



Responding to non-compliance with laws and regulations

Submitted by AAT

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1. AAT welcomes the opportunity to comment on the proposed changes to the Code of Ethics for Professional Accountants in respect of non compliance with laws and regulations (NOCLAR). Having been party to the round table discussion on the proposals in Brussels in 2014, it is pleasing to see that feedback has been taken on board in the development of the revised proposals, and the task force is commended for drawing together the diverse feedback received into this revised proposal.

As stated previously, this is an area which AAT has anecdotally identified as being particularly challenging for members to build confidence in understanding how to effectively exercise their professional judgement.

2. In response to question 1: *Where law or regulation requires the reporting of identified or suspected NOCLAR to an appropriate authority, do respondents believe the guidance in the proposals would support the implementation and application of the legal or regulatory requirement?*

- 2.1 AAT considers the guidance in the proposals supports the implementation and application of a legal or regulatory requirement. AAT particularly welcomes the acknowledgement of prohibitions in certain jurisdictions, which were considered a gap previously.

3. In response to question 2: *Where there is no legal or regulatory requirement to report identified or suspected NOCLAR to an appropriate authority, do respondents believe the proposals would be helpful in guiding PAs in fulfilling their responsibility to act in the public interest in the circumstances?*

- 3.1 AAT considers that the additional guidance provided to PAs to support them in evaluating how to fulfil their responsibility to act in the public interest is an extremely helpful addition to the Code, where there is no legal or regulatory requirement to report.

4. In response to question 4: *Do respondents agree with the proposed objectives for all categories of PAs?*

- 4.1 AAT agrees the principle of the objectives identified, but submits that in addition to integrity and professional behaviour, objectivity has a place in defining the objectives. This is because there is a collaborative dynamic to either rectifying or mitigating against the consequences of identified NOCLAR; or to deterring NOCLAR which has not yet occurred. However, this should not be to the detriment of the requirement to remain objective, as is indicated by the use of the third party test.

5. In response to question 5: *Do respondents agree with the scope of laws and regulations covered by the proposed Sections 225 and 360?*

- 5.1 AAT agrees with the drafting of the scope of laws and regulations proposed in both sections.

6. In response to question 6: *Do respondents agree with the differential approach among the four categories of PAs regarding responding to identified or suspected NOCLAR?*

- 6.1 AAT emphatically supports recognition that applying the conceptual framework approach to ethical decision making within the accountancy profession means that roles, levels of seniority and spheres of influence will impact on the safeguards available to each PA. The division of approach by way of four categories had not been anticipated as a methodology to acknowledge this, and AAT has concerns that this may undermine the conceptual framework, and encourage a more rules based, as opposed to principles based approach to ethical decision making.
- 6.2 This has also resulted in duplication of provisions which are applicable to all, which increases the size of the Code, and reduces its readability.
- 6.3 With auditors having additional obligations stemming from the ISAs, it follows that they do have a greater responsibility to take action, which is already evident through the existing framework. Whilst factually the introduction of the four categories of PA is accurate, there are many other factors which could influence the nature of safeguards available to a PA at any level, for example, the size of a business in which they are operating, and commensurate to this, access to senior management or TCWG. Were an “other PAIB” to have access to TCWG, it would not necessarily be in the public interest for the framework to discourage them from using this for fear of reprisals because it might be considered to fall outside what their ethical code might expect, despite the fact that the public interest has been served.
- 6.4 In summary, an unintended consequence of such distinctions is that safeguards are limited for fear of taking action above and beyond the guidance in the Code, which may be considered *ultra vires* by employers and/or professional bodies or regulators.

7. In response to question 7: *With respect to auditors and senior PAIBs:*

(a) *Do respondents agree with the factors to consider in determining the needs for, and the nature and extent of, further action, including the threshold of credible evidence of substantial harm as one of those factors?*

- 7.1 AAT agrees these factors, including the threshold of credible evidence. AAT does not consider the public interest to be served by mere speculation.

(b) *Do respondents agree with the imposition of the third party test relative to the determination of the need for, and nature and extent of, further action?*

- 7.2 AAT agrees with the imposition of a third party test relative to the need for, and nature and extent of further action. This is consistent with the wider code, and builds public confidence in the Code.

(c) *Do respondents agree with the examples of possible courses of further action? Are there other possible courses of further action respondents believe should be specified?*

- 7.3 AAT agrees with the examples provided, and does not think it would be helpful to provide further examples, which would inevitably introduce more specific factors which would not be applicable in all the circumstances.

(d) *Do respondents support the list of factors to consider in determining whether to disclose the matter to an appropriate authority?*

- 7.4 Yes.

8. In response to question 8: *For PAs in public practice providing services other than audits do respondents agree with the proposed level of obligation with respect to communicating the matter to a network firm where the client is also an audit client of the network firm?*

- 8.1 Considering whether to communicate a matter within a network firm when a client of a non audit service is audited within the network could be considered an ambiguous obligation on the individual PA.
 - 8.2 The provision detailed in the proposed section 225.39 by virtue of its requirement that the matter be communicated within the firm suggests that the engagement partner has a critical role in determining how the matter should be addressed.
 - 8.3 AAT sees no justification for varying the responsibility placed on the PA in circumstances where NOCLAR is identified through the provision of non audit services on the basis of whether the client is an audit client of the firm, or the network firm. A decision needs to be taken as to whether the engagement partner must be informed with the expectation that they then take responsibility for how the NOCLAR is addressed. If this is the case, then proposed sections 225.39 and 225.40 should be the same. If it is not the same, then it is questionable what value considering whether to provide the information through the network firm would bring in managing the NOCLAR effectively.
9. In response to question 9: *Do respondents agree with the approach to documentation with respect of the four categories of PAs?*
- 9.1 AAT is of the view that a consistent approach to documentation should be required for all four categories of PA, and in respect of auditors, reference made to their additional responsibilities for documentation in line with the ISAs.
 - 9.2 Documentation will ultimately support an investigation into NOCLAR should the threats to compliance with the fundamental principles manifest. AAT is of the view that encouragement to document is not sufficient, and that NOCLAR reporting would be bolstered by a more robust approach to documentation across the board. This could have a beneficial deterrent effect on management and TCWG of those firms where the PA no longer has confidence in their integrity.
10. In response to question 9: *Do respondents agree that a professional accountant providing professional services to a client that is not an audit client of the firm or a network firm should have a right to override confidentiality and disclose certain illegal acts to an appropriate authority and be expected to exercise this right? If not, why not and what action should be taken?*
- 10.1 AAT concurs with this position, and sees it as critical to the effective operation of NOCLAR provisions pervasively across the profession.