

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.



Responding to non-compliance with laws and regulations

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Introduction

The responsibilities of every member are about to significantly change in respect of dealing with matters of non-compliance with laws and regulations (NOCLAR). Responsibilities will differ proportionately depending on whether you are:

- An auditor or assurance practitioner
- A member in public practice providing professional services other than assurance services
- A member in business in a senior-level role, such as a director, officer or senior employee or
- Another member in business.

These changes are being made as a result of changes made by the International Ethics Standards Board for Accountants (IESBA) to the *Code of Ethics for Professional Accountants*.

The amendments set out a first-of-its kind framework to guide members in what actions to take in the public interest when they become aware of a potential illegal act, known as NOCLAR, committed by a client or employer.

Disclosure to an appropriate authority

The amendments include a clear pathway to disclosure of NOCLAR to appropriate public authorities in certain circumstances. The new framework permits members to set aside the duty of confidentiality in order to disclose NOCLAR to appropriate public authorities in certain circumstances. The duty of confidentiality under the old requirements acted as a barrier to disclosure, so this conflict is now addressed.

An important point to note is that this framework gives members the right, while not creating a duty, to disclose the matter to an appropriate authority. Where there is a legal or regulatory requirement to disclose the matter, the member has a duty to report to the appropriate authority.

In deciding whether to disclose the matter, it depends on whether there is credible evidence of substantial harm to the entity or to investors, creditors, employees or the general public in financial or non-financial terms.

The appropriate authority will depend on the nature of the matter, for example, a securities regulator in the case of fraudulent financial reporting or an environmental protection agency in the case of a breach of environmental laws and regulations.

The requirements do not contemplate assurance practitioners or other members proactively 'looking' for acts of non-compliance. An obligation to act appropriately only arises if they become aware of an act of non-compliance in the ordinary course of performing the engagement or performing professional activities.

What is the scope of laws and regulations covered?

NOCLAR is any act of omission or commission, intentional or unintentional, committed by a client or employer, including by those charged with governance (TCWG), by management or by other individuals working for or under the direction of a client or employer which is contrary to the prevailing laws or regulations. It is restricted to laws and regulations that:

- Have a direct effect on the determination of material amounts or disclosures in the financial statements.
- May be fundamental to the entity's business and operations, or to avoid material penalties.

Examples of laws and regulations include those that deal with bribery, corruption, money laundering and terrorist financing.

Matters that are clearly inconsequential are not in scope. Personal misconduct unrelated to the business activities of the client or employer are also out of scope.

Members are not expected to have a level of knowledge of laws and regulations that is greater than that which is required to undertake the professional service they have been engaged to perform or that is required for the professional accountant's role within an entity.

What is required of auditors or assurance practitioners?

The New Zealand Auditing and Assurance Standards Board (NZAuASB) has issued an amending standard; [Amendments to PES 1 Code of Ethics for Assurance Practitioners - Responding to Non-Compliance with Laws and Regulations](#). The amendments are effective as of 15 July 2017, but early adoption is permitted.

In accordance with the amending standard the assurance practitioner shall:

1. Discuss the matter with the appropriate level of management and, where appropriate, TCWG. The appropriate level of management is generally at least one level above the person or persons involved or potentially involved in the matter. It is the responsibility of management and TCWG to ensure compliance with laws and regulations, and to identify and address any non-compliance.
2. Assess the appropriateness of the response, and determine if further action is needed in the public interest.

Further action may include:

- Disclosing the matter to an appropriate authority (unless prohibited by law or regulation) even when there is no legal or regulatory requirement to do so.
- Withdrawing from the engagement and the professional relationship where permitted by law or regulation.

Assurance practitioners cannot turn a 'blind eye' to the matter by simply withdrawing from the engagement and the professional relationship without the matter being appropriately addressed.

The documentation requirements are consistent with the ISAs (NZ) – the documentation must be sufficient to enable an understanding of significant matters arising during the audit, the conclusions reached, and significant professional judgements made in reaching those conclusions.

What about CAs that are not assurance practitioners?

The amending standard issued by the NZAuASB applies only to assurance practitioners, whilst the amendments made by the IESBA to the international code apply more broadly to all professional accountants, those in public practice and those in business. The responsibilities of other members are not as extensive but are still onerous.

The New Zealand Institute of Chartered Accountants (NZICA), a regulatory body in New Zealand, has a code of ethics that governs the professional conduct of all members of Chartered Accountants Australia and New Zealand (CA ANZ) who are resident in New Zealand.

The New Zealand Regulatory Board has recently issued an [Invitation to Comment](#) that proposes similar but proportionate amendments to the NZICA *Code of Ethics* that apply to all New Zealand resident members, not just assurance practitioners. This ensures we keep our New Zealand ethical codes aligned with each other, and their international counterpart.

The closing date for comments is Friday 31 March 2017. The New Zealand Regulatory Board plans to issue the revised *Code of Ethics* after its April 2017 meeting.