

May 2018

**Basis for Conclusions**  
***ASA 250 Consideration of Laws and Regulations in the Audit of a Financial Report and***  
***ASA 2017-2 Amendments to Australian Auditing Standards***

Prepared by the Auditing and Assurance Standards Board



**Australian Government**

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**Auditing and Assurance Standards Board**

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The Basis for Conclusions ASA 250 *Consideration of Laws and Regulations in the Audit of a Financial Report* and ASA 2017-2 *Amendments to Australian Auditing Standards* 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 Standards by the AUASB. The Basis for Conclusions relates to, but does not form part of, ASA 250 and ASA 2017-2.

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## **BASIS FOR CONCLUSIONS**

### ***ASA 250 Consideration of Laws and Regulations in the Audit of a Financial Report and ASA 2017-2 Amendments to Australian Auditing Standards***

1. 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 Standards 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 *ASA 2017-2 Amendments to Australian Auditing Standards* and is not a substitute for reading the Standards.

#### **Scope**

2. This Basis for Conclusions applies to ASA 250 primarily, but is also relevant for ASA 2017-2, which made conforming amendments to:
  - (a) *ASQC 1 Quality Control for Firms that Perform Audits and Reviews of Financial Reports and Other Financial Information, Other Assurance Engagements and Related Services Engagements (Compiled)*;
  - (b) *ASA 210 Agreeing the Terms of Audit Engagements (Compiled)*;
  - (c) *ASA 220 Quality Control for an Audit of a Financial Report and Other Historical Financial Information (Compiled)*;
  - (d) *ASA 240 The Auditor's Responsibilities Relating to Fraud in an Audit of a Financial Report (Compiled)*;
  - (e) *ASA 260 Communication with Those Charged With Governance*; and
  - (f) *ASA 500 Audit Evidence (Compiled)*.
3. Conforming amendments were also made to:
  - (a) *ASRE 2400 Review of a Financial Report Performed by an Assurance Practitioner Who is Not the Auditor of the Entity*;
  - (b) *ASAE 3000 Assurance Engagements Other than Audits or Reviews of Historical Financial Information*;
  - (c) *ASAE 3402 Assurance Reports on Controls at a Service Organisation*; and
  - (d) *ASAE 3410 Assurance Engagements on Greenhouse Gas Statements*.

These standards do not have the force of law so were not part of the amendments made in ASA 2017-2. These amendments are addressed within Appendix A – *Conforming Amendments to Non-force-of-law Standards*.

#### **Operative Date**

4. The amended ASA 250 is operative for financial reporting periods commencing on or after 1 January 2018 with early adoption permitted.

## **Background**

5. The International Auditing and Assurance Standards Board (IAASB) issued ISA 250 (revised) *Consideration of Laws and Regulations in the Audit of Financial Statements* in October 2016. This project was initiated in response to the need to make amendments to Standards as a result of the International Ethics Standards Board for Accountants (IESBA) project regarding non-compliance with laws and regulations.
6. Further details regarding the development of the International Standard on Auditing (ISA), including the Basis for Conclusions prepared by the Staff of the IAASB, can be found on the IAASB's website: <https://www.iaasb.org/>.
7. 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.
8. In line with this direction, the AUASB issued Exposure Drafts ED 05/16 *Proposed Auditing Standard ASA 250 Consideration of Laws and Regulations in an Audit of a Financial Report* and ED 06/16 *Proposed Auditing Standard ASA 2016-2 Amendments to Australian Auditing Standards* on 22 December 2016 with comments due 15 March 2017. A number of Australian specific amendments were proposed in the ED 05/16. No Australian specific amendments were proposed in ED 06/16.
9. The AUASB issued a revised Australian Auditing Standard, ASA 250 *Consideration of Laws and Regulations in the Audit of a Financial Report* in May 2017. As a consequence of the making of ASA 250 (revised), the AUASB issued ASA 2017-2 *Amendments to Australian Auditing Standards* which contained conforming amendments to ASQC 1, ASA 210, ASA 220, ASA 240, ASA 260 and ASA 500.
10. Conforming amendments to Standards which do not have the force of law, were not included within ASA 2017-2 as they are not legislative instruments.

## **Proposed Amendments to the ASAs on Public Exposure in Australia**

11. 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. 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.
12. ED 05/16 was issued for public comment on 22 December 2016 with the following two Aus paragraphs added to the Application and Other Explanatory Material to identify reporting requirements under Australian legislation:
  - Aus A1.1 If, in the case of an audit conducted under the *Corporations Act 2001*, 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 fact occurred, the auditor ordinarily seeks legal advice before expressing an opinion on the financial report.

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

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).<sup>\*</sup> 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.

No Aus paragraphs were added to ED 06/16 on exposure.

### **Major Issues raised by Stakeholders on Exposure and the AUASB's Response**

13. Stakeholders were supportive of the proposed ASA 250 in ED 05/16 and the conforming amendments to standards in ED 06/16. However, it was identified by a respondent that the proposed Standard should also draw attention to whistle-blower protection under the *Corporations Act 2001*.
14. 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. The respondent commented that, under Section 1317 of the *Corporations Act 2001*, there are prohibitions on auditors discussing matters that have been brought to their attention by a whistle-blower and that these provisions are designed to avoid disclosure of the identity of a whistle-blower.
15. The respondent recommended that 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.
16. The AUASB concluded that such a reference met the compelling reason test and agreed to add the following Aus paragraph to the Application and Other Explanatory Material:

Aus A20.1 In the case of an audit conducted under the *Corporations Act 2001*, the auditor may need to consider the provisions relating to the protection for whistle-blowers contained in Part 9.4AAA of the *Corporations Act 2001* when communicating identified or suspected non-compliance with management and those charged with governance.

### **Conclusion**

17. In reaching its conclusions, the AUASB considered all stakeholder feedback, including the significant issue outlined above.
18. At its meeting on 30 May 2017, the AUASB voted to approve and issue ASA 250 with the following major amendments: Aus A20.1, Aus A26.1 and Aus A29.1.

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<sup>\*</sup> 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.

## **Appendix A – Conforming Amendments to Non-force-of-law Standards**

- A1. As result of the issuance of a revised ISA 250 and its subsequent adoption and release in Australia as ASA 250, a number of conforming amendments were needed to be made to related standards.
- A2. In the Australian environment, certain standards are given force of law and are required to be registered on the Federal Register of Legislation. Conforming amendments to these force-of-law standards must be made through either reissuing the standard or an amending standard.
- A3. Conforming amendments made to non-force-of-law standards are not contained in an amending standard as no legislative instrument exists to amend. This appendix to the basis of conclusions has been used to show the amendments made to standards which were not contained in ASA 2017-2.

### **Amendments to ASRE 2400 *Review of a Financial Report Performed by an Assurance Practitioner Who is Not the Auditor of the Entity***

#### *Requirements*

- A4. Existing paragraph 48 is amended to read as follows:

The assurance practitioner's enquiries of management and others within the entity, as appropriate, shall include the following: (Ref: Para. A84–A87~~8~~)

- (d) The existence of any actual, suspected or alleged:
- (i) Fraud or illegal acts affecting the entity; and
  - (ii) Non-compliance with provisions of laws and regulations that are generally recognised to have a direct effect on the determination of material amounts and disclosures in the financial statements, such as tax and superannuation laws and regulations;

- A5. The heading before existing paragraph 52 is amended to read as follows:

Fraud and non-compliance with laws and ~~or~~ regulations

- A6. Existing paragraph 52 is amended to read as follows:

When there is an indication that fraud or non-compliance with laws and ~~or~~ regulations, or suspected fraud a non-compliance with laws and ~~or~~ regulations, has occurred in the entity, the assurance practitioner shall:

- (a) Communicate that matter, unless prohibited by law and regulation, with ~~to~~ the appropriate level of ~~senior~~ management or those charged with governance as appropriate; (Ref: Para. A93)
- (b) Request management's assessment of the effect(s), if any, on the financial statements;
- (c) Consider the effect, if any, of management's assessment of the effects of identified or suspected fraud or non-compliance with laws and ~~or~~ regulations communicated to the assurance practitioner on the assurance practitioner's conclusion on the financial statements and on the assurance practitioner's report; and
- (d) Determine whether law, regulation or relevant ethical requirements: there is a responsibility to report the occurrence or suspicion of fraud or illegal acts to a party outside the entity (Ref: Para. A94~~2~~-A98)

- (i) Require the assurance practitioner to report to an appropriate authority outside the entity.
- (ii) Establish responsibilities under which reporting to an appropriate authority outside the entity may be appropriate in the circumstances.

*Application and Other Explanatory Material*

A7. A new paragraph after existing A87 is inserted as follows:

The assurance practitioner may have additional responsibilities under law, regulation or relevant ethical requirements regarding an entity's non-compliance with laws and regulations, including fraud, which may differ from or go beyond this ASRE, such as:

- (a) Responding to identified or suspected non-compliance with laws and regulations, including requirements in relation to specific communications with management and those charged with governance and considering whether further action is needed;
- (b) Communicating identified or suspected non-compliance with laws and regulations to an auditor, for example a group engagement partner; and
- (c) Documentation requirements regarding identified or suspected non-compliance with laws and regulations.

Complying with any additional responsibilities may provide further information that is relevant to the assurance practitioner's work in accordance with this Assurance Standard (e.g., regarding the integrity of management or, where appropriate, those charged with governance).

A8. The heading after existing paragraph A91 is amended to read as follows:

Fraud and non-compliance with laws ~~and~~ ~~or~~ regulations (Ref: Para. 52(a) ~~and~~ (d))

A9. A heading after existing paragraph A91 is inserted as follows:

Communication with management and those charged with governance

A10. A new paragraph after existing A91 (and above insertions) is inserted as follows:

In some jurisdictions, law or regulation may restrict the assurance practitioner's communication of certain matters with management or those charged with governance. 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, including alerting the entity, for example, when the assurance practitioner is required to report identified or suspected non-compliance with laws and regulations to an appropriate authority pursuant to anti-money laundering legislation. In these circumstances, the issues considered by the assurance practitioner may be complex and the assurance practitioner may consider it appropriate to obtain legal advice.

A11. A sub-heading after existing paragraph A91 (and above insertions) is inserted as follows:

Reporting of identified or suspected non-compliance with laws and regulations to an appropriate authority outside the entity

A12. Existing paragraph A92 is amended to read as follows:

~~Under this ASRE, if the assurance practitioner has identified or suspects fraud or illegal acts, the assurance practitioner is required to determine whether there is a responsibility to report the occurrence or suspicion to a party outside the entity.~~

Reporting identified or suspected non-compliance with laws and regulations to an appropriate authority outside the entity may be required or appropriate in the circumstances because:

- (a) Law, regulation or relevant ethical requirements require the assurance practitioner to report;
- (b) The assurance practitioner has determined reporting is an appropriate action to respond to identified or suspected non-compliance in accordance with relevant ethical requirements (see paragraph A95); or
- (c) Law, regulation or relevant ethical requirements provide the assurance practitioner with the right to do so (see paragraph A96).

~~Although the assurance practitioner's professional duty to maintain the confidentiality of client information may preclude such reporting, the assurance practitioner's legal responsibilities may override the duty of confidentiality in some circumstances.~~

- A13. A new paragraph after existing A92 is inserted as follows:

In some cases, the relevant ethical requirements may require the assurance practitioner to report or to consider whether reporting identified or suspected fraud or non-compliance with laws and regulations to an appropriate authority outside the entity is an appropriate action in these circumstances. For example, APES 110 *Code of Ethics for Professional Accountants* requires the assurance practitioner to take steps to respond to identified or suspected non-compliance with laws and regulations, and consider whether further action is needed, which may include reporting to an appropriate authority outside the entity.<sup>1</sup> APES 110 *Code of Ethics for Professional Accountants* explains that such reporting would not be considered a breach of the duty of confidentiality under APES 110 *Code of Ethics for Professional Accountants*.<sup>2</sup>

- A14. A new paragraph after existing A92 (and insertion above) is inserted as follows:

Even if law Even if law, regulation or relevant ethical requirements do not include requirements that address reporting identified or suspected non-compliance, they may provide the assurance practitioner with the right to report identified or suspected fraud or non-compliance with laws and regulations to an appropriate authority outside the entity.

- A15. A new paragraph after existing A92 (and insertions above) is inserted as follows:

In other circumstances, the reporting of identified or suspected non-compliance with laws and regulations to an appropriate authority outside the entity may be precluded by the assurance practitioner's duty of confidentiality under law, regulation or relevant ethical requirements.

- A16. A new paragraph after existing A92 (and insertions above) is inserted as follows:

The determination required by paragraph 52(d) may involve complex considerations and professional judgements. Accordingly, the assurance practitioner may consider consulting internally (e.g., within the firm or a network firm) or on a confidential basis with a regulator or a professional body (unless doing so is prohibited by law or regulation or would breach the duty of confidentiality). The assurance practitioner may also consider obtaining legal advice to understand the assurance practitioner's options and the professional or legal implications of taking any particular course of action.

- A17. As a result of the changes made above, paragraph references are re-numbered and references to these paragraphs are updated accordingly.

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<sup>1</sup> See, for example, Section 225.51 to 225.52 of APES 110 *Code of Ethics for Professional Accountants*.

<sup>2</sup> See, for example, Section 140.7 and Section 225.53 of APES 110 *Code of Ethics for Professional Accountants*.

**Amendments to ASAE 3000 *Assurance Engagements Other than Audits or Reviews of Historical Financial Information***

*Requirements*

A18. Existing paragraph 45 is amended to read as follows:

The assurance practitioner shall make enquiries of the appropriate party(ies) regarding:

- (a) Whether they have knowledge of any actual, suspected or alleged intentional misstatement or non-compliance with laws and regulations affecting the subject matter information; (Ref: Para. A101–A102)
- (b) ...
- (c) ...

A19. Existing paragraph 78 is amended to read as follows:

The assurance practitioner shall consider whether, pursuant to the terms of the engagement and other engagement circumstances, any matter has come to the attention of the assurance practitioner that is to be communicated with the responsible party, the measurer or evaluator, the engaging party, those charged with governance or others. (Ref: Para. A193~~A192~~–A199)

*Application and Other Explanatory Material*

A20. A new paragraph after existing paragraph A101 is inserted as follows:

The assurance practitioner may have additional responsibilities under law, regulation or relevant ethical requirements regarding an entity's non-compliance with laws and regulations, which may differ from or go beyond the assurance practitioner's responsibilities under this ASAE, such as:

- (a) Responding to identified or suspected non-compliance with laws and regulations, including requirements in relation to specific communications with management and those charged with governance and considering whether further action is needed;
- (b) Communicating identified or suspected non-compliance with laws and regulations to an auditor; and
- (c) Documentation requirements regarding identified or suspected non-compliance with laws and regulations.

Complying with any additional responsibilities may provide further information that is relevant to the assurance practitioner's work in accordance with this and any other ASAE (e.g., regarding the integrity of the responsible party or those charged with governance). Paragraphs A195–A199 further address the assurance practitioner's responsibilities under law, regulation or relevant ethical requirements regarding communicating and reporting identified or suspected non-compliance with laws and regulations.

A21. A new heading after existing paragraph A192 is inserted as follows:

Communication with Management and Those Charged with Governance

A22. A new paragraph after existing paragraph A192 (and heading) is inserted as follows:

Relevant ethical requirements may include a requirement to report identified or suspected non-compliance with laws and regulations to an appropriate level of management or those charged with governance. In some jurisdictions, law or regulation may restrict the assurance practitioner's communication of certain matters with the responsible party, management or

those charged with governance. 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, including alerting the entity, for example, when the assurance practitioner is required to report the identified or suspected non-compliance to an appropriate authority pursuant to anti-money laundering legislation. In these circumstances, the issues considered by the assurance practitioner may be complex and the assurance practitioner may consider it appropriate to obtain legal advice.

A23. A new heading is inserted after existing paragraph A192 (and changes above) as follows:

Reporting of Identified or Suspected Non-Compliance with Laws and Regulations to an Appropriate Authority outside the Entity

A24. A new paragraph after existing paragraph A192 (and changes above) is inserted as follows:

Law, regulation or relevant ethical requirements may:

- (a) Require the assurance practitioner to report identified or suspected non-compliance with laws and regulations to an appropriate authority outside the entity.
- (b) Establish responsibilities under which reporting to an appropriate authority outside the entity may be appropriate in the circumstances.<sup>3</sup>

A25. A new paragraph after existing paragraph A192 (and changes above) is inserted as follows:

Reporting identified or suspected non-compliance with laws and regulations to an appropriate authority outside the entity may be required or appropriate in the circumstances because:

- (a) Law, regulation or relevant ethical requirements require the assurance practitioner to report;
- (b) The assurance practitioner has determined reporting is an appropriate action to respond to identified or suspected non-compliance in accordance with relevant ethical requirements; or
- (c) Law, regulation or relevant ethical requirements provide the assurance practitioner with the right to do so.

A26. A new paragraph after existing paragraph A192 (and changes above) is inserted as follows:

The reporting of identified or suspected non-compliance with laws and regulations in accordance with law, regulation or relevant ethical requirements may include non-compliance with laws and regulations that the assurance practitioner comes across or is made aware of when performing the engagement but which may not affect the subject matter information. Under this ASAE, the assurance practitioner is not expected to have a level of understanding of laws and regulations beyond those affecting the subject matter information. However, law, regulation or relevant ethical requirements may expect the assurance practitioner to apply knowledge, professional judgement and expertise in responding to such non-compliance. Whether an act constitutes actual non-compliance is ultimately a matter to be determined by a court or other appropriate adjudicative body.

A27. A new paragraph after existing paragraph A192 (and changes above) is inserted as follows:

In some circumstances, the reporting of identified or suspected non-compliance with laws and regulations to an appropriate authority outside the entity may be precluded by the assurance practitioner's duty of confidentiality under law, regulation, or relevant ethical requirements. In other cases, reporting identified or suspected non-compliance to an appropriate authority

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<sup>3</sup> See, for example, Section 225.51 to 225.52 of APES 110 *Code of Ethics for Professional Accountants*.

outside the entity would not be considered a breach of the duty of confidentiality under the relevant ethical requirements.<sup>4</sup>

A28. A new paragraph after existing paragraph A192 (and changes above) is inserted as follows:

The assurance practitioner may consider consulting internally (e.g., within the firm or network firm), obtaining legal advice to understand the professional or legal implications of taking any particular course of action, or consulting on a confidential basis with a regulator or a professional body (unless doing so is prohibited by law or regulation or would breach the duty of confidentiality).<sup>5</sup>

A29. As a result of the changes made above, paragraph references are re-numbered and references to these paragraphs are updated accordingly.

### **Amendments to ASAE 3402 *Assurance Reports on Controls at a Service Organisation***

#### *Requirements*

A30. Existing paragraph 56 is amended to read as follows:

If the service auditor becomes aware of non-compliance with laws and regulations, fraud, or uncorrected errors attributable to the service organisation that are not clearly trivial and may affect one or more user entities, the service auditor shall determine whether the matter has been communicated appropriately to affected user entities. If the matter has not been so communicated and the service organisation is unwilling to do so, the service auditor shall take appropriate action. (Ref: Para. A53)

#### *Application and Other Explanatory Material*

A31. Existing paragraph A53 is amended to read as follows:

Appropriate actions to respond to the circumstances identified in paragraph 56, unless prohibited by law or regulation, may include:

- Obtaining legal advice about the consequences of different courses of action.
- Communicating with those charged with governance of the service organisation.
- Determining whether to communicate with third parties (e.g., law, regulation or relevant ethical requirements may require the service auditor to report to an appropriate authority outside the entity or the external auditor of the service organisation,<sup>17</sup> or establish responsibilities under which such reporting may be appropriate in the circumstances)  
~~Communicating with third parties (for example, a regulator) when required to do so.~~
- Modifying the service auditor's opinion, or adding an Other Matter paragraph.
- Withdrawing from the engagement.

### **Amendments to ASAE 3410 *Assurance Engagements on Greenhouse Gas Statements***

A32. Existing paragraph 78 is amended to read as follows:

The assurance practitioner shall communicate, unless prohibited by law or regulation, with ~~to~~ those person(s) with oversight responsibilities for the GHG statement the following matters that come to the assurance practitioner's attention during the course of the engagement, and

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<sup>4</sup> See, for example, Section 140.7 and Section 225.53 of APES 110 *Code of Ethics for Professional Accountants*.

<sup>5</sup> See, for example, Section 225.55 of APES 110 *Code of Ethics for Professional Accountants*.

shall determine whether there is a responsibility to report them to another party within or outside the entity:

- (a) Deficiencies in internal control that, in the assurance practitioner's professional judgement, are of sufficient importance to merit attention;
- (b) Identified or suspected fraud; and
- (c) Matters involving identified or suspected non-compliance with laws and ~~of~~ regulations, other than when the matters are clearly trivial. (Ref: Para. A87)