compliance with the Code of Ethics is mandatory for all members. Members must be able to demonstrate at all times that their actions, behaviour and conduct comply with the Code of Ethics.
- 6 The Code of Ethics is established on the basis that unless a limitation is specifically stated, the requirements are equally applicable to all members, whether they be in public practice, industry, commerce, the public sector or education.
- 7 Compliance with the Code of Ethics depends primarily on members’ acceptance of their responsibilities to act ethically and their voluntary actions to meet those responsibilities; secondarily on reinforcement by peers and public opinion; and ultimately on disciplinary proceedings. Non-compliance with the Code of Ethics may expose a member to disciplinary action.

CODE OF ETHICS

- 8 Members should be bound not merely by the terms but also by the spirit of the Code of Ethics. The fact that particular behaviour or conduct does not receive a mention within the Code of Ethics does not prevent it from amounting to breach of ethics.
- 9 Detailed issues of applicability of this Code are discussed in Appendix 1, which covers issues such as non-member partners and directors, members' responsibility for the conduct of others, and the ethical requirements applicable to services performed outside New Zealand.

Structure of the Code of Ethics

- 10 The Code of Ethics has been structured around the Fundamental Principles that form the basis of the behaviour expected from all members. Adherence to these Fundamental Principles is mandatory for all members.
- 10A The circumstances in which members operate may give rise to specific threats to compliance with the Fundamental Principles. It is impossible to define every situation that creates such threats and specify the appropriate mitigating action. In addition, the nature of engagements and work assignments may differ and consequently different threats may exist, requiring the application of different safeguards. If identified threats are other than clearly insignificant, members should, where appropriate, apply safeguards to eliminate the threats or reduce them to an acceptable level, such that compliance with the Fundamental Principles is not compromised. If a member cannot implement appropriate safeguards, the member should decline or discontinue the specific professional service involved, or, where necessary, resign from the client or the employing organisation.
- 11 Supporting each Fundamental Principle are a number of specific Rules that prescribe aspects of the professional and ethical behaviour expected of members. Compliance with these Rules is mandatory for all members, although some Rules may be applied differently depending on whether a member is in public practice or in employment.
- 12 The Rules are, in turn, supported by guidance on the Application of the Rules. These "Application" sections establish appropriate ethical behaviour in a number of typical situations that can occur in the accountancy profession. Members who encounter an ethical issue that is covered in the Application sections are expected to comply with the guidance provided.
- 13 The Rules and Applications are not intended to cover all circumstances where members may need to make decisions as to appropriate ethical conduct. In circumstances not specifically covered by the Code of Ethics, members must have regard to the Fundamental Principles and should be guided by any similar situations specifically covered by the Rules and

CODE OF ETHICS

Applications, and by the guidance provided in Appendix 2, *Resolving Conflicts of Loyalties – Members in Employment*.

The Public Interest

- 14 Members of the Institute have an important role and position in society. Members can remain in this position only if they are seen to be regulated, and can demonstrate that their services are provided to high levels of performance in accordance with ethical standards designed to maintain public confidence that the accountancy profession will act in the public interest.
- 15 The public interest is defined as the collective well-being of the community of people and institutions the profession serves. The accountancy profession's public consists of clients, governments, employers, employees, investors, creditors, the business and financial community, and others who rely on the Objectivity and Integrity of members for sound financial accounting and reporting, effective financial management and competent advice on a variety of business and taxation matters.

CODE OF ETHICS

THE FUNDAMENTAL PRINCIPLE OF INTEGRITY

Members must behave with Integrity in all professional and business relationships. Integrity implies not merely honesty but fair dealing and truthfulness.

- 16 Integrity is a quality of overriding importance for all members of the Institute. Integrity implies not merely honesty but fair dealing and truthfulness. It is members' adherence to the fundamental principle of Integrity that allows the public to derive their trust in the accountancy profession. It is also the benchmark against which a member must ultimately test all decisions.
- 17 Integrity can accommodate the inadvertent error and honest difference of opinion. However, Integrity cannot accommodate deceit or subordination of principles, values and standards.
- 18 Integrity is measured in terms of what is right or just.
- 19 In the absence of specific rules, standards or guidance, or in the face of conflicting opinions, a member should test their decisions and actions against the following questions:
 - Am I doing what a person of Integrity would do?
 - Have I retained my Integrity?

CODE OF ETHICS

INTEGRITY – THE RULES

Rule 1: Incompatible Activities

20 *A member must not engage in any business, occupation or activity which impairs or might impair the member's Integrity, or the good reputation of the profession.*

Rule 2: False or Misleading Statements

21 *A member must not make, prepare or certify, or permit or direct another person to make, prepare or certify, any statement which the member knows, believes or ought to know to be false, incorrect or misleading, or open to misconstruction, by reason of the misstatement, omission or suppression of a material fact or otherwise.*

CODE OF ETHICS

INTEGRITY – APPLICATION OF THE RULES

Rule 1: Incompatible Activities

A member must not engage in any business, occupation or activity which impairs or might impair the member's Integrity, or the good reputation of the profession.

- 22 The simultaneous engagement in another business, occupation or activity unrelated to professional work that has the effect of not allowing the member to properly discharge the member's responsibilities in accordance with the Fundamental Principles of the Code of Ethics, is regarded as inconsistent with the professional work conducted by members.
- 23 Members must ensure that they do not lend their names or their professional status to an enterprise which:
 - (a) involves an invitation to the public to pay, deposit or invest money, and the member knows, or as the result of reasonable enquiry ought to have known, that the invitation does not give a fair and full statement of the transaction that is involved; or
 - (b) may bring discredit to those associated with the enterprise.

CODE OF ETHICS

Rule 2: False or Misleading Statements

A member must not make, prepare or certify, or permit or direct another person to make, prepare or certify, any statement which the member knows, believes or ought to know to be false, incorrect or misleading, or open to misconstruction, by reason of the misstatement, omission or suppression of a material fact or otherwise.

Preparation of Information

- 24 A member is expected to present information fully, honestly and professionally, so that it will be understood in its context.
- 25 Financial and non-financial information should be maintained in a manner that describes clearly the true nature of business transactions, assets or liabilities and classifies and records entries in a timely and proper manner. Members must do everything within their power to ensure that this is the case.

Forecasts of Future Results

- 26 A member must not sign or authorise for publication in any document intended for publication to the public (including to current and potential investors, lenders or creditors of the entity), a statement or report on the estimated future results or dividends of an existing or proposed business unless the member is satisfied that the estimate of future results or dividends is not misleading and does not falsely imply an undertaking by the member or by the business or company concerned.

Integrity in the Performance of Taxation Work

- 27 Members must not associate themselves with any tax return or communication with the revenue authorities which they have reason to believe:
- (a) contains a false or misleading statement;
 - (b) contains statements or information furnished recklessly or without any real knowledge of whether they are true or false; or
 - (c) omits or obscures information required to be submitted and such omission or obscurity would mislead the revenue authorities.

CODE OF ETHICS

Communications with External Auditor – Members in Employment

- 28 Members in employment in dealing with their employer's external auditors must not knowingly misrepresent facts or knowingly fail to disclose material facts.

Conflicts of Loyalties – Members in Employment

- 29 Members in employment in the performance of their professional work may be subject to direction from their employers. If a *member in employment* is directed by their employer to breach the requirements of the Code of Ethics in relation to false or misleading statements (including, but not limited to, financial information, forecasts of future results, tax returns and communications with an external auditor) then the member should refer to the guidance in Appendix 2 of this Code of Ethics.

Undertakings, Pledges and Promises

- 30 A member must not give an undertaking, or make a pledge or promise to a client or third party unless the member has reasonable grounds for believing that the undertaking, pledge or promise will be honoured.

CODE OF ETHICS

CODE OF ETHICS

THE FUNDAMENTAL PRINCIPLE OF OBJECTIVITY AND INDEPENDENCE

Members must be fair, impartial and intellectually honest, and must not allow prejudice or bias, conflict of interest or influence of others to override Objectivity. Members undertaking certain types of engagements must be, and be seen to be, Independent.

Objectivity

- 31 The fundamental principle of Objectivity imposes the obligation on all members to be fair, impartial and intellectually honest.
- 32 Objectivity is essential for any member exercising professional judgement. It is as essential for members in employment as for members in public practice. Objectivity is a state of mind which has regard to all considerations relevant to the task in hand but no other.
- 33 In the absence of specific rules, standards or guidance, a member should test their decisions and actions against the following questions:
 - Would another equally experienced member have come to the same decision with access to the same information, but without the other relationships or influences that have put my Objectivity at risk?
 - Have I retained my Objectivity?

Independence

- 34 Members performing certain types of engagements must not only be Objective, they must also be Independent.
- 35 Independence is:
 - (a) Independence of mind — the state of mind that permits the provision of an opinion without being affected by influences that compromise professional judgement, allowing an individual to act with Integrity and exercise Objectivity and professional scepticism; and
 - (b) Independence in appearance — the avoidance of facts and circumstances that a reasonable and informed third party, having knowledge of all relevant information, including safeguards applied, would reasonably conclude a *firm's* or a member of the assurance team's Integrity, Objectivity or professional scepticism had been compromised.

CODE OF ETHICS

- 36 Independence is an essential requirement for certain types of assurance engagements, such as the external audit or review of a financial report. Independence also applies to some other *professional services*, including some insolvency engagements, independent business valuations, appraisal reports under New Zealand Stock Exchange Listing Rules, and expert witness engagements.

CODE OF ETHICS

OBJECTIVITY AND INDEPENDENCE – THE RULES

Rule 3: Objectivity

37 Members must perform all professional work with an Objective mind.

Rule 4: Independence

38 Members performing certain types of assurance engagements, such as the external audit or review of a financial report, must be Independent of the entity and the subject matter on which they are reporting. Independence is also important for some other professional services, including some insolvency engagements, independent business valuations, appraisal reports under New Zealand Stock Exchange Listing Rules, and expert witness engagements.

Rule 5: Disclosure of Conflicts of Interest

39 When a member has a conflict of interest the member must disclose the conflict to those involved.

Rule 6: Independent Advice

40 Where a member in public practice is a party to any transaction, not directly related to the provision of professional services, in which a client of the firm is also a party, the member must offer the client the opportunity to take independent advice.

CODE OF ETHICS

OBJECTIVITY AND INDEPENDENCE – APPLICATION OF THE RULES

Rule 3: Objectivity

Members must perform all professional work with an Objective mind.

- 41 Members serve in many different capacities and must demonstrate their Objectivity in varying circumstances. Members in public practice undertake assurance engagements, and render tax and other management advisory services. Other members prepare financial statements in the employment of others, perform internal auditing services, and serve in financial management capacities in industry, commerce, the public sector and education. They also educate and train those who aspire to admission into the profession. Regardless of service or capacity, members must protect the Integrity of their professional work, maintain Objectivity and avoid any subordination of their judgement.
- 42 Members are often exposed to situations that involve the possibility of pressures being exerted on them. These pressures may impair their Objectivity. It is impracticable to define and prescribe all such situations where these possible pressures exist. Reasonableness should prevail in establishing standards for identifying relationships that are likely to, or appear to, impair a member's Objectivity.
- 43 Members must remain conscious of the need to remain Objective in the performance of all professional work, and must continually review and manage the risks to their Objectivity. In addition, members must ensure that they comply with the requirements of this Code of Ethics in relation to:
- disclosure of conflicts of interest (paragraphs 59 to 78); and
 - Independence, for certain types of engagement, (paragraphs 54 to 58).

Financial Involvement

- 44 Financial involvements may put the Objectivity of a member at risk. Where such risks exist members must take particular care to ensure that their professional work is completed Objectively.
- 45 For a *member in public practice* the following are examples of situations where there is a need to carefully manage and continually review the risk to the member's Objectivity from financial involvement:
- (a) when the member, or their *immediate family*, or others in the members firm or their immediate families, has a *financial interest* in a client;

CODE OF ETHICS

- (b) when receipt of fees from a client or group of connected clients represents a significant proportion of the total gross income of the member or the member's firm;
 - (c) when material amounts of fees remain unpaid by a client.
- 46 For a member in employment the following are examples of situations where there is a need to carefully manage and continually review the risk to the member's Objectivity from financial involvement:
- (a) when the member or the member's immediate family has a financial interest (including share options) in the employer;
 - (b) when a member responsible for producing the financial statements of an entity receives an element of remuneration which is dependent on the financial results of the entity.

Personal Relationships

- 47 Family, business and personal relationships may put the Objectivity of a member at risk. There is a particular need to ensure that an Objective approach to any assignment is not endangered as a consequence of any such relationship.

Acceptance and Offer of Gifts or Hospitality

- 48 Members must neither accept nor offer gifts or hospitality that might reasonably be believed to have a significant and improper influence on their professional judgement or those with whom they deal. What constitutes an excessive gift or offer of hospitality will vary according to the nature and extent of the professional relationship and the accepted practice in a particular industry or culture.

Objectivity in the Performance of Taxation Work

- 49 A member performing professional tax work is entitled to put forward the best position in favour of a client, or an employer, provided the work is performed with Competence, does not in any way impair Integrity and Objectivity, and is, in the opinion of the member, consistent with the law. The member may resolve doubt in favour of the client or the employer if in the member's opinion there is reasonable support for the position.

Objectivity of Members in Employment

- 50 Although it may be more difficult for a member in employment to be, or to be seen to be free, of any interest which might conflict with a proper approach to the member's professional work, this does not diminish the member's duty to maintain Objectivity in the performance of that work. A member in employment performing professional work should recognise the problems created by financial involvements or other relationships which, by

CODE OF ETHICS

reason of their nature or degree, might threaten the member's Objectivity in respect of work performed. The member must observe the high standards of conduct and Integrity expected of members.

- 51 Without the capacity of being fully Independent of their employers, it is all the more important that members in employment should strive constantly to maintain Objectivity in every aspect of their work. It follows that the interests of a member's employer should not affect the Objectivity of a member's judgement.
- 52 Problems may be created by financial involvements or personal relationships that, whether sanctioned by a contract of employment or not, could by reason of their nature or degree threaten the Objectivity of a member. Where any doubt exists, any involvement or relationship should be disclosed in writing to the employer.
- 53 Any report for which members in employment are responsible, whether it bears their signature or not, must be prepared with Integrity and Objectivity. This means, for example, that while a report prepared by a member in employment may properly present one side of a case and may present that case to its best advantage, the report should be accurate, truthful and, within its scope, both complete and balanced. It should not rely on ambiguities or half-truths but should be objectively justifiable and should be based on reasonable assumptions.

CODE OF ETHICS

Rule 4: Independence

Members performing certain types of assurance engagements, such as the external audit or review of a financial report, must be Independent of the entity and the subject matter on which they are reporting. Independence is also important for some other professional services, including some insolvency engagements, independent business valuations, appraisal reports under New Zealand Stock Exchange Listing Rules, and expert witness engagements.

Independence for Assurance Engagements – A Conceptual Framework

- 54 *Code of Ethics: Independence for Assurance Engagements* provides a detailed discussion of Independence for assurance engagements. The pronouncement takes a conceptual approach, discussing threats to Independence and appropriate safeguards that members may take to protect their Independence. It also provides a number of examples of how the conceptual approach to Independence is to be applied to specific circumstances and relationships.

Independence for other Professional Engagements

- 55 Independence is also important for some other professional services, including some insolvency engagements, independent business valuations, appraisal reports under New Zealand Stock Exchange Listing Rules, and expert witness engagements.
- 56 Where specific Independence requirements have been established for engagements other than assurance engagements, they are set out in the appropriate Professional Engagement Standard; for example the Independence requirements for insolvency engagements are set out in Service Engagement Standard 1 (SES-1): *Performance of Insolvency Engagements*.
- 57 Where there is no relevant Professional Engagement Standard, members must have regard to:
- (a) any other authoritative Independence requirements applicable to that engagement, such as the New Zealand Stock Exchange Market Surveillance Panel's *Policy on the Approval of Independent Reporters*; and
 - (b) any requirements from legislation.
- 58 In addition, members should consider the applicability to the engagement of the threats and safeguards approach as set out in the conceptual framework for Independence in assurance engagements in the *Code of Ethics: Independence*.

CODE OF ETHICS

Rule 5: Disclosure of Conflicts of Interest

When a member has a conflict of interest the member must disclose the conflict to those involved.

All Members

- 59 Conflicts of interest may arise where a member undertakes professional work for a client or employer and the member, or the member's firm, has a relationship with another person, entity, product or service that could be viewed by the client or employer as impairing the Objectivity of the member.
- 60 Members must inform clients or employers of the nature of any business connections, interests or affiliations which could be viewed as affecting the member's judgement or impairing the Objective quality of their services to such clients or employers.

Members in Public Practice

- 61 In the rendering of professional services, two types of conflict of interest may arise:
- (a) conflicts between the interests of a member, or a member's firm, and a client; and
 - (b) conflicting interests of different clients.
- 62 Situations frequently arise which are perceived by clients to be a conflict of interest, but which in reality are no more than concerns about the confidentiality of information.
- 63 Members in public practice must establish systems and procedures that enable them to identify conflicts of interests, whether the conflict of interest arises in the acceptance of new assignments or in the performance of existing engagements. Members must be able to demonstrate to new and existing clients that any conflict of interest can be managed with appropriate safeguards.

Conflicts Between the Interests of a Member, or a Member's Firm, and a Client

- 64 Where there is, or is likely to be, a conflict between the interests of a member, or a member's firm, and a client, then the appropriate safeguards include:
- (a) disclosure in writing of the circumstances of the conflict;

CODE OF ETHICS

- (b) advising the client in writing that, in the particular circumstances, the client may wish to seek alternative independent advice; and
 - (c) obtaining in writing the informed consent of the client to act.
- 65 In those circumstances where effective safeguards are not available to reduce the risk to a member's actual or perceived Objectivity, then the member must not accept the new engagement or must discontinue the existing engagement.

Conflicts Between the Interests of Two or More Clients

- 66 Where a member or a member's firm is acting for more than one party in any transaction they must inform the parties of that fact and offer to each the opportunity to take independent advice.
- 67 It is conceivable in today's business environment that a member or a member's firm may undertake professional work for two or more clients whose interests may be in conflict with each other. However, a member must take all reasonable steps to manage the activities of the member's firm so as to avoid the work of the firm on behalf of one client adversely affecting that undertaken on behalf of another client.
- 68 Where a member believes that the situation may be managed, sufficient disclosure must be made in writing to the clients or potential clients concerned together with details of any proposed safeguards to preserve confidentiality and manage the conflict of interest. In those circumstances where adequate disclosure is not possible by reason of constraints of confidentiality the member must disengage from the relevant professional work.
- 69 Safeguards to manage potential conflicts between the interests of two or more clients include:
- (a) the use of different partners and staff for different engagements, each having separate internal reporting lines;
 - (b) standing instructions and all other steps necessary to prevent the transfer of confidential information between staff and sections within the firm;
 - (c) regular reviews of the situation by a senior partner not personally involved with either client;
 - (d) advising all the relevant clients in writing that, in the particular circumstances, they may wish to seek alternative independent advice; and
 - (e) obtaining in writing informed consent to act from all the clients concerned.

CODE OF ETHICS

- 70 Where the acceptance or continuance of professional work would, even with the above safeguards, prejudice the interests of any of the clients involved, the professional work must not be accepted or continued.

Clients in Dispute

- 71 In severe cases of conflict of duty, such as where two clients are, or are about to become, in dispute on a matter, the member or the member's firm must not advise both clients on the matter. The member or the firm must determine whether it is appropriate to advise one client or encourage them both to seek independent advice. The member or the firm should only elect to continue to advise one client on the matter provided that the interests of the other client would not be materially prejudiced thereby. This does not preclude the member acting as sole arbitrator or referee if requested to so act by both clients.
- 72 In a property or relationship dispute where the member had previously undertaken work for both parties jointly, the member should consider the following safeguards:
- (a) discontinuing the provision of financial advice to one of the parties and advising that party to seek professional advice from another member;
or
 - (b) obtaining in writing informed consent from both parties to continue to act.
- 73 Where the acceptance or continuance of professional work would, even with the above safeguards, prejudice the interests of any of the clients involved, the professional work must not be accepted or continued.
- 74 Regardless of whether a member has advised one party involved in the property or relationship dispute to seek independent professional advice, the member must remain conscious of any rights both parties have of accessing the information held by the member.

Receipt of Commissions or other Benefits from a Third Party

- 75 The payment or receipt of a commission by a member could impair the member's Objectivity and Independence. While the Code of Ethics does not prohibit the entering into of arrangements with third parties whereby a commission may be paid to the member, members must at all times adhere to the requirements of the Secret Commissions Act 1910 (as well as other legislation applicable to the particular professional services performed, such as the Investment Advisers (Disclosure) Act 1996). Specifically, a member must make adequate disclosure in writing of the existence of the arrangement from which a commission may be paid to the member, the identity of the third party or parties, and the method of calculating the commission.

CODE OF ETHICS

- 76 Members should consider the desirability of obtaining written acknowledgement from each client that this disclosure has been made.
- 77 If advice is given to a client, which, if acted upon, would result in receipt of commission by the member or the member's firm, care should be taken to ensure that the advice is in the best interests of the client.

Associations with Third Parties

- 78 In making any recommendation for the use of the services of a third party, any relevant connection between the third party and the member, or member's firm, must be disclosed in writing to the client.

CODE OF ETHICS

Rule 6: Independent Advice

Where a member in public practice is a party to any transaction, not directly related to the provision of professional services, in which a client of the firm is also a party, the member must offer the client the opportunity to take independent advice.

- 79 Before a member or the member's immediate family, or an entity in which the member or the member's immediate family have a material beneficial or financial interest or over which the member exercises significant influence, borrows money from, or has obligations guaranteed by, a client of the firm, the following conditions must be met:
- (a) the member must first obtain from the client specific written authority for the borrowing; and
 - (b) the member must obtain from the client acknowledgement in writing that the client has been offered the opportunity to take independent advice.
- 80 Before a member or the member's immediate family, or an entity in which the member or the member's immediate family have a material beneficial or financial interest or over which the member can exercise significant influence, lends money to, or guarantees the borrowings of, a client of the firm, the member must first obtain from the client acknowledgement in writing that the client has been offered the opportunity to take independent advice.
- 81 The preceding two paragraphs do not apply to a current or a deposit account with a trading bank, or similar banking or financial institution, nor do they apply to an overdraft or loan from such an institution negotiated in the ordinary course of business.

CODE OF ETHICS

THE FUNDAMENTAL PRINCIPLE OF COMPETENCE

Members must only undertake professional work in which they have the Competence necessary to perform the work to the technical and professional standards expected.

- 82 Competence implies that a member possesses the necessary knowledge, education and experience appropriate to the nature of the professional work being performed.
- 83 Competence to perform professional work involves both the technical qualifications and experience of the member and the member's staff, and the ability to supervise and evaluate the quality of the work performed. Competence relates both to knowledge of the profession's standards, techniques and the technical subject matter involved, and to the capability to exercise sound judgement in applying such knowledge in the performance of professional work.
- 84 In the absence of specific rules, Competency standards or guidance, a member should test their decisions to undertake professional work against the following questions:
- Am I Competent to perform this work?
 - Can I obtain expert advice or assistance to enable me to perform this work Competently?

CODE OF ETHICS

COMPETENCE – THE RULES

Rule 7: Competence

85 *A member who accepts or undertakes professional work must have the Competence necessary to carry out the work. Accordingly, a member must refrain from undertaking or continuing any assignment which the member is not Competent to carry out, unless the member obtains such advice and assistance as will enable the member to complete the assignment in an efficient, proper and timely manner.*

Rule 8: Duty to Maintain Competence

86 *A member has a duty to observe and maintain a high standard of professional Competence throughout the member's professional career.*

CODE OF ETHICS

COMPETENCE – APPLICATION OF THE RULES

Rule 7: Competence

A member who accepts or undertakes professional work must have the Competence necessary to carry out the work. Accordingly, a member must refrain from undertaking or continuing any assignment which the member is not Competent to carry out, unless the member obtains such advice and assistance as will enable the member to complete the assignment in an efficient, proper and timely manner.

All Members

- 87 Members must not portray themselves as having expertise or experience they do not possess.

Members in Public Practice

- 88 Members in public practice must refrain from agreeing to perform professional services which they are not Competent to carry out, unless Competent advice and assistance is obtained so as to enable them to satisfactorily perform such services. If a member does not have the Competence to perform a specific part of the professional service, technical advice must be sought from experts such as other members, lawyers, actuaries, engineers, geologists, valuers.
- 89 In such situations, although the member is relying on the technical Competence of the expert, the expert's knowledge of the ethical requirements cannot be automatically assumed. Since the ultimate responsibility for the professional service rests with the member, the member must ensure that the requirements of the Institute's Code of Ethics and the Professional Engagement Standards appropriate to the work being performed are followed. Members should also refer to the guidance in Appendix 1 of this Code of Ethics in the section "Members' Responsibility for the Conduct of Others".

Members in Employment

- 90 A member in employment may be asked to undertake significant tasks for which the member has not had sufficient specific training or experience. When undertaking such work the member must not mislead the employer as to the degree of expertise or experience the member possesses and, where appropriate, expert advice and assistance should be sought.

CODE OF ETHICS

Rule 8: Duty to Maintain Competence

A member has a duty to observe and maintain a high standard of professional Competence throughout the member's professional career.

All Members

- 91 A member has a continuing duty to maintain professional knowledge and skills at a level required to ensure that the member's clients or employer receive Competent professional service based on up-to-date developments and practice, legislation and techniques. Attention is drawn to the appropriate Standards and Guidelines issued by the Institute from time to time and contained in the *Members' Handbook*.

CODE OF ETHICS

THE FUNDAMENTAL PRINCIPLE OF QUALITY PERFORMANCE

Members must perform their professional work with due care and diligence, ensuring that all professional obligations are completed in a timely manner and are carried out in accordance with the relevant technical and professional standards appropriate to that work.

- 92 Due care imposes the obligation to perform professional work to the best of a member's ability, with concern for the best interests of those for whom the work is performed and consistent with the profession's responsibility to the public.
- 93 Diligence imposes the responsibility to perform professional work promptly and carefully, to be thorough, and to observe applicable technical, professional and ethical standards.
- 94 In the absence of specific rules, standards or guidance, a member should test their performance against the following question:
 - Am I providing the standard of professional work that a reasonable client or employer would expect, given the circumstances and the contractual relationships between the parties?

CODE OF ETHICS

QUALITY PERFORMANCE – THE RULES

Rule 9: Due Care and Diligence

95 Members must perform all their professional work with due care and diligence.

Rule 10: Timeliness

96 Members must complete all their professional obligations in a timely manner.

Rule 11: Compliance with Technical and Professional Standards

97 Members must comply with the requirements of the Professional Engagement Standards, the Professional Standards and any other Standards or pronouncements which the Council may from time to time issue and declare to be mandatory for the purposes of this provision.

CODE OF ETHICS

QUALITY PERFORMANCE – APPLICATION OF THE RULES

Rule 9: Due Care and Diligence

Members must perform all their professional work with due care and diligence.

- 98 Members have a duty to carry out with care and skill, the instructions of the client or employer insofar as they are compatible with the requirements of the Code of Ethics.

CODE OF ETHICS

Rule 10: Timeliness

Members must complete all their professional obligations in a timely manner.

- 99 Members have a duty to perform their professional obligations in a timely manner. As well as the professional work that the member is engaged to perform, these obligations include, but are not limited to, communications with clients, other members and the Institute.

Members in Public Practice

- 100 Members in public practice must keep their clients fully informed of the progress of any professional work, if it is likely that that work will not be completed within a reasonable timeframe or within the deadlines agreed.
- 101 Members in public practice must pay particular attention to the scheduling and completion of a client's work if it is known that the work is required by a specific date, for example the filing of tax returns or the provision of information under contract or statute.

CODE OF ETHICS

Rule 11: Compliance with Technical and Professional Standards

Members must comply with the requirements of the Professional Engagement Standards, the Professional Standards and any other Standards or pronouncements which the Council may from time to time issue and declare to be mandatory for the purposes of this provision.

- 102 The Professional Engagement Standards, Professional Standards and other Standards or pronouncements that the Council has declared to be mandatory for the purpose of this provision are located in the *Members' Handbook*.

Responsibilities of Members to Observe Generally Accepted Accounting Practice

- 103 Members who are involved in, or have responsibility for, the preparation or presentation of general purpose financial reports should take all reasonable steps within their power to ensure that generally accepted accounting practice is complied with.
- 104 All material departures from generally accepted accounting practice should be disclosed and explained in the general purpose financial report. The explanation should include the reasons for the departure and its financial and non-financial effects.

Members in Employment

- 105 Members in employment, in the performance of their professional work, may be subject to direction from their employers which may mean they face a conflict of loyalties in seeking to apply this Rule. For example, a member and the member's superior may have a dispute over the presentation of financial information. The member must take the following steps to attempt to resolve the situation:
- (a) The member should consider the materiality of the items under dispute.
 - (b) The member should consider whether the financial information presentation or the nature or omission of disclosure in the financial information as proposed by the superior, represents the use of an acceptable alternative accounting treatment.
 - (c) The member should consider whether it would be appropriate to seek another opinion on the issue from another member, either within or external to the organisation.
 - (d) If, after appropriate research or consultation, the member concludes that the accounting treatment proposed by the superior has authoritative support and/or does not result in a material misstatement, the member need do nothing further.

CODE OF ETHICS

- (e) If the member concludes that the financial statements or records could be materially misstated, the member should refer to the guidance in Appendix 2 of this Code of Ethics.

CODE OF ETHICS

THE FUNDAMENTAL PRINCIPLE OF PROFESSIONAL BEHAVIOUR

Members must behave in a manner consistent with the good reputation of the profession and refrain from any conduct which might bring discredit to the profession

- 106 Members must behave professionally in all aspects of their professional work. This includes a member's dealings with current and prospective clients, employers, employees, other business contacts, other members, the Institute, and the general public.
- 107 Confidentiality of client and employer information is a key aspect of Professional Behaviour.
- 108 For members in public practice, other areas where Professional Behaviour is particularly important and expected are:
- (a) the publicity and promotion of professional services;
 - (b) the charging of professional fees;
 - (c) resolving disputes with clients; and
 - (d) accepting new assignments.
- 109 In the absence of specific rules, standards or guidance, a member should test their behaviour against the following questions:
- How would I react if I was the client (or other party) and a member behaved like this towards me?
 - Have I behaved Professionally?

CODE OF ETHICS

PROFESSIONAL BEHAVIOUR – THE RULES

Rule 12: Confidentiality

110 Members must respect the confidentiality of information acquired in the course of their professional work and must not disclose such information without proper and specific authority or unless there is a legal or professional right or duty to disclose the information.

Rule 13: Duty to Report

111 Any member who has reasonable grounds for suspecting defalcation, fraud, dishonesty or other unethical behaviour by any other member is under a duty to make a confidential report immediately to the Chief Executive of the Institute.

Rule 14: Professional Conduct

112 Members must conduct themselves with courtesy and consideration towards all they come into contact with during their professional work, including clients, other members, employers, staff, third parties and the general public.

CODE OF ETHICS

PROFESSIONAL BEHAVIOUR – APPLICATION OF THE RULES

Rule 12: Confidentiality

Members must respect the confidentiality of information acquired in the course of their professional work and must not disclose such information without proper and specific authority or unless there is a legal or professional right or duty to disclose the information.

- 113 Members have an obligation to respect the confidentiality of information about a client's or employer's affairs acquired in the course of their professional work. The duty of confidentiality continues even after the end of the relationship between the member and the client or employer.
- 114 Members have an obligation to ensure that staff under their control and persons from whom advice and assistance are obtained respect the principle of confidentiality.
- 115 Confidentiality is not only a matter of disclosure of information. It also requires that a member acquiring information in the course of performing the member's professional work neither uses nor appears to use that information for personal advantage or for the advantage of a third party.

Fraudulent or Illegal Activities and Confidentiality

- 116 In those circumstances where a member, in the course of the member's professional work, discovers evidence of fraudulent or illegal activities, the member must:
- (a) where appropriate, raise the matter with the appropriate level of management of the client or employer; and
 - (b) consider the member's legal and professional rights and duties to disclose the information to other parties (see paragraphs 117 to 130).
- 117 In circumstances where the member discovers evidence of fraudulent or illegal activities and there is no legal or professional right or duty to disclose, then the member must not communicate the information to a third party without the client's or employer's consent. However, the member must do all that can be done to persuade the member's client or employer to fulfil the client's or employer's legal obligations. Should the client decline, the member should safeguard the member's Integrity by declining to undertake further professional work on behalf of the client concerned. Should the member's employer decline, the member should consider the guidance provided in Appendix 2 of this Code of Ethics.

CODE OF ETHICS

Rights and Duties to Disclose Confidential Information

- 118 Members must be careful to distinguish between a right to disclose and a duty to disclose. When a member has a right to disclose, the member may do so if the member so wishes. In considering whether the member wishes to disclose, the member may consider factors such as the public interest and the member's own protection. When a member has a duty to disclose the member is bound or obliged to do so.
- 119 Examples of legal rights to disclose arising from legislation include:
- (a) The right to make protected disclosures in specific circumstances as set out in the Protected Disclosures Act 2000 (see paragraph 120);
 - (b) The right under the Financial Transactions Reporting Act 1996 for an auditor to report to the Police a transaction that the auditor has reasonable grounds to believe may be relevant to the enforcement of the Proceeds of Crimes Act 1991 or to the investigation or prosecution of a money laundering offence.
- 120 In specific circumstances the Protected Disclosures Act 2000 provides members the right (but not obligation) to disclose information about "serious wrongdoings" in or by their "employer". The definition of "employee" in the Protected Disclosures Act 2000 is wide and includes "an individual who is engaged or contracted under a contract for services to do work for the organisation." In many cases it is expected that a member engaged to provide professional services to a client will satisfy this definition. When this is the case, the member may be able to make a protected disclosure provided that the member complies with the specific requirements of the Protected Disclosures Act 2000 and the disclosure is made in good faith.
- 121 A legal right to disclose information obtained during the course of the member's professional work may exist when disclosure is necessary to protect the professional interests of the member in legal proceedings that relate to that client or employer.
- 122 A legal duty to disclose information obtained during the course of the member's professional work exists when the member is instructed to provide such information by a court of competent jurisdiction or where there is specific provision contained in legislation or regulations that imposes a requirement for such disclosure to be made.

CODE OF ETHICS

- 123 An example of a legal duty to disclose contained in legislation is the requirement in the Financial Transactions Reporting Act 1996 for accountants who receive funds in the course of business for deposit or investment, to report to the Commissioner of Police a transaction that they have reasonable grounds to believe may be relevant to the enforcement of the Proceeds of Crimes Act 1991 or to the investigation or prosecution of a money laundering offence.
- 124 A professional duty to disclose information obtained during the course of a member's professional work exists where the member is required to disclose the information by the Professional Conduct Committee, Disciplinary Tribunal, Appeals Council or Practice Review Board. In addition, disclosure of certain information may be required by the Institute's Code of Ethics or in order to comply with the professional and technical standards issued by the Institute. For example, Rule 13 of this Code of Ethics establishes a duty for members to report suspected defalcation, fraud, dishonesty or other unethical behaviour by other members to the Chief Executive of the Institute.
- 125 In all situations where the member considers disclosing confidential information, the member must consider:
- (a) the interests of all parties who may be affected; and
 - (b) the need to consult legal counsel and/or the Institute.

CODE OF ETHICS

Rule 13: Duty to Report

Any member who has reasonable grounds for suspecting defalcation, fraud, dishonesty or other unethical behaviour by any other member is under a duty to make a confidential report immediately to the Chief Executive of the Institute.

- 126 Members may receive information about another member in professional confidence, for example, where that other member is a client or employer. In those circumstances, the member should respect the confidentiality of the information. However, the information can and must be reported to the Chief Executive of the Institute if the client or employer authorises disclosure or if disclosure is required in the public interest. Disclosure may be required in the public interest if the information relates to the committing or anticipated committing of offences involving dishonesty or fraud.
- 127 The duty in this Rule should be contrasted with the member's right (but not obligation) under the Protected Disclosures Act 2000 to make protected disclosures about "serious wrongdoing" (refer to paragraph 120). In making a protected disclosure, members must follow the specific requirements of the Protected Disclosures Act 2000. In some circumstances the Protected Disclosures Act 2000 allows for protected disclosures to be made to the Institute as an "appropriate authority". If a protected disclosure is made to the Institute about a matter involving another member, then the protected disclosure will satisfy the requirements of this Rule. If a protected disclosure is made to a party other than the Institute, the member still has a duty to report the matter to the Chief Executive of the Institute.
- 128 A member should be aware that if the report to the Chief Executive gives the member's name or other information which might enable identification, that information may be available to the member to whom the report relates under the Privacy Act 1993.
- 129 In all situations where the member considers disclosing confidential information, the member must consider:
- (a) the interests of all parties who may be affected; and
 - (b) the need to consult legal counsel and/or the Institute.
- 130 The duty to report also extends to the member's own conduct. A member is as responsible for reporting personal misconduct as for reporting the misconduct of others. In the event of disciplinary proceedings the fact that a member has made such a report may count in the member's favour.

CODE OF ETHICS

Rule 14: Professional Conduct

Members must conduct themselves with courtesy and consideration towards all they come into contact with during their professional work, including clients, other members, employers, staff, third parties and the general public.

Professional Dealings with Clients

Publicity and Promotion of Professional Services

- 131 Members are permitted to promote, advertise and solicit their professional services, provided such promotion is carried out in a manner which is consistent with the good reputation of the profession and does not bring discredit to the profession.
- 132 Forms of unacceptable promotion of professional services include, but are not limited to, those that:
- (a) involve the use of coercion, overreaching or harassing conduct;
 - (b) are presented in a manner or contain material which is not in good taste;
 - (c) create false or unjustified expectations of favourable results;
 - (d) make comparisons with other members that are not based on verifiable facts;
 - (e) imply the ability to influence any court, tribunal, regulatory agency or similar body or official;
 - (f) consist of self-laudatory statements that are not based on verifiable facts;
 - (g) are presented in a manner or contain material that would be likely to mislead or deceive members of the public;
 - (h) contain testimonials or endorsements other than where:
 - (i) the prior consent has been obtained from the giver of the testimonial or endorsement; and
 - (ii) the testimonial or endorsement has not been obtained for reward.
- 133 A member will be held responsible for the form and content of any advertisement, whether placed by the member personally or by another person or organisation on the member's behalf, and for any publicity which the member expressly or impliedly authorises.

CODE OF ETHICS

- 134 Members must not undertake work for clients of a third party where the form of promotion carried out by the third party would, if carried out by the member directly, constitute a breach of the requirements contained in paragraphs 131 to 133.
- 135 Members may approach potential clients personally or through direct mail to make known the range of professional services that they offer. However, members must ensure that follow-up communication is terminated when the recipient has so requested, either directly to the member or through the Institute. Any continued contact is regarded as harassment, which is considered unprofessional behaviour.

Professional Fees and Commissions

- 136 A member in public practice should inform a client, preferably in writing, prior to commencement of any engagement:
- (a) of the scope of services to be provided;
 - (b) of the basis upon which any fee the member proposes to charge that client for the professional services will be calculated; and
 - (c) on request and where practicable, of the level of fees likely to be charged for any assignment.
 - (d) Any written notification should be included either in an engagement letter, which should be regularly updated, or in a separate letter sent to the client as soon as is practicable.
- 137 The member should, at the earliest opportunity, discuss with and explain to the client the basis on which fees will be calculated and, where practicable, the estimated initial fee. The arrangements agreed should be confirmed in writing and should include a confirmation of any estimate, quotation or other indication, and where the basis of future fees will differ from that of initial fees, the basis on which such fees will be rendered.
- 138 Where an assignment is accepted “sight unseen” (for example, from the courts, a tribunal or some other statutory body), it is important that the member establishes the parameters of the service to be provided and who is to pay so that agreement can be reached on payment of fees.
- 139 The client should be advised without delay of any changes to the fee structure or billing arrangements which may become necessary during the course of an assignment or between assignments.

CODE OF ETHICS

- 140 Professional fees must be a fair reflection of the value of the professional services performed for the client, taking into account the following factors, the relative importance of which will vary according to the circumstances of each engagement:
- (a) the skill and knowledge required for the type of professional services involved;
 - (b) the level of training and experience of the persons necessarily engaged in performing the professional services;
 - (c) the time necessarily taken by each person engaged in performing the professional services;
 - (d) the degree of risk and responsibility that performing those services entails;
 - (e) the importance of the matter to the client;
 - (f) the complexity of the matter and the difficulty of the work involved; and
 - (g) the urgency and circumstances in which the professional services are performed.

This provision should not be interpreted as preventing members from performing professional services on a voluntary or honorary basis for token, or no, remuneration.

- 141 When performing professional services for a client it may be necessary or expedient to charge a pre-arranged fee, in which case the member in public practice must estimate a fee taking into account the matters referred to above.
- 142 A member in public practice must not make a representation that specific professional services in current or future periods will be performed for either a stated fee, estimated fee or fee range if it is likely at the time of the representation that such fees will be substantially increased and the prospective client is not advised of that likelihood.
- 143 Where, due to unforeseen circumstances, the fee is, or is likely to be, significantly greater than anticipated or expected by the client, the matter should be discussed with the client as soon as practicable, but always before billing.
- 144 It is not improper for a member in public practice to charge a client a lower fee than has previously been charged for similar services, provided the fee has been calculated in accordance with the factors referred to above.
- 145 The fact that the member in public practice secures work by quoting a fee lower than another member is not improper. However, members in public practice who obtain work at fees significantly lower than those charged by an

CODE OF ETHICS

existing accountant, or quoted by others, must be aware that there is a risk of a perception that the quality of work could be impaired.

- 146 When deciding on a fee to be quoted to the client for the performance of professional services, a member must be satisfied that, as a result of the fee quoted:
- (a) the quality of the work will not be impaired and that due care will be applied to comply with all professional standards and quality control procedures in the performance of those services; and
 - (b) the client will not be misled as to the precise scope of services that a quoted fee is intended to cover and the basis on which future fees will be charged.
- 147 Members in public practice should invoice clients for professional services on a timely basis in accordance with the terms agreed with the client.
- 148 The invoice (or statement) should provide sufficient detail for the client to identify the nature of the work for which the client is being charged and should refer to the written description of services agreed with the client.
- 149 Members in public practice should comply with any reasonable request from a client to provide specific details of the work performed and fees charged for significant aspects of the services performed. Where the fees charged are based primarily on time engaged, a request by a client for a detailed time and cost summary is considered a reasonable request.
- 150 Where fees rendered exceed, without prior agreement, a quotation or estimate or indication of fees given by a member by more than a reasonable amount, the member should be prepared to provide the client with a full and detailed explanation of the excess and to take steps to resolve speedily any dispute which arises.
- 151 Where all reasonable attempts to speedily resolve a fee dispute have been unsuccessful, members may contact the Institute for assistance.

Percentage and Contingent Fees

- 152 No member shall offer or render professional services of the kinds referred to below, under an arrangement whereby no fee will be charged unless a specified finding or result is attained, or where the amount of the fee is otherwise contingent on the findings or results of such services:
- (a) audit engagements;
 - (b) review engagements;

CODE OF ETHICS

- (c) preparation of financial statements;
 - (d) preparation of prospective financial information;
 - (e) preparation and lodgement of tax returns;
 - (f) independent business valuations;
 - (g) fairness opinions and appraisal reports; and
 - (h) expert witness engagements.
- 153 Even for other work, such methods of charging may be perceived as a threat to Objectivity and should therefore be adopted only after careful consideration.
- 154 Where work is subject to a fee on a contingent, percentage or similar basis, the capacity in which a member has worked and the basis of their remuneration should be made clear in any document prepared by the member in contemplation that a third party may rely on it.
- 155 Members may charge a client a fee for advisory services and/or may receive commissions from third parties in respect of advisory services provided to a client. Where an agency, commission or other form of arrangement has been entered into with a third party, the member must inform the client in writing of the existence of such an arrangement, the identity of the other party or parties and the method of calculation of the agency fee, commission or other benefit occurring directly or indirectly to the member. The onus of proof that disclosure has been made is on the member.
- 156 Members are referred to paragraphs 75 to 77 of this Code for further discussion of the disclosure requirements with respect to commissions from third parties.

Disputes with Clients and Termination of Engagements

- 157 Members in public practice may on occasion find themselves in dispute with a client in relation to the level of fees charged, the quality of the services provided or some other aspect of their dealings with the client. When a dispute arises a member must actively attempt to resolve the dispute in a timely manner.
- 158 If a member in public practice believes that a relationship with a client has been or is likely to be terminated, whether by the client or the member, the member must take care to make clear to the client what matters within the terms of the engagement have been dealt with and what remains to be done, and also what further action in relation to the engagement the member will, or will not, take.

CODE OF ETHICS

Professional Dealings with Other Members

Accepting New Assignments

159 When a member in public practice is asked to provide professional services or advice, enquiries must be made as to whether the prospective client has an existing accountant. In cases where there is an existing accountant who will continue to provide professional services to the prospective client, the procedures set out in paragraphs 160 to 163 must be observed. If the appointment will result in another member in public practice being superseded, the procedures set out in paragraphs 164 to 177 must be followed.

Appointments where an Existing Member is not Superseded

160 A member may give professional services or advice of a specialist nature in circumstances where the existing accountant will continue work for the client.

161 It is recommended that when accepting a specialist assignment a member should advise the existing accountant of the specialist appointment unless directed by the client not to do. Where there are two or more firms of accountants carrying out work for the client concerned, it may be appropriate to notify only the relevant firm, for example, auditor or tax consultant, depending on the specialist work being undertaken.

162 Where appropriate, the existing accountant must maintain contact with the member undertaking the specialist assignment and co-operate with that member in all reasonable requests for assistance.

163 Members should also refer to Advisory Engagement Standard 1: *Opinions on Accounting and Reporting Matters* for guidance on requirements to communicate with the existing accountant when the member is requested to provide:

- (a) a written opinion where the primary purpose of that opinion relates to the application of GAAP or assurance engagement standards to a specific set of circumstances (or on a transaction either completed or contemplated) for an entity for which the member is not the existing accountant; or
- (b) a written generic opinion where the primary purpose of that opinion relates to the application of GAAP or assurance engagement standards.

Superseding Another Member in Public Practice

164 The proprietors of a business have an indisputable right to choose their professional advisers and to change professional advisers should they so desire. While it is essential that the legitimate interests of the proprietors are protected, it is also important that a member in public practice who is asked

CODE OF ETHICS

to replace another member in public practice has the opportunity to ascertain if there are any professional reasons why the appointment should not be accepted. This cannot effectively be done without direct communication with the existing accountant. In the absence of a specific request, the existing accountant must not volunteer information about the client's affairs.

- 165 Communication enables a proposed accountant to ascertain whether the circumstances in which a change in appointment is proposed are such that the appointment can properly be accepted and also whether there is a wish to undertake the engagement.
- 166 The extent to which an existing accountant can discuss the affairs of the client with the proposed accountant depends on:
- (a) whether the client's permission to do so has been obtained; and/or
 - (b) the legal or ethical requirements relating to such disclosure.
- 167 The proposed accountant must treat in the strictest confidence and give due weight to any information provided by the existing accountant.
- 168 The information provided by the existing accountant may indicate, for example, that the ostensible reasons given by the client for the change are not in accordance with the facts. It may disclose that the proposal to make a change in Chartered Accountants was made because the existing accountants stood their ground and properly carried out their duties as Chartered Accountants despite opposition or evasion on an occasion when important differences of principles or practice arose with the client.
- 169 Communication between the parties therefore serves:
- (a) to protect the proposed accountant from accepting an appointment in circumstances where all the pertinent facts are not known; and
 - (b) to protect the interests of the existing accountant when the proposed change arises from, or is an attempt to interfere with, the conscientious exercise of the existing accountant's duty to act as an Independent professional.
- 170 Before accepting an appointment to supersede another member in public practice in the provision of recurring professional services, the proposed accountant must:
- (a) ascertain if the prospective client has advised the existing accountant of the proposed change and has given the existing accountant permission, preferably in writing, to discuss the client's affairs relevant to the proposed change fully and freely with the proposed accountant;

CODE OF ETHICS

- (b) when satisfied with the reply received from the prospective client, request permission to communicate with the existing accountant. If such permission is refused or the permission referred to in (a) above is not given, the proposed accountant should attempt to acquire the relevant information by other means and in the absence of special circumstances the member should take particular care before superseding the existing accountant; and
 - (c) on receipt of permission, request the existing accountant, preferably in writing to provide:
 - (i) information on any professional matters of which the proposed accountant should be aware before deciding whether or not to accept the appointment; and
 - (ii) if there are such matters, all the details necessary to enable the proposed accountant to make an informed decision.
- 171 In the case of audit engagements, the communication with the existing accountant must be made before the proposed accountant's name may formally go forward for nomination.
- 172 The existing accountant, on receipt of the communication referred to in paragraph 170(c) must:
- (a) reply within seven days, preferably in writing, advising whether there are any professional reasons why the proposed accountant should not accept the appointment;
 - (b) if there are any such reasons or other matters which should be disclosed, ensure that the client has given permission to give details of this information to the proposed accountant. If permission is not granted, the existing accountant must report that fact to the proposed accountant; and
 - (c) on receipt of permission from the client, disclose all information needed to enable the proposed accountant to decide whether or not to accept the appointment, and discuss freely with the proposed accountant all matters relevant to the appointment of which the latter should be aware.
- 173 If the proposed accountant does not receive, within a reasonable time, a reply from the existing accountant and there is no reason to believe that there are any exceptional circumstances surrounding the proposed change, the proposed accountant must send a further letter, stating that there is an assumption that there is no professional reason why the appointment should not be accepted.

CODE OF ETHICS

- 174 The fact that there may be fees owing to the existing accountant is not a professional reason why the proposed accountant should not accept the appointment.
- 175 The existing accountant must promptly transfer all documents belonging to the client, whenever or however obtained, to the client or, where the client so instructs, to the proposed accountant, and should advise the client accordingly, unless the existing accountant has a legal right to withhold them. In addition, the existing accountant should provide such information regarding the client that is essential to enable the superseding accountant to perform the accountancy services previously provided to the client.
- 176 The existing accountant is entitled to withhold the transfer of documents when a valid lien for unpaid fees exists. For further guidance on possessory liens, members should refer to the Institute publication, *Possessory Liens — A Reference Guide for Chartered Accountants*.
- 177 The existing accountant must exercise care when determining which documents and records must be transferred and which can be retained. Records relating to the affairs of a client will comprise documents and records which are the property of the client and documents and records which form the working papers of the accountant who is to be superseded.

CODE OF ETHICS

CODE OF ETHICS

APPENDIX 1: APPLICABILITY OF THE CODE OF ETHICS

Non-Member Partners or Directors

- 1 Non-members who are permitted to practise in partnership or as directors in a *corporate practice* with members, are required to comply with the Code of Ethics. Members who practise in partnership with non-members or have non-members as fellow directors in a corporate practice, are required to ensure that their non-member partners or directors comply with the Code of Ethics.
- 2 When there is a reference in this Code of Ethics to “member” it shall also be deemed to include a reference to a non-member partner or director, in so far as it is not inconsistent with the Rules and this Code of Ethics.

Members’ Responsibility for the Conduct of Others

- 3 A member must not permit others to carry out on the member’s behalf acts which if carried out by the member, would place the member in breach of the Code of Ethics, the Rules, or the *Act*.
- 4 Members in public practice may be held responsible for the compliance with the Code of Ethics of all persons associated with the member in the practice of Chartered Accountancy, who are either under the member’s supervision or are the member’s partners or fellow directors in a corporate practice.
- 5 Members in public practice may on occasion use the services of experts who are not members. The member must take steps to ensure that such experts are aware of the requirements of the Code of Ethics. Such steps include:
 - (a) asking the expert to read the Code of Ethics and any other relevant ethical requirements;
 - (b) requiring written confirmation of the expert’s understanding of the ethical requirements;
 - (c) highlighting to the expert any specific ethical requirements or risks unique to the engagement; and
 - (d) providing consultation when potential conflicts arise.

Services Outside New Zealand

- 6 A member may reside in another country or may be temporarily visiting that country to perform professional work. When a member performs professional work in a country other than New Zealand the member must consider the relevant ethical requirements of:

CODE OF ETHICS

- (a) the International Federation of Accountants' (IFAC) Code of Ethics;
 - (b) the ethical requirements of the country in which the work is being performed; and
 - (c) the Institute's Code of Ethics.
- 7 The member must comply with the strictest of the above requirements.

CODE OF ETHICS

APPENDIX 2: RESOLVING CONFLICTS OF LOYALTIES – MEMBERS IN EMPLOYMENT

- 1 From time to time members will encounter situations which give rise to ethical conflicts. Such conflicts may arise in a wide variety of ways, ranging from the relatively trivial dilemma to the extreme case of fraud and similar illegal activities.
- 2 This Appendix provides specific guidance to members in employment when they encounter a conflict of loyalties between the instructions or interests of their employer and their professional and ethical obligations.
- 3 Members in employment owe a duty of loyalty to their employer as well as to their profession and there may be times when the two are in conflict. An employee's normal priority must be to support the organisation's legitimate and ethical objectives and the rules and procedures drawn up in support of those objectives. However, a member in employment cannot legitimately be required to:
 - (a) break the law;
 - (b) breach the Rules, Code of Ethics or other Standards of the Institute;
 - (c) lie to or mislead (including misleading by keeping silent) those acting as auditors to the employer;
 - (d) be party to the falsification of records; or
 - (e) put the member's name to or otherwise be associated with a statement which materially misrepresents the facts.
- 4 While members in employment should observe the terms of their employment, these cannot require them to be implicated in any dishonest transaction. If they are instructed or encouraged to engage in any activity that is unlawful they are entitled and required to decline in order to retain their Integrity.
- 5 When members become aware that their employers have committed an unlawful act that could compromise them, every effort should be made to persuade the employer not to perpetuate the unlawful activity and to rectify the matter.
- 6 When faced with a significant ethical conflict between the instructions or interests of their employer and their professional and ethical obligations, members should take all reasonable steps to resolve the conflict.
- 7 The "reasonable steps" which a member in employment is expected to take to resolve an ethical conflict include the following:
 - (a) Follow the established policies (if any) of the member's employing organisation to seek a resolution of the conflict.

CODE OF ETHICS

- (b) Review the conflict problem with the member's immediate superior. If the problem is not resolved with the immediate superior, the member should consider going to a higher managerial level, in which case the immediate superior should normally be notified of the decision. If it appears that the superior is involved in the conflict problem, the member should raise the issue with a higher level of management.
 - (c) Consider documenting the conflict in a memorandum. Matters to be documented could include the member's understanding of the facts, the member's professional and ethical obligations, the implications for the employing organisation and the member, and the persons with whom the member discussed the issue.
 - (d) If the ethical conflict remains unresolved after the member has raised the issue with management at the highest level in the organisation and the matter is sufficiently significant, then the member should consider raising the issue with non-executive members of the employing organisation's governing body (such as non-executive directors).
 - (e) Seek counselling and advice on a confidential basis with an independent adviser or the Institute to obtain an understanding of possible courses of action.
 - (f) If the ethical conflict still exists after fully exhausting all levels of internal review, the member may have no other recourse on significant matters (for example, fraud) than to consider resignation. An employer may also be influenced in taking the right decision if it is made clear by the member that it will not be possible to continue as an employee if matters are not righted. If a member resigns because of an ethical conflict, the member should consider documenting the reasons for resignation in a memorandum to an appropriate level of authority within the member's employing organisation.
- 8 Members must respect the confidentiality of information acquired during their employment and may therefore be precluded from communicating the issue causing a conflict to third parties. However in certain circumstances (for example, wrongful dismissal as a result of an ethical conflict) members may have a legal or professional right or obligation to communicate the issue. Members should refer to paragraphs 118 to 130 for guidance on confidentiality and rights and duties to disclose confidential information, including discussion of the Protected Disclosures Act 2000.
- 9 Members in senior positions should endeavour to ensure that policies are established within their employing organisation to seek resolution of ethical conflicts.

CODE OF ETHICS

APPENDIX 3: COMPARISON OF CODE OF ETHICS WITH INTERNATIONAL AND AUSTRALIAN CODES

This Appendix, which was prepared as at 24 October 2002 and which deals only with significant differences, is produced for information purposes only and does not form part of the Code of Ethics.

The New Zealand Code of Ethics is substantially different in structure but not content to both the International Federation of Accountants' Code of Ethics for Professional Accountants (IFAC Code) and the Australian Code of Professional Conduct (CPC).

The fundamental principles contained in all three codes are identical and are applicable to all members, but the rules are treated differently. Both the IFAC Code and the CPC have a section of the code applicable to all members with another section applicable to members in public practice. The IFAC Code has an additional section which is applicable to employed professional accountants (members). The New Zealand Code identifies the sections applicable to all members, to members in public practice and to members in employment under each rule.

Both the IFAC Code and the CPC outline the objectives of the accountancy profession and the four basic needs (credibility, professionalism, quality of services and confidence) that need to be met by the accountancy profession in order to meet the objectives identified.

In other respects, the New Zealand Code of Ethics is consistent in all material respects with the IFAC Code and the CPC except that:

- (a) The New Zealand Code and the IFAC Code discuss "Public Interest" in the introduction to the Code. The CPC identifies "Public Interest" as a separate fundamental principle;
- (b) The New Zealand Code contains more guidance in relation to resolving conflicts of interest between two or more clients and clients in dispute;
- (c) The "Duty to Report" rule in the New Zealand Code is not identified in either of the other two codes. The "Duty to Report" in both the IFAC Code and the CPC is limited to the legal requirements to report certain serious matters to the appropriate authorities; and
- (d) The New Zealand Code does not give guidance for members in public practice who accept a special assignment from the client of another member where the assignment is requested by either the other member or the client. This guidance is provided in both the IFAC Code and the CPC.

CODE OF ETHICS

DEFINITIONS

For the purpose of this Code of Ethics the following terms have the meaning specified.

Accounting services means services relating to:

- (a) the preparation of financial information;
- (b) auditing;
- (c) taxation;
- (d) insolvency.

The **Act** means the Institute of Chartered Accountants of New Zealand Act 1996, as well as any amendments or any replacement legislation.

Associated finance entity means an entity engaged in the business of deposit taking, investing or financing in which a member or interested person has a material financial interest.

For the purpose of this definition a member is, or interested persons are, considered to have a material financial interest when that member or those interested persons together, whether directly or by nominee or as a beneficiary under a trust:

- (a) *hold more than 20% of the shares, or more than 20% of the nominal capital, or more than 20% of the paid up capital, or more than 20% of the voting power; or*
- (b) *have sole authority to operate any bank account relating to that entity; or*
- (c) *have by any other means whatsoever effective control over the funds of that entity; or*
- (d) *by reasons of the extent of control over the funds of that entity, at the end of any income year would be entitled to more than 20% of the profits for that year if those profits were distributed by way of dividend or otherwise at the end of that year.*

In the context of this definition an interested person means any near relative of the member, and any employee or partner of the member and any near relative of the employee or partner.

Client, in relation to a member, includes any person or entity on whose behalf money is, or securities are, held or received by the member.

Client bank account means a client's bank account on which a member, acting either solely or in conjunction with any one or more persons who are partners of or in the employ of that member or member's firm, holds a signing authority.

CODE OF ETHICS

Examples of situations where members have signing authorities in respect of client bank accounts include where the client is overseas or on contract work in remote locations. Members may also be requested by clients to process transactions such as payroll payments through client bank accounts.

Client monies means any money (in whatever form) which is the property of another person or entity coming into a member's control in the course of the member's practice, but does not include:

- (a) a cheque made payable to another person or entity received by a member for the sole purpose of forwarding to the payee if it is so forwarded promptly; or
- (b) monies administered under any insolvency legislation; or
- (c) monies held by a member in the member's capacity as a trustee in accordance with a properly constituted trust deed where there are one or more trustees independent of the member and the member's practice; or
- (d) fees paid in advance for professional work agreed to be performed and clearly identified as such.

Control refers to a situation by which a member, acting either solely or in conjunction with any one or more persons who are partners of or in the employ of the member or the member's firm, can authorise the transacting of client monies. Client bank accounts controlled by a member are included within the meaning of "client monies".

Corporate practice means a company approved by the Institute's Council under Rule 19.8 to offer accounting services to the public.

Existing accountant means a member in public practice currently performing professional services for a client.

Financial interest means an interest in equity or other security, debenture, loan or other debt instrument of an entity, including rights and obligations to acquire such an interest and derivatives directly related to such interest.

Firm means:

- (a) a sole practitioner, partnership or corporate practice;
- (b) an entity that controls such parties; and
- (c) an entity controlled by such parties.

Immediate family means a spouse (or equivalent) and dependants.

Institute means the New Zealand Institute of Chartered Accountants.

CODE OF ETHICS

Member means any person who is a member of any of the Institute's three Colleges of membership (Chartered Accountants, Associate Chartered Accountants, Accounting Technicians) and includes all five classes of membership (full membership, provisional membership, life membership, fellowship, retired membership).

Member in employment means a member employed in industry, commerce, the voluntary sector, the public sector or education. Where appropriate the term member in employment may also be taken to refer to a member employed by a *member in public practice*.

Member in public practice means a member who offers accounting services to the public, whether or not the member holds, or ought to hold, a certificate of public practice. Where appropriate the term member in public practice should also be taken to refer to a *firm*.

Money includes cash, foreign currency and any instrument for the payment of monies in any case where the instrument may be paid into a financial institution and any security the title to which is transferable by delivery (for example, bills of exchange and promissory notes).

Near Relative includes:

- (a) spouse or spouse equivalent;
- (b) minor child or person to whom a member is in a parental relationship; or
- (c) any other close relative who is financially dependent on the member, or on the spouse or spouse equivalent of the member, or on whom the member is financially dependent.

Offering accounting services to the public shall include any conduct from which it may be reasonably inferred that the member is offering accounting services to, or accepting assignments from, the public.

Professional work or Professional services means any work or services in which the member is required to use professional expertise on behalf of a client or employer, irrespective of whether payment is received for this work.

Trust account means an account or accounts established by a member with a financial institution in New Zealand which are kept for the sole purpose of receiving and holding deposits of client monies and the withdrawal of client monies from the account.

CODE OF ETHICS

INDEX

| | <i>paragraph</i> |
|--|------------------------|
| Accepting new assignments | 159 |
| Appointments where an existing member is not superseded | 160 |
| Associations with third parties | 78 |
| Australian Code of Professional Conduct | App 3 |
| | |
| Clients | 136 |
| – Conflicts of interest | 64, 66 |
| – Disputes | 71, 157 |
| – Professional dealings with | 131 |
| Commissions | |
| – receipt of commissions or other benefits from a third party | 75 |
| Communications with external auditor – members in employment | 28 |
| COMPETENCE | 82 |
| – Application of the Rules | 87 |
| – Competence (Rule 7) | 85, 87 |
| – Duty to maintain Competence (Rule 8) | 86, 91 |
| – Rules | 85 |
| Compliance with technical and professional standards (Rule 11) | 97, 102 |
| Confidentiality (Rule 12) | 110, 113, 118 |
| Conflicts of interests | 39, 59, 61, 64, 66, 71 |
| Conflicts of loyalties – members in employment | 29, App 2 |
| | |
| Disclosure of | |
| – Confidential information – rights and duties | 118 |
| – Conflicts of interest (Rule 5) | 39, 59 |
| Dishonesty – duty to report | 111, 126 |
| Disputes | |
| – Clients in dispute | 71 |
| – With clients | 157 |
| Due care and diligence (Rule 9) | 95, 98 |

CODE OF ETHICS

| | |
|---|-----------------------|
| Duty to | |
| – Disclose confidential information (Rule 12) | 118 |
| – Maintain competence (Rule 8) | 86, 91 |
| – Report (Rule 13) | 111, 126 |
| False or misleading statements (Rule 2) | 21, 24 |
| Fees | |
| – and commissions | 136 |
| – Percentage and contingent | 152 |
| Financial involvement | 44 |
| Forecasts of future results | 26 |
| Fraud - duty to report | 111, 126 |
| Fraudulent or illegal activities and confidentiality | 116 |
| GAAP – responsibilities of members to observe | 103 |
| Gifts or hospitality – acceptance and offer | 48 |
| IFAC Code of Ethics | App1, para 6, App3 |
| Incompatible activities (Rule 1) | 20, 22 |
| INDEPENDENCE | 34 |
| – Independence (Rule 4) | 38, 54 |
| – For assurance engagements | 54 |
| – For other professional engagements | 55 |
| Independent advice (Rule 6) | 40, 79 |
| INTEGRITY | 16 |
| – Application of the Rules | 22 |
| – False or misleading statements (Rule 2) | 21, 24 |
| – Communications with external auditor – members in employment | 28 |
| – Conflicts of loyalties – members in employment | 29 |
| – Forecasts of future results | 26 |
| – Integrity in the performance of taxation work | 27 |
| – Preparation of information | 24 |
| – Undertakings, pledges and promises | 30 |
| – Incompatible activities (Rule 1) | 20, 22 |
| – Rules | 20 |

CODE OF ETHICS

| | |
|---|---------------|
| Members in employment | |
| – Communications with external auditor | 28 |
| – Conflicts of loyalties | 29, App 2 |
| – Competence | 90 |
| – Compliance with technical and professional standards | 105 |
| – Objectivity | 50 |
| Non-member partners or directors | App 1, para 1 |
| | |
| OBJECTIVITY & INDEPENDENCE | 31, 34 |
| – Application of the Rules | 41 |
| – Disclosure of conflicts of interest (Rule 5) | 39, 59 |
| – associations with third parties | 78 |
| – conflicts between the interests of a member, or a member’s firm, and a client | 64 |
| – conflicts between the interests of two of more clients | 66 |
| – clients in dispute | 71 |
| – members in public practice | 61 |
| – receipt of commissions or other benefits from a third party | 75 |
| – Independence (Rule 4) | 38, 54 |
| – for assurance engagements | 54 |
| – for other professional engagements | 55 |
| – Independent advice (Rule 6) | 40, 79 |
| – Objectivity (Rule 3) | 37, 41 |
| – acceptance and offer of gifts or hospitality | 48 |
| – financial involvement | 44 |
| – objectivity in the performance of taxation work | 49 |
| – objectivity of members in employment | 50 |
| – personal relationships | 47 |
| – Rules | 37 |
| Overseas – services provided | App 1, para 6 |
| | |
| Personal relationships | 47 |
| Preparation of information | 24 |

CODE OF ETHICS

| | |
|---|---------------|
| PROFESSIONAL BEHAVIOUR | 106 |
| – Application of the Rules | 113 |
| – Confidentiality (Rule 12) | 110, 113 |
| – fraudulent or illegal activities and confidentiality | 116 |
| – rights and duties to disclose confidential information | 118 |
| – Duty to report (Rule 13) | 111, 126 |
| – Professional conduct (Rule 14) | 112, 131 |
| – accepting new assignments | 159 |
| – appointments where an existing member is not superseded | 160 |
| – disputes with clients and termination of engagements | 157 |
| – percentage and contingent fees | 152 |
| – professional fees and commissions | 136 |
| – publicity and promotion of professional services | 131 |
| – superseding another member in public practice | 164 |
| – Rules | 110 |
| Professional conduct (Rule 14) | 112, 131 |
| Protected Disclosures Act | 120, 127 |
| Public Interest | 14 |
| Publicity and promotion of professional services | 131 |
| | |
| QUALITY PERFORMANCE | 92 |
| – Application of the Rules | 98 |
| – Compliance with technical and professional standards (Rule 11) | 97, 102 |
| – members in employment | 105 |
| – responsibilities of members to observe Generally Accepted Accounting Practice | 103 |
| – Due care and diligence (Rule 9) | 95, 98 |
| – Rules | 95 |
| – Timeliness (Rule 10) | 96, 99 |
| | |
| Resolving conflicts of loyalties – members in employment | App 2 |
| Responsibility for conduct of others | App 1, para 3 |

CODE OF ETHICS

| | |
|---|--------------|
| Services provided outside New Zealand | App1, para 6 |
| Superseding another member in public practice | 164 |
| Taxation | |
| – Integrity in the performance of taxation work | 27 |
| – Objectivity in the performance of taxation work | 49 |
| Termination of engagements | 158 |
| Third parties | |
| – Associations with | 78 |
| – Receipt of commissions or benefits from | 75 |
| Timeliness (Rule 10) | 96, 99 |
| Undertakings, pledges and promises | 30 |

CODE OF ETHICS