Perspective

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

APESB to issue NOCLAR and Long Association Standards

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This article provides important information about the significant changes to professional and ethical obligations of accountants when they become aware of a potential illegal act during the course of their work. It also provides an update on proposed auditor rotation requirements as well as outlining amendments to compilation engagement requirements and the recently announced post implementation review of financial planning services.

NOCLAR

Responding to Non-Compliance with Laws and Regulations is an international ethics standard for auditors and other professional accountants and sets out a first of its kind framework to guide all professional accountants in what action to take in the public interest when they become aware of a potential illegal act.

The NOCLAR standard aims to increase awareness and understanding among all professional accountants of their legal and regulatory responsibilities when they face NOCLAR in the course of undertaking professional activities for their client or employer and to assist in increased reporting of NOCLAR to public authorities. In the long term this is expected to protect stakeholders and the general public from substantial harm resulting from the violation of laws and regulations and strengthen the reputation of the accounting profession.

The standard was developed partly to address ethical lapses that occurred during the global financial crisis in 2008. The standard was issued by the International Ethics Standards Board for Accountants (IESBA) in July 2016, and will become effective in the International Code from 15 July 2017.

So what is NOCLAR and what do the provisions mean for professional accountants in Australia?

What is NOCLAR?

NOCLAR refers to any act which is contrary to the prevailing laws or regulations and is

committed by a client or employer, including individuals, management or those charged with governance.

The laws and regulations within the scope of the NOCLAR pronouncement are connected to a member's professional training and knowledge, including:

- laws and regulations that may have a direct effect on the determination of material amounts and disclosures in the financial statements; and
- other laws and regulations that might be fundamental to the entity's business and operations or to avoid material penalties.

This results in a broad range of laws and regulations to be considered by the member, such as:

- fraud, corruption and bribery;
- Securities trading and banking;
- financial products and services;
- money laundering;
- tax payments;
- environmental protection; and
- public health and safety.

It is important to note that the NOCLAR provisions do not apply to matters that are clearly inconsequential or relate to personal misconduct unrelated to the business activities of the client or employer.

What does the NOCLAR standard require?

The NOCLAR standard sets out a framework or process to guide members' conduct when they become aware of actual or suspected NOCLAR committed by a client or employer. The process is tailored for the level of seniority of the person involved and whether they are in public practice (auditors and other members in public practice), or employed by an organisation.

The standard requires all members

- to comply with the fundamental principles of integrity and professional behaviour;
- to alert management or those charged with governance about actual or suspected NOCLAR to enable them to take appropriate action; and
- to take further action in the public interest, if necessary, if those charged with governance or management fail to act.

The further actions that members could undertake include disclosure to regulators (in the absence of corrective action by the entity involved) or resigning from the engagement or employment.

The NOCLAR provisions also highlight the personal impacts of the member disclosing possible illegal acts to regulators. If there are concerns about the member's physical safety or

there is no legislation in place (for example, whistleblowing legislation) that could protect the accountant, then potentially the member should not disclose to regulators or appropriate authorities.

In Australia, there is currently limited protection in place for whistleblowers. The Australian government is currently undertaking a review of the legal protection offered to whistleblowers and are expected to strengthen these provisions. However, the specifics of how this will occur have not been finalised or released yet.

How does NOCLAR interact with the fundamental principle of confidentiality?

Confidentiality is one of the fundamental principles that a professional accountant must comply with and requires professional accountants to respect the confidentiality of information acquired as a result of professional and business relationships. Information should not be disclosed to others without proper and specific authority, unless there is a legal or professional right or duty to disclose.

The NOCLAR provisions clarifies that public interest is higher or more important than confidentiality to a client or employer. Professional accountants will now have to consider the public interest obligations and assess whether there is potential harm to investors, stakeholders and the public if confidentially is not set aside to take appropriate action.

When are the provisions expected to become effective in Australia?

APESB has commenced the process to implement these provisions in Australia by releasing an exposure draft in December 2016 - ED 02-16. At their May meeting the APESB Board is expected to deliberate on the results of the exposure draft process, and finalise the standard for issue. It is not expected that the provisions will change substantively from the exposure draft.

It is expected that some of the global accounting firms will adopt the international code for periods beginning on or after 15 July 2017 and the APESB exposure draft proposed the same effective date to be introduced in Australia.

However, respondents to the exposure draft have strongly indicated that a later date is preferred to ensure the provisions can be appropriately implemented. This will be one of the key considerations for the Board at its May 2017 meeting.

APESB encourages stakeholders to refer to the final standard to determine the full impact of the changes and the final effective date. The final standard is expected to be available on the APESB website in June 2017.

Long Association

APESB is proposing to amend APES 110 to incorporate changes on Long Association of Personnel with an Audit or Assurance Client (Long Association) requirements proposed by the IESBA to enhance the independence of the external audit process.

The proposed amendments set out specific requirements in relation to the period of time that engagement partners can be on an audit or assurance engagement for their clients before they are required to have a cooling-off period. The requirements are included in APES 110 in Section 290 *Independence – Audit and Review Engagements* (Section 290) and Section 291

Independence – Other Assurance Engagements (Section 291).

Whilst there are several amendments in these sections proposed to the existing Code, the most significant is an increase to the minimum required cooling-off period (with recognition of jurisdictional law or regulation which specify shorter cooling-off periods).

The current requirements in Australia relating to the time-on and cooling-off periods are established in legislation and the professional and ethical standards, and for listed entities allow for a time-on period of five years with a cooling-off period of two consecutive years.[1] There is the option to extend the time-on period by an additional two years, however, permission needs to be obtained from the audit committee of the relevant client and, in some cases, the regulator.

The proposed Long Association amendments specify a cooling-off period of five consecutive years for engagement partners who have had a time-on period of seven years. However, where legislation or regulation allows a shorter cooling-off period of less than five years this can be reduced to the higher of that period or three years, as long as the time-on period is seven years or less. This applies in Australia as the applicable law (the *Corporations Act 2001*) prescribes a cooling-off period that is shorter than the proposed Code requirement of five years.

Another key proposal is the inclusion of a transitional provision that specifies a sunset to the three-year cooling-off period. This will see the three-year cooling-off period transition to a five-year cooling-off period for audits of Financial Statements for periods beginning after 15 December 2023.

The IESBA have indicated that they are planning to release the final international standard on Long Association in December 2017. Once IESBA releases their standard APESB will finalise the amendments to APES 110. The expected effective dates, as proposed in ED 01-17, for the Australian amendments in line with the international standard are as follows:

- Section 290 - effective for audits of Financial Statements for periods beginning on or after 15 December 2018.
- Section 291 - effective on 15 December 2018.

Earlier adoption of these provisions will be permitted.

Other key developments

Issue of revised APES 315 Compilation of Financial Information

In March this year the APESB issued a revised APES 315 *Compilation of Financial Information* (APES 315). This replaces the existing version of APES 315 issued in February 2015.

The key change in the revised APES 315 was to update the reference in paragraph 1.11 to *ASIC Corporations (Audit Relief Instrument) 2016/784* which supersedes *ASIC Class Order CO 98/1417 Audit relief for proprietary companies*. Other changes were made to clarify the examples in the appendices including the decision trees on when to issue a compilation report.

1 The requirements under the Corporations Act 2001 for Listed Entities of five years on and two years off are more restrictive than the APES 110 requirements of seven years on and two years off for Public Interest Entities. Therefore, the legislative requirements take precedence.

The revised APES 315 will be effective for engagements to compile financial information commencing on or after 1 July 2017 with early adoption permitted. The revised standard is available from APESB's website: www.apesb.org.au

Consultation Paper – Post implementation review of APES 230 Financial Planning Services

The APESB is currently conducting a post implementation review of APES 230 *Financial Planning Services* (APES 230).

APES 230 was issued in 2013 and commenced with effect from 1 July 2014. The provisions relating to professional fees and third party payments became effective a year later on 1 July 2015.

Since APES 230 was issued nearly four years ago there have been significant developments in the financial services industry in Australia, primarily related to enhancing consumer outcomes. The APES 230 post implementation review aims to ensure the standard remains relevant in the midst of these industry changes.

Have your say?

The APESB is seeking feedback from members and stakeholders about their experience in implementing APES 230 as well as any comments relating to the changed environment that may impact on the standard. Respondents are asked to submit their comments electronically through the APESB website by 30 June 2017.

The Consultation Paper and the link to lodge submissions can be found on the APESB website.

Next steps

Stakeholders are encouraged to stay informed on the progress of these APESB projects by visiting our website www.apesb.org.au or registering to receive regular updates via our website or mobile apps.