

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

APESB Roundtable

CPA Australia

Melbourne, 14 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.
- 2nd 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.

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

(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 3rd party test)
 - how the auditor meets the objectives

(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 (e.g. under whistle-blowing legislation)
 - actual or potential threats to physical safety
- Disclosure of confidential information without employer consent will not be considered a breach of Confidentiality.

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 3rd 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 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 3rd 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 3rd 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.

IESBA's expected timeline

Timing	Action
Sept 2015	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

Table	Perspective	Questions
1	Auditors	4,5,6,7,9
2	Other PAs in Public Practice	1,2,3,8,9
3	Senior PAIBs	4,5,6,7,9
4	Other PAIBs	1,2,3,5,9

Feedback from the Tables

Closing Remarks

The Hon. Nicola Roxon
Chairman