

The Institute of Public Accountants

**Submission to IESBA: Exposure draft –
responding to non-compliance with laws and
regulations**

September 2015



IPA INSTITUTE OF PUBLIC
ACCOUNTANTS®

8 September 2015

Mr Ken Siong
Technical Director
International Ethics Standard Board for Accountants
529 5th Avenue
New York New York
USA

Dear Ken

ED: "Responding to Non-Compliance with Laws and Regulations"

Thank you for the opportunity to comment on the exposure draft "Non-compliance with Laws and Regulations".

The Institute of Public Accountants (IPA) broadly supports the proposals in relation to responding to Non-Compliance with Laws and Regulations (NOCLAR). The IPA in particular supports the explicit recognition of the responsibility for NOCLAR extending beyond Professional Accountants (PAs) acting as auditors, to both PAs in practice providing non-audit services and Professional Accountant in Business (PAiB). The IPA especially welcomes the acknowledgment in the proposals of the role senior PAiBs have in relation to the compliance with laws and regulations

The IPA would like to make two observations:

1. The category of "PAs in Public Practice providing services other than the Audit of Financial Statements" appears to include PAs providing other assurance including audits of information other than financial statements. The IPA is of the opinion PAs performing any assurance engagements should have the same responsibility in relation to NOCLAR. For example, review engagements are substituted in some jurisdictions for the audit of financial statements for certain types of entities. The IPA is of the view the same duty of care in relation to NOCLAR exists in such circumstances. Similarly, engagements may exist which require audit level assurance in respect of individual balances or transactions. In relation to such engagements NOCLAR obligations could arise and should be approached with a similar level of obligation consistent with the scope of an engagement to audit financial statements.
2. The IPA believes the proposed standard should include a requirement for PAs in practice to include an explicit paragraph as to their obligation in relation to NOCLAR in all engagement letters.

Our comments on the detailed questions asked in the Exposure Draft are in the attached appendix to this letter.

If you would like to discuss our comments, please contact me or our technical advisers Mr Stephen La Greca (stephenlagreca@aol.com) or Mr Colin Parker (colin@gaap.com.au) (a former member of the AASB), GAAP Consulting.

Yours sincerely



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About the IPA

The IPA is a professional organisation for accountants recognised for their practical, hands-on skills and a broad understanding of the total business environment. Representing more than 35,000 members in Australia and in over 65 countries, the IPA represents members and students working in industry, commerce, government, academia and private practice. Through representation on special interest groups, the IPA ensures the views of its members are voiced with government and key industry sectors and makes representations to Government including the Australian Tax Office (ATO), Australian Securities and Investments Commission (ASIC) and the Australian Prudential Regulation Authority (APRA) on issues affecting our members, the profession and the public interest. The IPA recently merged with the Institute of Financial Accountants of the UK, making the new IPA Group the largest accounting body in the SMP/SME sector in the world.

Appendix

General Matters

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?

IPA Response

The IPA is of the view the proposed guidance on the reporting NOCLAR to appropriate authorities when required by law or regulation is of a very general nature and unlikely to be useful in addressing the requirements of such legislation or regulation. The IPA acknowledges it is extremely difficult for the IESBA to provide guidance with appropriate specificity given the need to develop a standard for multiple jurisdictions, nonetheless the IPA believes there should be a mechanism to encourage local Boards to add specific guidance.

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?

IPA Response

The IPA believes the guidance will be useful in determining an appropriate response to NOCLAR.

Question 3

The Board invites comments from preparers (including TCWG), users of financial statements (including regulators and investors) and other respondents on the practical aspects of the proposals, particularly their impact on the relationships between:

- (a) Auditors and audited entities;*
- (b) Other PAs in public practice and their clients; and*
- (c) PAIBs and their employing organisations.*

IPA Response

- (a) The IPA does not believe the proposals would have any significant impact on the relation with auditors and their clients although it may be necessary to reissue engagement letters to clearly set-out the auditor's responsibilities for NOCLAR.
- (b) The IPA envisages there may be some issues for client relationships arising from the proposed requirement and as a result some clients may prefer to use non-accountants for certain non-audit services.
- (c) The IPA has some concern in relation to non-senior PAiBs where the jurisdiction does not have whistle-blower protection legislation. This is exacerbated if the entity does not have internal mechanisms to report NOCLAR anonymously. The IPA believes the risk to careers

(especially in industry sectors with a small number of participants) would out-weigh the requirements to report NOCLAR, even internally, without adequate protection. The IPA believes in such circumstances the practical results would be for a non-senior PAiB at best to resign and not report.

Specific Matters

Question 4

Do respondents agree with the proposed objectives for all categories of PAs?

IPA Response

The IPA agrees with the proposed objectives for all categories of PAs.

Question 5

Do respondents agree with the scope of laws and regulations covered by the proposed Sections 225 and 360?

IPA Response

The IPA agrees with the proposed scope of laws and regulations covered by the proposed Sections 225 and 360.

Question 6

Do respondents agree with the differential approach among the four categories of PAs regarding responding to identified or suspected NOCLAR?

IPA Response

The IPA agrees with the approach among the four categories of PAs regarding the response to NOCLAR. However the IPA is of the opinion that assurance engagements other than audits of financial statements have the same requirements in relation to NOCLAR as audits of financial statements. In some jurisdictions a review engagement may be substituted for an audit for certain categories of entities. Similarly, there may be assurance engagements in relation to fund raising, acquittal of government monies, or compliance engagements which the IPA believes should carry the duty of care in relation to NOCLAR as audits of financial statement. Therefore, the IPA is of the view the requirements of category of PAs Performing Audits of Financial Statements should include all assurance engagements.

Question 7

With respect to auditors and senior PAiBs:

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

- (c) Do respondents agree with the examples of possible courses of further action? Are there possible courses of further action respondents believe should be specified?*
- (d) Do respondents support the list of factors to consider in determining whether to disclose the matter to an appropriate authority?*

IPA Response

- (a) The IPA agrees with factors to be considered in responding to NOCLAR including the credible evidence of actual or potential substantial harm. Although the IPA agrees with the factors to be considered further guidance is needed as to the nature of evidence required particularly in relation to **potential** substantial harm.
- (b) The IPA supports the introduction of the third party test as a factor in the determination of the need for further action.
- (c) The IPA agrees with the possible examples of further actions, but would add in the case of assurance engagements the inclusion of details of the NOCLAR in the assurance engagement report and if applicable to the financial or other potential impacts; e.g. in relation to a financial statement audit an “Other Matter” paragraph could be added in accordance with ISA 706 “Emphasis of Matter Paragraphs and Other Matter Paragraphs in the Independent Audit Report”.
- (d) The IPA supports the list of factors to be considered in determining whether to disclose the matter to an appropriate authority. However the IPA would add whether the entity was in the process of raising funds or applying for government funding to the matters to be considered.

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?

IPA Response

The IPA supports the requirement for a network firm providing non-audit services to communicate NOCLAR to a network firm that is the auditor.

Question 9

Do respondents agree with the approach to documentation with respect to the four categories of PAs?

IPA Response

The IPA supports the proposed approach to documentation.