

May 2017

Basis for Conclusions ***ASA 250 Consideration of Laws and*** ***Regulations in the Audit of a Financial*** ***Report*** **Draft**

Prepared by the **Auditing and Assurance Standards Board**



Australian Government

Auditing and Assurance Standards Board

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Basis for Conclusions ASA 250 *Consideration of Laws and Regulations in the Audit of a Financial Report* has been developed by the Auditing and Assurance Standards Board (AUASB) to provide a background to, and rationale for the development and approval of the Standard by the AUASB. The Basis for Conclusions relates to, but does not form part of, ASA 250.

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BASIS FOR CONCLUSIONS

ASA 250 Consideration of Laws and Regulations in the Audit of a Financial Report

This Basis for Conclusions is issued by the Auditing and Assurance Standards Board (AUASB). It provides a background to, and rationale for the development and approval of the Standard by the AUASB. The Basis of Conclusions relates to, but does not form part of, *ASA 250 Consideration of Laws and Regulations in the Audit of a Financial Report*, and is not a substitute for reading the Standard.

Background

Draft

1. The IAASB issued the final revised ISA 250 on 5 October 2016. In summary, the following changes were made from the previous ISA 250 in order to:
 - Align aspects of ISA 250 (Revised) to the NOCLAR (non-compliance with laws and regulations) provisions in the IESBA Code, particularly the definition of non-compliance and the examples of laws and regulations within the scope of ISA 250 (Revised) (see paragraphs 12, A6 and A9–A10 of ISA 250 (Revised)).
 - Clarify the requirement regarding the auditor’s determination of whether to report identified or suspected NOCLAR to an appropriate authority outside the entity and the auditor’s duty of confidentiality, in order to recognize the different provisions of laws, regulations, or relevant ethical requirements (see paragraphs 29 and A28–A34 of ISA 250 (Revised)).
 - Highlight that the auditor may have additional responsibilities under law, regulation, or relevant ethical requirements regarding identified or suspected NOCLAR. This also includes additional emphasis of the possible documentation requirements contained in law, regulation or relevant ethical requirements (see paragraph 9 of ISA 250 (Revised)).
 - Highlight the implications of identified or suspected NOCLAR on the audit, for example, the reliability of management’s representations, the implications for the auditor’s report, and the consideration of whether to withdraw from the engagement (see paragraphs 22 and A23–A27 of ISA 250 (Revised)).
 - Emphasise the requirements in the IESBA Code relating to the communication of identified or suspected NOCLAR to a group engagement partner or an auditor at a component (see paragraph A8 of ISA 250 (Revised)).
 - Draw attention to the fact that, in certain cases, communication with management or those charged with governance may be restricted or prohibited by law or regulation, for example law or regulation may specifically prohibit a communication, or other action, that might prejudice an investigation by an appropriate authority into an actual, or suspected, illegal act (see paragraphs 20, 23 and A21 of ISA 250 (Revised)).
 - Furthermore, conforming amendments were also made to a number of other International Standards to reflect the matters indicated above or clarify the expected work effort with regard to identified or suspected NOCLAR. These include ISQC 1; ISA 210; ISA 220; ISA 240; ISA 260; ISA 500; ISRE 3000, ISAE 3402; ISAE 3410; and ISRS 4410.
2. Due to the extensive use of references to the changes in the APESB Code, the final issuance of ASA 250 and ASA 2017-2 will be held back pending the APESB release of their standard.

AUASB

3. In accordance with its mandates under section 227 of the *Australian Securities and Investments Commission Act 2001* and the Financial Reporting Council's (FRC) *Strategic Direction*, the AUASB's policy is to adopt the IAASB's ISAs, unless there are compelling reasons not to do so; and to amend the ISAs only when there are compelling reasons to do so.
4. Compelling reasons fall broadly into two categories: legal and regulatory; and principles and practices considered appropriate in maintaining or improving audit quality in Australia. Compelling reasons are further guided by the AUASB's policy of harmonisation with the standards of the New Zealand Auditing and Assurance Standards Board (NZAuASB).
5. The AUASB's principles of convergence with the ISAs and harmonisation with the New Zealand auditing standards can be found on the AUASB's website:
http://www.auasb.gov.au/admin/file/content102/c3/Aug14_IAASB-NZAuASB_Principles_of_Convergence_and_Harmonisation.pdf
6. The AUASB has decided to adopt the revised ISA 800, into the Australian Auditing Standards that are made under section 336 of the *Corporations Act 2001* (the Act). Prior to implementation, the AUASB is required to consult with stakeholders and accordingly has issued Exposure Drafts **ED 05/16** for public exposure and comment. All comments received from stakeholders are considered by the AUASB prior to finalisation of the revised standard.

Public Exposure

7. The revised Australian standard, including the amendments described below, were published for public comment in ED 05/16: Proposed Auditing Standard ASA 800 Consideration of Laws and Regulation in the Audit of a Financial Report issued on 23 December 2016 and closed on 15 March 2017.

Proposed Amendments to the ASAs on Public Exposure in Australia

8. The adoption of international standards and any changes to adopted standards are governed by the AUASB's policies regarding convergence with IAASB standards and harmonisation with the standards of the NZAuASB (see paragraphs 5 to 8). The policies and procedures incorporate "compelling reasons" tests which must be used to support changes to the international standards. Changes are made only when the AUASB is satisfied that there are persuasive reasons to do so.

As a result of the "compelling reasons" test, the following three Aus paragraphs were added to ASA 250:

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| Aus A20.1 | In the case of an audit conducted under the <i>Corporations Act 2001</i> , the auditor may consider the provisions relating to the protection for whistleblowers contained in Part 9.4AAA of the <i>Corporations Act 2001</i> when communicating identified or suspected non-compliance with management and those charged with governance. |
| Aus A26.1 | If, in the case of an audit conducted under the <i>Corporations Act 2001</i> , the auditor identifies non-compliance with an Australian Accounting Standard, defects or irregularities in the financial report or deficiencies, failures or shortcomings in respect of sec 307 of the Act, the auditor's report is to include the information required by the Act.* The auditor needs to consider any other relevant laws and regulations. If the auditor is in doubt as to the proper interpretation of laws or regulations, or whether non-compliance has in |

* See sections 308 (2) and (3) of the *Corporations Act 2001*.

fact occurred, the auditor ordinarily seeks legal advice before expressing an opinion on the financial report.

- Aus A29.1 In certain circumstances, the auditor has a statutory responsibility to report instances of non-compliance with laws and regulations. For example, in certain circumstances, the auditor is required under the *Corporations Act 2001*, to report to the Australian Securities and Investments Commission (ASIC).^{*} Establishing the appropriate authority to which such a report would be made in a particular instance will depend on the nature and circumstances of the non-compliance. When in doubt, the auditor would ordinarily seek legal advice.

AUASB Drafting Conventions

9. The AUASB makes format and other editorial changes from the ISAs, such as spelling and terminology changes, to accord with Australian legislative requirements, particularly those relating to legislative instruments.

Other General Changes

10. The AUASB made other general changes from the ISAs which reflect ongoing policies and include:
- (a) Replacement of requirements, guidance and references to international ethical requirements with requirements, guidance and references to relevant Australian ethical requirements; and
 - (b) Replacing references to international standards and international standard-setters with references to relevant Australian standards and standard-setters.

Major Issues raised by Respondents on Exposure

11. EY – Comment in relation to question 1&2 for ED 05/16

The proposed standard requires the auditor to discuss any identified or suspected non-compliance with laws and regulations with management (paragraph 20) and communicate such matters to those charged with governance (paragraph 23) unless prohibited by law or regulation. We note that, under Section 1317 of the *Corporations Act*, there are prohibitions on auditors discussing matters that have been brought to their attention by a whistle blower. These provisions are designed to avoid disclosure of the identity of a whistle blower.

We recommend an Australian specific requirement or guidance be added to the proposed standard to draw direct attention to these provisions to ensure that an auditor gives due consideration to it prior to discussing or communicating any identified or suspected non-compliance with laws and regulations which came to the auditor's attention by a whistle blower.

AUASB Technical Group (ATG) Comments on Disposition

The ATG agree with the recommendation and believe that the change meets the compelling reason test required when adding additional application material to ISA 250. We have added the following Aus paragraph A20.1:

In the case of an audit conducted under the *Corporations Act 2001*, the auditor may consider the provisions relating to the protection for whistle-blowers contained in Part 9.4AAA of the

^{*} See ASIC Regulatory Guide 34 *Auditors' obligations: Reporting to ASIC* that provides guidance to help auditors comply with their obligations, under sections 311, 601HG and 990K of the *Corporations Act 2001*, to report contraventions and suspected contraventions of the Act to ASIC.

Corporations Act 2001 when communicating identified or suspected non-compliance with management and those charged with governance.

Refer paper attached to agenda item 4(a).5 for the compelling reason test for paragraph A20.1.

12. Deloitte – Appendix 2 (Other specific comment relating to changes within ED 05/16)

We note that reference has been made to the “*Proposed Amendments to APES 110 Code of Ethics for Professional Accountants* exposure draft issued by the Accounting Professional and Ethical Standards Board on December 16 2016”.

Given that this wording will quickly become outdated, we are assuming that the intention of the AUASB is to update this reference as appropriate, prior to the issuance of the amended auditing standard.

AUASB Technical Group (ATG) Comments on Disposition

Agreed by the ATG, changed to “*APES 110 Code of Ethics for Professional Accountants*”

This wording will be confirmed post the release of proposed amendments by the APESB, and prior to the issuance of the amended auditing standards.

13. CPA – submission in relation to ED 05/16 and 06/16

We support the AUASB’s proposed amendments to ASA 250 *Consideration of Laws and Regulations in an Audit of a Financial Report* and conforming amendments to a number of other AUASB Standards to maintain conformity with International Auditing and Assurance Standards and to reflect the proposed amendments to APES 110 *Code of Ethics for Professional Accountants* (the Code), under certain conditions. The conditions for our support of the proposed amendments are that:

The revisions to ASA 250 and conforming amendments to other AUASB Standards are consistent with the final approved amendments to the Code; and

The operative date of revised ASA 250 and conforming amendments to other AUASB Standards is no earlier and preferably the same as the operative date of the revised Code.

AUASB Technical Group (ATG) Comments on Disposition

Agreed by the ATG, ASA 250 and the conforming amendments to other AUASB standards will be consistent with the final approved amendments to the APESB Code and with an operative date no earlier than the operative date of the revised APESB Code

Conclusion

The AUASB voted to approve and issue ASA 250 on 30 May 2017 (TBC)

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