

**Responding to IESBA's *Non-Compliance  
with Laws and Regulations (NOCLAR)*  
Exposure Draft**

**APESB Roundtable**

**CA ANZ Offices**

*Sydney, 21 July 2015*

# Agenda

- Welcome and historical development
- Overview of IESBA's NOCLAR ED
- Roundtable discussions
- Feedback from the tables
- Closing remarks

# Welcome and Historical Development

*The Hon. Nicola Roxon*

*Chairman*



# Historical development - IESBA

- Original IESBA project commenced in 2010 and the ED was issued in August 2012.
- To address circumstances where a Professional Accountant (PA) identifies an act or suspected act of NOCLAR.
  - whether the matter should be disclosed to an appropriate authority
  - process for responding to identified or suspected NOCLAR
  - threshold for taking action
  - documentation
- Original ED required disclosure.

# Historical development - IESBA

## Stakeholder responses

- Comment period closed - December 2012.
- 73 global submissions received.
- Significant concerns expressed by global stakeholders (except regulators and public authorities) in respect of:
  - operability of the proposals; and
  - potential for unintended consequences.

# Historical development - IESBA

## IESBA's extensive global consultations with stakeholders

- 3 global roundtables in 2014 (Hong Kong, Brussels, Washington DC).
- Over 160 senior-level participants from 27 jurisdictions.
- Observers (PIOB, IESBA CAG Chair, IAASB).
- Outreach activities:
  - consultations with IOSCO, IFIAR, European Commission and European Audit Regulators

# Historical development - IESBA

## Discussions with IESBA CAG and National Standard Setters (NSS)

- Strong support for proposed framework.
- Re-exposure of ED approved in April 2015.
- 2<sup>nd</sup> ED issued in May 2015:
  - 120-day comment period with comments due on 4 September 2015

# Historical development

## APESB's submission to IESBA's original 2012 ED

- Supportive of the principle a PA must act in the public interest.
- Did not support the requirement for a PA to:
  - breach the fundamental principle of confidentiality
  - disclose an act or suspected act of NOCLAR where there is no legal or regulatory protection



# Historical development – APESB's submission to IESBA's 2012 ED

## APESB's proposals to IESBA

- PA should have the right to disclose an act or suspected act of NOCLAR when it's in the public interest.
- The Code should provide guidance to assist PAs.
- IESBA to consider developing a balanced approach and should not require PAs to act in a 'quasi' regulatory role.

# Historical development – APESB's submission to IESBA's 2012 ED

## APESB's significant concerns

- Likely impact of proposed changes on SMPs.
- May threaten PA's role as a trusted advisor to clients.
- Unintended negative consequences where clients or employers have subsidiaries in foreign jurisdictions e.g. emerging economies where:
  - judicial systems may not be robust or
  - severe physical penalties are imposed

# Overview of IESBA's NOCLAR ED

*Channa Wijesinghe*

*Technical Director*

# NOCLAR ED Overview

- What is NOCLAR?
- Objectives of proposed sections 225 and 360.
- Scope of the revised proposals:
  - Original ED 2012
  - Revised ED 2015
  - Scope exclusions
- Requirements of the proposed framework.
- Strengths of the proposed framework.
- IESBA's expected timeline.

# What is NOCLAR?

*Any act of omission or commission, intentional or unintentional, committed by a client or employer or by TCWG, management or employees of a client or employer which is contrary to the prevailing laws or regulations.*

# Objectives of proposed sections 225 and 360

- PAs not to turn a blind eye.
- Not to bring the profession into disrepute.
- Comply with fundamental principles of integrity and professional behavior.
- Ethical responsibility - respond to NOCLAR by alerting management / TCWG.
- Deter occurrence of NOCLAR where it has not yet occurred.
- Take further action as needed in the public interest.  
(*paragraphs 225.3-225.4 and 360.3-360.4*)

# Scope of the revised proposals – Original ED 2012

Classified NOCLAR into three categories:

- PA in Public Practice providing services to an audit client:
  - NOCLAR that impact the client's financial reporting
  - NOCLAR's subject matter which falls within the PA's expertise
- PA in Public Practice providing services to a non-audit client.
  - NOCLAR related to the subject matter of the Professional Service

# Scope of the revised proposals – Original ED 2012

- PAIB:
  - NOCLAR that impact the employing organisation's financial reporting
  - NOCLAR's subject matter which falls within the PA's expertise



# Scope of the revised proposals – Revised ED 2015

PA should recognise an act of NOCLAR or suspected NOCLAR in the following two categories of laws and regulations:

- Laws and regulations that impact the financial statements.
- Other laws and regulations that impact the operating aspects of the business.

*(paragraphs 225.5 & 360.5)*

# Scope of the revised proposals – Revised ED 2015

- Examples of applicable laws and regulations are given in paragraphs 225.6 and 360.6:
  - fraud, corruption and bribery
  - money laundering, terrorist financing and proceeds of crime
  - securities markets and trading
  - banking and other financial products and services
  - tax and pension liabilities and payments
  - environmental protection
  - public health and safety
- No distinction between PIEs and non-PIEs.

# Scope of the revised proposals

## Scope exclusions

- Clearly inconsequential matters.
- Personal misconduct unrelated to the client's or employer's business activities.
- NOCLAR committed by other parties.

*(paragraphs 225.8 & 360.8)*

# Requirements of proposed framework

- **Adopts a differential approach which:**
  - recognises the remits of four categories of PAs
  - PAs spheres of influence
  - PAs levels of authority, responsibility and decision making
  - levels of public expectations on PAs

# Requirements of proposed framework for Auditors

## I. Raise the identified or suspected NOCLAR with management/TCWG

- Clarify auditor's understanding of the matter and to enable management/TCWG to investigate it.
- Substantiate or dispel auditor's concerns.
- Prompt management/TCWG to:
  - rectify, remediate or mitigate consequences for stakeholders
  - deter the act of NOCLAR where it has not yet occurred
  - if required, disclose the matter to an appropriate authority

*(IESBA ED pages 32-33 and paragraphs 225.11-225.17)*

# Requirements of proposed framework for Auditors

## II. Fulfill professional responsibilities

- Understand and comply with applicable laws and regulations.
- Comply with professional standards:
  - communicate with TCWG
  - communicate with Group Engagement Team
  - consider audit report implications  
*(paragraphs 225.18-225.19)*

# Requirements of proposed framework for Auditors

## III. Determine if further action is needed to achieve the objectives

(a) The nature and extent of further action needed will depend on various factors, e.g.:

- Appropriateness and timeliness of management /TCWG's response
- Credible evidence of actual or potential substantial harm to the entity or stakeholders  
*(paragraphs 225.20-225.23)*

# Requirements of proposed framework for Auditors

## III. Determine if further action is needed to achieve the objectives

### (b) Determination of courses of further action:

- This determination is to be made objectively from the perspective of a reasonable third party.
  - Consider obtaining legal advice, consulting with a regulator or professional body.
- (i) Disclosing the matter to an appropriate authority (e.g. report to ASIC contraventions of the *Corporations Act 2001 (section 311)*).



# Requirements of proposed framework for Auditors

## III. Determine if further action is needed to achieve the objectives

- External factors to consider:
  - availability of an appropriate authority to receive the information, investigate the matter and take action
  - existence of robust and credible protection (e.g. under whistle-blowing legislation)
  - actual or potential threats to physical safety
- Disclosure of confidential information without client consent will not be considered a breach of Confidentiality.

# Requirements of proposed framework for Auditors

## III. Determine if further action is needed to achieve the objectives

- Disclosure precluded if prohibited by laws and regulations.
- (ii) Withdrawing from the engagement and client relationship.
  - However, withdrawal is not a substitute for taking appropriate action

*(paragraphs 225.24-225.30)*

# Requirements of proposed framework for Auditors

## IV. Documentation

- Required.
- Document the following matters:
  - identified or suspected NOCLAR
  - discussions of identified or suspected NOCLAR with management, TCWG and other parties
  - response of management and TCWG
  - courses of action considered, judgements made and decisions taken (apply 3<sup>rd</sup> party test)
  - how the auditor meets the objectives of section 225 (*paragraphs 225.31-225.32*)

# Requirements of proposed framework for senior PAIBs

## I. Overarching expectations

- Set the right tone at the top within the organization.
- Establish appropriate policies and procedures to prevent NOCLAR.
- Establish internal whistle-blowing procedures as a necessary part of good governance.

*(IESBA ED pages 34-35, paragraphs 360.9-360.13)*

# Requirements of proposed framework for senior PAIBs

## II. Fulfill professional responsibilities

- Obtain an understanding of the matter.
- Raise the identified or suspected NOCLAR with a superior/TCWG.
- Understand and comply with applicable laws and regulations.
- Rectify/remediate/mitigate consequences of the act of NOCLAR.
- Seek to deter the act of NOCLAR that has not yet occurred.
- Alert an external auditor.

*(paragraphs 360.1-360.3,360.14-360.18)*

# Requirements of proposed framework for senior PAIBs

## III. Determine if further action is needed to achieve the objectives

- (a) The nature and extent of further action needed will depend on various factors, e.g.:
- Appropriateness and timeliness of superior /TCWG's responses.
  - Credible evidence of actual or potential substantial harm to the employer or stakeholders.
  - Whether management or TCWG have taken appropriate action.

*(paragraphs 360.4,360.19-360.22)*

# Requirements of proposed framework for senior PAIBs

## III. Determine if further action is needed to achieve the objectives

(b) Courses of further action may include:

- i. Informing the parent entity in the case of a group
- ii. Disclosing the matter to appropriate authority (e.g. reporting of suspected money laundering activities to AUSTRAC)
- iii. Resigning from the employing organisation

*(paragraphs 360.23-360.29)*

# Requirements of proposed framework for senior PAIBs

## III. Determine if further action is needed to achieve the objectives

- This determination is to be made objectively from the perspective of a reasonable third party.
- Consider obtaining legal advice, consulting with a regulator or professional body



# Requirements of proposed framework for senior PAIBs

## III. Determine if further action is needed to achieve the objectives

- External factors to consider:
  - availability of an appropriate authority to receive the information, investigate the matter and take action
  - existence of robust and credible protection
  - actual or potential threats to physical safety
- Disclosure of confidential information without employer consent not considered a breach of Confidentiality.
- Disclosure precluded if contrary to laws and regulations

# Requirements of proposed framework for for senior PAIBs

## IV. Documentation

- Encouraged
  - Document the following matters:
    - identified or suspected NOCLAR
    - discussions of identified or suspected NOCLAR with management, TCWG and other parties
    - response of management and TCWG
    - courses of action considered, judgements made and decisions taken (apply 3<sup>rd</sup> party test)
    - how the senior PAIB meets the objectives
- (paragraph 360.35)*

# Requirements of proposed framework for Other PAs in Public Practice

## **I. (a) Where the client is an audit client of the Firm or Network Firm:**

- Discuss the identified or suspected NOCLAR with management or TCWG.
- Communicate the matter within the Firm/Network Firm and the audit engagement partner.

## **I. (b) Where the client is not an audit client of the Firm or Network Firm:**

- Discuss the identified or suspected NOCLAR with management or TCWG.

*(page 36 and paragraphs 225.33-225.40)*

# Requirements of proposed framework for Other PAs in Public Practice

## II. Determine if further action is needed to achieve the objectives

- Disclosing the matter to the external auditor.
- Disclosing the matter to an appropriate authority.
- This will depend on various factors, e.g.:
  - appropriateness and timeliness of management /TCWG's response
  - likelihood of substantial harm to the client or stakeholders

*(paragraphs 225.41-225.46)*

# Requirements of proposed framework for Other PAs in Public Practice

## II. Determine if further action is needed to achieve the objectives

- Factors to consider when disclosing to third parties:
  - whether it is contrary to law and regulation?
  - whether terms or nature of engagement precludes disclosure (i.e. legal privilege) of information about client to third parties?
  - whether there are restrictions about disclosure imposed by a regulatory agency or prosecutor?

*(paragraphs 225.41-225.46)*

# Requirements of proposed framework Other PAs in Public Practice

## II. Determine if further action is needed to achieve the objectives

- Disclosure of confidential information without client consent will not be considered a breach of Confidentiality
- Must act in good faith and exercise caution
- Consider informing the client
- Consider obtaining legal advice, consulting with a regulator or professional body

# Requirements of proposed framework Other PAs in Public Practice

## III. Association

- Consider whether to remain associated with the client. (*paragraph 225.47*)

## IV. Documentation

- Encouraged.
- Document the following matters:
  - identified or suspected NOCLAR
  - discussions of identified or suspected NOCLAR with management, TCWG and other parties

# Requirements of proposed framework Other PAs in Public Practice

## IV. Documentation

- response of management and TCWG
- courses of action considered, judgements made and decisions taken (apply 3<sup>rd</sup> party test)
- how the PA meets the objectives

*(paragraph 225.48)*



# Requirements of proposed framework for Other PAIBs

- I. Obtain an understanding of the identified or suspected NOCLAR.  
*(paragraphs 360.30-360.32)*
- II. Escalate the identified or suspected NOCLAR to the immediate superior or next higher level of authority.  
*(paragraph 360.33)*
- III. Consider disclosure to an appropriate authority.  
*(paragraph 360.34)*

# Requirements of proposed framework for Other PAIBs

## IV. Documentation

- Encouraged.
- Document the following matters:
  - identified or suspected NOCLAR
  - discussions of identified or suspected NOCLAR with management, TCWG and other parties
  - response of management and TCWG
  - courses of action considered, judgements made and decisions taken (apply 3<sup>rd</sup> party test)
  - how the PA meets the objectives

*(paragraph 360.35)*

# Strengths of proposed framework

- A holistic, comprehensive and balanced framework.
- A proportionate approach.
- Emphasis on tone at the top within an entity.
- Stimulating increased reporting under law and regulation.
- Expanded auditor's 'toolkit'.
- Rigorous consideration of further action by PAs in the public interest.

# Timeline

Timing	Action
14 August	Comments due to the APESB
4 Sept 2015	IESBA ED comment period closes
Dec 2015	IESBA to consider comments
Q2 - 2016	Finalize NOCLAR under extant drafting conventions (close-off document)
March 2016	Discussion with CAG
To be advised	Restructure close-off document under IESBA Code's new structure & drafting conventions
To be advised	Issue restructured ED for comment (on restructuring only)

# Roundtable Discussions

*Allocation of questions to Table Teams*

# Allocation of Questions

<b>Table</b>	<b>Perspective</b>	<b>Questions</b>
<b>1</b>	Auditors	4,5,6,7,9
<b>2</b>	Other PAs in Public Practice	1,2,3,8,9
<b>3</b>	PAIBs	1-7, 9

# Feedback from the Tables

# Closing Remarks

*The Hon. Nicola Roxon*  
*Chairman*