

EXPOSURE DRAFT

ED 16/08

(November 2008)

**Proposed Auditing Standard
ASA 250
*Consideration of Laws and
Regulations in an Audit of a
Financial Report (Revised
and Redrafted)*
(Re-issuance of ASA 250)**

Issued for Comment by the **Auditing and Assurance Standards Board**



Australian Government

Auditing and Assurance Standards Board

Commenting on this Exposure Draft

Comments on this Exposure Draft should be forwarded so as to arrive by no later than 15 December 2008. Comments should be addressed to:

The Chairman
Auditing and Assurance Standards Board
PO Box 204
Collins Street West
Melbourne Victoria 8007
AUSTRALIA
E-mail: edcomments@auasb.gov.au

A copy of all non-confidential submissions will be placed on public record on the AUASB website: www.auasb.gov.au.

Obtaining a Copy of this Exposure Draft

This Exposure Draft is available on the AUASB website: www.auasb.gov.au. Alternatively, any individual or organisation may obtain one printed copy of this Exposure Draft without charge until no later than 15 December 2008 by contacting:

The Auditing and Assurance Standards Board
Level 7
600 Bourke Street
Melbourne Victoria 3000
AUSTRALIA

Phone: (03) 8080 7400
Fax: (03) 8080 7450
E-mail: enquiries@auasb.gov.au

Postal Address:
PO Box 204
Collins Street West
Melbourne Victoria 8007
AUSTRALIA

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PREFACE

Reasons for Issuing ED 16/08

The Auditing and Assurance Standards Board (AUASB) is proposing to re-issue Auditing Standard ASA 250 *Consideration of Laws and Regulations in an Audit of a Financial Report* pursuant to the requirements of the legislative provisions and the Strategic Direction explained below.

The AUASB is an independent statutory board of the Australian Government established under section 227A of the *Australian Securities and Investments Commission Act 2001*, as amended (ASIC Act). Under section 336 of the *Corporations Act 2001*, the AUASB may make Australian Auditing Standards for the purposes of the corporations legislation. These Auditing Standards are legislative instruments under the *Legislative Instruments Act 2003*.

The International Auditing and Assurance Standards Board (IAASB), an independent standard-setting board of the International Federation of Accountants (IFAC), has undertaken a programme to redraft, in “clarity” format, the entire suite of International Standards on Auditing (ISAs). In some cases, and in accordance with normal practice, the ISAs have been revised in addition to being redrafted. The redrafted ISAs are effective for audits of financial statements for periods beginning on or after 15 December 2009.

Under the Strategic Direction given to the AUASB by the Financial Reporting Council (FRC), the AUASB is required to have regard to any programme initiated by the IAASB for the revision and enhancement of the ISAs and to make appropriate consequential amendments to the Australian Auditing Standards. Accordingly, the AUASB has decided to revise and redraft the Australian Auditing Standards using the equivalent redrafted ISAs.

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Main Proposals

This proposed Auditing Standard establishes mandatory Requirements and provides Application and Other Explanatory Material regarding the auditor's responsibility to consider laws and regulations when performing an audit of a financial report.

Proposed Operative Date

It is intended that this proposed Auditing Standard will be operative for financial reporting periods commencing on or after 1 January 2010.

Main changes from existing ASA 250 *Consideration of Laws and Regulations in an Audit of a Financial Report* (April 2006)

The main differences between this proposed Auditing Standard and the Auditing Standard that it supersedes, ASA 250 *Consideration of Laws and Regulations in an Audit of a Financial Report* (April 2006), are included in the Tables of Differences provided as an attachment to this Exposure Draft.

Request for Comments

Comments are invited on this Exposure Draft of the proposed re-issuance of Auditing Standard ASA 250, *Consideration of Laws and Regulations in an Audit of a Financial Report* by no later than 15 December 2008. The AUASB is seeking comments on the main changes from the existing ASA 250. In addition, respondents are asked to consider and respond to the following questions:

1. Have applicable laws and regulations been appropriately addressed in the proposed standard?
2. Are there any references to relevant laws or regulations that have been omitted?
3. Are there any laws or regulations that may, or do, prevent or impede the application of the proposed standard, or may conflict with the proposed standard?
4. What, if any, are the additional significant costs to/benefits for auditors and the business community arising from compliance with the main changes to the Requirements of this proposed Auditing

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Standard? If there are significant costs, do these outweigh the benefits to the users of audit services?

5. Are there any other significant public interest matters that constituents wish to raise?

The AUASB prefers that respondents express a clear opinion on whether the main changes to the Requirements of this proposed Auditing Standard are supported and that this opinion be supplemented by detailed comments, whether supportive or critical, on the above matters. The AUASB regards both supportive and critical comments as essential to a balanced review of the Auditing Standard.

AUASB Information Note

The IAASB's "Clarity" project is not yet complete and accordingly there is a possibility that the equivalent underlying ISA to this Exposure Draft will include conforming amendments arising from standards not yet approved by the IAASB. While all currently known conforming amendments are incorporated into this Exposure Draft, readers are advised that the AUASB may decide to make further conforming amendments in line with those of the IAASB.

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AUTHORITY STATEMENT

The Auditing and Assurance Standards Board (AUASB) makes this Auditing Standard ASA 250 *Consideration of Laws and Regulations in an Audit of a Financial Report* (Revised and Redrafted) pursuant to section 227B of the *Australian Securities and Investments Commission Act 2001* and section 336 of the *Corporations Act 2001*.

This Auditing Standard is to be read in conjunction with ASA 100 *Preamble to Auditing Standards* (Revised and Redrafted), which sets out the intentions of the AUASB on how the Australian Auditing Standards are to be understood, interpreted and applied.

AUDITING STANDARD ASA 250

Consideration of Laws and Regulations in an Audit of a Financial Report (Revised and Redrafted)

Application

- Aus 0.1 This Auditing Standard applies to:
- (a) an audit of a financial report for a financial year, or an audit of a financial report for a half-year, in accordance with the *Corporations Act 2001*; and
 - (b) an audit of a financial report for any other purpose.
- Aus 0.2 This Auditing Standard also applies, as appropriate, to an audit of other historical financial information.

Operative Date

- Aus 0.3 This Auditing Standard is operative for financial reporting periods commencing on or after 1 January 2010.

Introduction

Scope of this ASA

1. This Auditing Standard deals with the auditor's responsibility to consider laws and regulations when performing an audit of a financial report. This Auditing Standard does not apply to other assurance engagements in which the auditor is specifically engaged to test and report separately on compliance with specific laws or regulations.

Effect of Laws and Regulations

2. The effect on a financial report of laws and regulations varies considerably. Those laws and regulations to which an entity is subject constitute the legal and regulatory framework. The provisions of some laws or regulations have a direct effect on the financial report in that they determine the reported amounts and disclosures in an entity's financial report. Other laws or regulations are to be complied with by management or set the provisions under which the entity is allowed to conduct its business but do not have a

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direct effect on an entity's financial report. Some entities operate in heavily regulated industries (such as banks and chemical companies). Others are subject only to the many laws and regulations that relate generally to the operating aspects of the business (such as those related to occupational safety and health, and equal employment opportunity). Non-compliance with laws and regulations may result in fines, litigation or other consequences for the entity that may have a material effect on the financial report.

Responsibility of Management for Compliance with Laws and Regulations

3. It is the responsibility of management, with the oversight of those charged with governance, to ensure that the entity's operations are conducted in accordance with the provisions of laws and regulations, including compliance with the provisions of laws and regulations that determine the reported amounts and disclosures in an entity's financial report. (Ref: Para. A1-A2)

Responsibility of the Auditor (Ref: Para. A3-A6)

4. The requirements in this Auditing Standard are designed to assist the auditor in identifying material misstatement of the financial report due to non-compliance with laws and regulations. However, the auditor is not responsible for preventing non-compliance and cannot be expected to detect non-compliance with all laws and regulations.
5. The auditor is responsible for obtaining reasonable assurance that the financial report, taken as a whole, are free from material misstatement, whether caused by fraud or error.¹ In conducting an audit of a financial report, the auditor takes into account the applicable legal and regulatory framework. Owing to the inherent limitations of an audit, there is an unavoidable risk that some material misstatements in the financial report may not be detected, even though the audit is properly planned and performed in accordance with the Australian Auditing Standards.² In the context of laws and regulations, the potential effects of inherent limitations on the auditor's ability to detect material misstatements are greater for such reasons as the following:
 - There are many laws and regulations, relating principally to the operating aspects of an entity, that typically do not

¹ See ASA 200 (Revised and Redrafted), Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Australian Auditing Standards, paragraph 5. [See footnote ◊.]

² See ASA 200 (Revised and Redrafted), paragraph A38. [See footnote ◊.]

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affect the financial report and are not captured by the entity's information systems relevant to financial reporting.

- Non-compliance may involve conduct designed to conceal it, such as collusion, forgery, deliberate failure to record transactions, management override of controls or intentional misrepresentations being made to the auditor.
- Whether an act constitutes non-compliance is ultimately a matter for legal determination by a court of law.

Ordinarily, the further removed non-compliance is from the events and transactions reflected in the financial report, the less likely the auditor is to become aware of it or to recognise the non-compliance.

6. This Auditing Standard distinguishes the auditor's responsibilities in relation to compliance with two different categories of laws and regulations as follows:
- (a) The provisions of those laws and regulations generally recognised to have a direct effect on the determination of material amounts and disclosures in the financial report such as tax and superannuation laws and regulations (see paragraph 13); and
 - (b) Other laws and regulations that do not have a direct effect on the determination of the amounts and disclosures in the financial report, but compliance with which may be fundamental to the operating aspects of the business, to an entity's ability to continue its business, or to avoid material penalties (for example, compliance with the terms of an operating license, compliance with regulatory solvency requirements, or compliance with environmental regulations); non-compliance with such laws and regulations may therefore have a material effect on the financial report (see paragraph 14).
7. In this Auditing Standard, differing requirements are specified for each of the above categories of laws and regulations. For the category referred to in paragraph 6(a), the auditor's responsibility is to obtain sufficient appropriate audit evidence about compliance with the provisions of those laws and regulations. For the category referred to in paragraph 6(b), the auditor's responsibility is limited to undertaking specified audit procedures to help identify non-compliance with those laws and regulations that may have a material effect on the financial report.

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8. The auditor is required by this Auditing Standard to remain alert to the possibility that other audit procedures applied for the purpose of forming an opinion on the financial report may bring instances of identified or suspected non-compliance to the auditor's attention. Maintaining professional scepticism throughout the audit, as required by ASA 200 (Revised and Redrafted),³ is important in this context, given the extent of laws and regulations that affect the entity.

Effective Date

9. [Deleted by the AUASB. Refer Aus 0.3]

Objectives

10. The objectives of the auditor are:
- (a) To obtain sufficient appropriate audit evidence regarding compliance with the provisions of those laws and regulations generally recognised to have a direct effect on the determination of material amounts and disclosures in the financial report;
 - (b) To perform specified audit procedures to help identify instances of non-compliance with other laws and regulations that may have a material effect on the financial report; and
 - (c) To respond appropriately to non-compliance or suspected non-compliance with laws and regulations identified during the audit.

Definition

11. For the purposes of this Auditing Standard, the following term has the meaning attributed below:

Non-compliance means acts of omission or commission by the entity, either intentional or unintentional, which are contrary to the prevailing laws or regulations. Such acts include transactions entered into by, or in the name of, the entity, or on its behalf, by those charged with governance, management or employees. Non-compliance does not include personal misconduct (unrelated to the

³ See ASA 200 (Revised and Redrafted), paragraph 15. [See footnote ◊.]

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business activities of the entity) by those charged with governance, management or employees of the entity.

Requirements

The Auditor's Consideration of Compliance with Laws and Regulations

12. As part of obtaining an understanding of the entity and its environment in accordance with ASA 315 (Revised and Redrafted),⁴ the auditor shall obtain a general understanding of:
 - (a) The legal and regulatory framework applicable to the entity and the industry or sector in which the entity operates; and
 - (b) How the entity is complying with that framework. (Ref: Para. A7)
13. The auditor shall obtain sufficient appropriate audit evidence regarding compliance with the provisions of those laws and regulations generally recognised to have a direct effect on the determination of material amounts and disclosures in the financial report. (Ref: Para. A8)
14. The auditor shall perform the following audit procedures to help identify instances of non-compliance with other laws and regulations that may have a material effect on the financial report:
 - (a) Enquiring of management and, where appropriate, those charged with governance, as to whether the entity is in compliance with such laws and regulations; and
 - (b) Inspecting correspondence, if any, with the relevant licensing or regulatory authorities. (Ref: Para. A9-A10)
15. During the audit, the auditor shall remain alert to the possibility that other audit procedures applied may bring instances of non-compliance or suspected non-compliance with laws and regulations to the auditor's attention. (Ref: Para. A11)
16. The auditor shall request management and, where appropriate, those charged with governance, to provide written representations that all known instances of non-compliance or suspected non-compliance with laws and regulations whose effects should be considered when

⁴ See ASA 315 (Redrafted), *Identifying and Assessing the Risks of Material Misstatement Through Understanding the Entity and Its Environment*, paragraph 11.

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preparing the financial report have been disclosed to the auditor.
(Ref: Para. A12)

17. In the absence of identified or suspected non-compliance, the auditor is not required to perform audit procedures regarding the entity's compliance with laws and regulations, other than those set out in paragraphs 12-16.

Audit Procedures When Non-Compliance Is Identified or Suspected

18. If the auditor becomes aware of information concerning an instance of non-compliance or suspected non-compliance with laws and regulations, the auditor shall obtain: (Ref: Para. A13)
- (a) An understanding of the nature of the act and the circumstances in which it has occurred; and
 - (b) Further information to evaluate the possible effect on the financial report. (Ref: Para. A14)
19. If the auditor suspects there may be non-compliance, the auditor shall discuss the matter with management and, where appropriate, those charged with governance. If management or, as appropriate, those charged with governance do not provide sufficient information that supports that the entity is in compliance with laws and regulations and, in the auditor's judgement, the effect of the suspected non-compliance may be material to the financial report, the auditor shall consider the need to obtain legal advice. (Ref: Para. A15-A16)
20. If sufficient information about suspected non-compliance cannot be obtained, the auditor shall evaluate the effect of the lack of sufficient appropriate audit evidence on the auditor's opinion.
21. The auditor shall evaluate the implications of non-compliance in relation to other aspects of the audit, including the auditor's risk assessment and the reliability of written representations, and take appropriate action. (Ref: Para. A17-A18)

Reporting of Identified or Suspected Non-Compliance

Reporting Non-Compliance to Those Charged with Governance

22. Unless all of those charged with governance are involved in management of the entity, and therefore are aware of matters involving identified or suspected non-compliance already

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communicated by the auditor,⁵ the auditor shall communicate with those charged with governance matters involving non-compliance with laws and regulations that come to the auditor's attention during the course of the audit, other than when the matters are clearly inconsequential.

23. If, in the auditor's judgement, the non-compliance referred to in paragraph 22 is believed to be intentional and material, the auditor shall communicate the matter to those charged with governance as soon as practicable.
24. If the auditor suspects that management or those charged with governance are involved in non-compliance, the auditor shall communicate the matter to the next higher level of authority at the entity, if it exists, such as an audit committee or supervisory board. Where no higher authority exists, or if the auditor believes that the communication may not be acted upon or is unsure as to the person to whom to report, the auditor shall consider the need to obtain legal advice.

Reporting Non-Compliance in the Auditor's Report on the Financial Report
(Ref: Para. Aus A18.1)

25. If the auditor concludes that the non-compliance has a material effect on the financial report, and has not been adequately reflected in the financial report, the auditor shall, in accordance with ASA 705 (Revised and Redrafted), express a qualified or adverse opinion on the financial report.⁶
26. If the auditor is precluded by management or those charged with governance from obtaining sufficient appropriate audit evidence to evaluate whether non-compliance that may be material to the financial report has, or is likely to have, occurred, the auditor shall express a qualified opinion or disclaim an opinion on the financial report on the basis of a limitation on the scope of the audit in accordance with ASA 705 (Revised and Redrafted).
27. If the auditor is unable to determine whether non-compliance has occurred because of limitations imposed by the circumstances rather than by management or those charged with governance, the auditor shall evaluate the effect on the auditor's opinion in accordance with ASA 705 (Revised and Redrafted).

⁵ See ASA 260 (Revised and Redrafted), *Communication with Those Charged with Governance*, paragraph 9.

⁶ See ASA 705 (Revised and Redrafted), *Modifications to the Opinion in the Independent Auditor's Report*, paragraphs 8-9.

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Reporting Non-Compliance to Regulatory and Enforcement Authorities

28. If the auditor has identified or suspects non-compliance with laws and regulations, the auditor shall determine whether the auditor has a responsibility to report the identified or suspected non-compliance to parties outside the entity. (Ref: Para's. A19-A20 and Aus A19.1)

Documentation

29. The auditor shall document identified or suspected non-compliance with laws and regulations and the results of discussion with management and, where applicable, those charged with governance and other parties outside the entity. (Ref: Para. A21)

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Application and Other Explanatory Material

Responsibility for Compliance with Laws and Regulations

Responsibility of Management for Compliance with Laws and Regulations
(Ref: Para. 3)

- A1. Management, with the oversight of those charged with governance, is responsible for ensuring that the entity's operations are conducted in accordance with laws and regulations. Laws and regulations may affect an entity's financial report in different ways: for example, most directly, they may affect specific disclosures required of the entity in the financial report or they may prescribe the applicable financial reporting framework. They may also establish certain legal rights and obligations of the entity, some of which will be recognised in the entity's financial report. In addition, laws and regulations may impose penalties in cases of non-compliance.
- A2. The following are examples of the types of policies and procedures an entity may implement to assist in the prevention and detection of non-compliance with laws and regulations:
- Monitoring legal requirements and ensuring that operating procedures are designed to meet these requirements.
 - Instituting and operating appropriate systems of internal control.
 - Developing, publicising and following a code of conduct.
 - Ensuring employees are properly trained and understand the code of conduct.
 - Monitoring compliance with the code of conduct and acting appropriately to discipline employees who fail to comply with it.
 - Engaging legal advisors to assist in monitoring legal requirements.
 - Maintaining a register of significant laws and regulations with which the entity has to comply within its particular industry and a record of complaints.

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In larger entities, these policies and procedures may be supplemented by assigning appropriate responsibilities to the following:

- An internal audit function.
- An audit committee.
- A compliance function.

Responsibility of the Auditor (Ref: Para. 4-8)

- A3. Non-compliance by the entity with laws and regulations may result in a material misstatement of the financial report. Detection of non-compliance, regardless of materiality, may affect other aspects of the audit including, for example, the auditor's consideration of the integrity of management or employees.
- A4. Whether an act constitutes non-compliance with laws and regulations is a matter for legal determination, which is ordinarily beyond the auditor's professional competence to determine. Nevertheless, the auditor's training, experience and understanding of the entity and its industry or sector may provide a basis to recognise that some acts, coming to the auditor's attention, may constitute non-compliance with laws and regulations.
- A5. In accordance with specific statutory requirements, the auditor may be specifically required to report, as part of the audit of the financial report, on whether the entity complies with certain provisions of laws or regulations. In these circumstances, ASA 700 (Revised and Redrafted)⁷ or ASA 800 (Revised and Redrafted)⁸ deal with how these audit responsibilities are addressed in the auditor's report. Furthermore, where there are specific statutory reporting requirements, it may be necessary for the audit plan to include appropriate tests for compliance with these provisions of the laws and regulations.

Considerations Specific to Public Sector Entities

- A6. In the public sector, there may be additional audit responsibilities with respect to the consideration of laws and regulations which may

⁷ See ASA 700 (Revised and Redrafted), *Forming an Opinion and Reporting on a Financial Report*, paragraph [to be inserted].

⁸ See ASA 800 (Revised and Redrafted) *Special Considerations—Audits of a Financial Report Prepared in Accordance with Special Purpose Frameworks*, paragraph [to be inserted].

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relate to the audit of a financial report or may extend to other aspects of the entity's operations.

The Auditor's Consideration of Compliance with Laws and Regulations

Obtaining an Understanding of the Legal and Regulatory Framework (Ref: Para. 12)

- A7. To obtain a general understanding of the legal and regulatory framework, and how the entity complies with that framework, the auditor may, for example:
- Use the auditor's existing understanding of the entity's industry, regulatory and other external factors;
 - Update the understanding of those laws and regulations that directly determine the reported amounts and disclosures in the financial report;
 - Enquire of management as to other laws or regulations that may be expected to have a fundamental effect on the operations of the entity;
 - Enquire of management concerning the entity's policies and procedures regarding compliance with laws and regulations; and
 - Enquire of management regarding the policies or procedures adopted for identifying, evaluating and accounting for litigation claims.

Laws and Regulations Generally Recognised to Have a Direct Effect on the Determination of Material Amounts and Disclosures in the Financial Report
(Ref: Para. 13)

- A8. Certain laws and regulations are well-established, known to the entity and within the entity's industry or sector, and relevant to the entity's financial report (as described in paragraph 6(a)). They could include those that relate to, for example:
- The form and content of the financial report;
 - Industry-specific financial reporting issues;
 - Accounting for transactions under government contracts; or

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- The accrual or recognition of expenses for income tax or superannuation costs.

Some matters may be relevant to specific assertions (for example, the completeness of income tax provisions), while others may be relevant to the financial report as a whole (for example, the required statements constituting a complete financial report). Non-compliance with other laws and regulations may result in fines, litigation or other consequences for the entity, the costs of which may need to be provided for in the financial report, but are not considered to have a direct effect on the financial report as described in paragraph 6(a).

Procedures to Identify Instances of Non-Compliance – Other Laws and Regulations (Ref: Para. 14)

- A9. Certain other laws and regulations may need particular attention by the auditor because they have a fundamental effect on the operations of the entity (as described in paragraph 6(b)). Non-compliance with laws and regulations that have a fundamental effect on the operations of the entity may cause the entity to cease operations, or call into question the entity's continuance as a going concern. For example, non-compliance with the requirements of the entity's license or other entitlement to perform its operations could have such an impact (for example, for a bank, non-compliance with capital or investment requirements). There are also many laws and regulations relating principally to the operating aspects of the entity that typically do not affect the financial report and are not captured by the entity's information systems relevant to financial reporting.
- A10. As the financial reporting consequences of other laws and regulations can vary depending on the entity's operations, the audit procedures required by paragraph 14 are directed to bringing to the auditor's attention instances of non-compliance with laws and regulations that may have a material effect on the financial report.

Non-Compliance Brought to the Auditor's Attention by Other Audit Procedures (Ref: Para. 15)

- A11. Audit procedures applied to form an opinion on the financial report may bring instances of non-compliance or suspected non-compliance with laws and regulations to the auditor's attention. For example, such audit procedures may include:
- Reading minutes;

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- Enquiring of the entity's management and in-house legal counsel or external legal counsel concerning litigation, claims and assessments; and
- Performing substantive tests of details of classes of transactions, account balances or disclosures.

Written Representations (Ref: Para. 16)

A12. Because the effect on the financial report of laws and regulations can vary considerably, written representations provide necessary audit evidence about management's knowledge of identified or suspected non-compliance with laws and regulations, whose effects may have a material effect on the financial report. However, written representations do not provide sufficient appropriate audit evidence on their own and, accordingly, do not affect the nature and extent of other audit evidence that is to be obtained by the auditor.⁹

Audit Procedures When Non-Compliance Is Identified or Suspected

Indications of Non-Compliance with Laws and Regulations (Ref: Para. 18)

- A13. When the auditor becomes aware of the existence of, or information about, the following matters, it may be an indication of non-compliance with laws and regulations:
- Investigations by regulatory organisations and government departments or payment of fines or penalties.
 - Payments for unspecified services or loans to consultants, related parties, employees or government employees.
 - Sales commissions or agent's fees that appear excessive in relation to those ordinarily paid by the entity or in its industry or to the services actually received.
 - Purchasing at prices significantly above or below market price.
 - Unusual payments in cash, purchases in the form of cashiers' cheques payable to bearer or transfers to numbered bank accounts.

⁹ See ASA 580 (Revised and Redrafted), *Written Representations*, paragraph 4.

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- Unusual transactions with companies registered in tax havens.
- Payments for goods or services made other than to the country from which the goods or services originated.
- Payments without proper exchange control documentation.
- Existence of an information system which fails, whether by design or by accident, to provide an adequate audit trail or sufficient evidence.
- Unauthorised transactions or improperly recorded transactions.
- Adverse media comment.

Matters Relevant to the Auditor's Evaluation (Ref: Para. 18(b))

- A14. Matters relevant to the auditor's evaluation of the possible effect on the financial report include:
- The potential financial consequences of non-compliance with laws and regulations on the financial report including, for example, the imposition of fines, penalties, damages, threat of expropriation of assets, enforced discontinuation of operations, and litigation.
 - Whether the potential financial consequences require disclosure.
 - Whether the potential financial consequences are so serious as to call into question the fair presentation of the financial report, or otherwise make the financial report misleading.

Audit Procedures (Ref: Para. 19)

- A15. The auditor may discuss the findings with those charged with governance where they may be able to provide additional audit evidence. For example, the auditor may confirm that those charged with governance have the same understanding of the facts and circumstances relevant to transactions or events that have led to the possibility of non-compliance with laws and regulations.
- A16. If management or, as appropriate, those charged with governance do not provide sufficient information to the auditor that the entity is in

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fact in compliance with laws and regulations, the auditor may consider it appropriate to consult with the entity's in-house legal counsel or external legal counsel about the application of the laws and regulations to the circumstances, including the possibility of fraud, and the possible effects on the financial report. When it is not considered appropriate to consult with the entity's legal counsel or when the auditor is not satisfied with the legal counsel's opinion, the auditor may consider it appropriate to consult the auditor's own legal counsel as to whether a contravention of a law or regulation is involved, the possible legal consequences, including the possibility of fraud, and what further action, if any, the auditor would take.

Evaluating the Implications of Non-Compliance (Ref: Para. 21)

- A17. As required by paragraph 21, the auditor evaluates the implications of non-compliance in relation to other aspects of the audit, including the auditor's risk assessment and the reliability of written representations. The implications of particular instances of non-compliance identified by the auditor will depend on the relationship of the perpetration and concealment, if any, of the act to specific control activities and the level of management or employees involved, especially implications arising from the involvement of the highest authority within the entity.
- A18. In exceptional cases, the auditor may consider whether, unless prohibited by law or regulation, withdrawal from the engagement is necessary when management or those charged with governance do not take the remedial action that the auditor considers appropriate in the circumstances, even when the non-compliance is not material to the financial report. When deciding whether withdrawal from the engagement is necessary, the auditor may consider seeking legal advice. If withdrawal from the engagement is prohibited, the auditor may consider alternative actions, including describing the non-compliance in an Other Matter(s) paragraph in the auditor's report.¹⁰

Reporting of Identified or Suspected Non-Compliance

Reporting Non-Compliance in the Auditor's Report on the Financial Report

- Aus A18.1 If, in the case of an audit conducted under the *Corporations Act 2001*, the auditor identifies non-compliance with an Australian Accounting Standard* or defects, irregularities

¹⁰ ASA 706 (Revised and Redrafted), *Emphasis of Matter Paragraphs and Other Matter Paragraphs in the Independent Auditor's Report*, paragraph 8.

* [sec. 308(2)].

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failures etc.[#], the auditor's report is required to include the prescribed information. 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.

Reporting Non-Compliance to Regulatory and Enforcement Authorities (Ref: Para. 28)

A19. The auditor's professional duty to maintain the confidentiality of client information may preclude reporting identified or suspected non-compliance with laws and regulations to a party outside the entity. However, the auditor's legal responsibilities vary by jurisdiction and, in certain circumstances, the duty of confidentiality may be overridden by statute, the law or courts of law. In some jurisdictions, the auditor of a financial institution has a statutory duty to report the occurrence, or suspected occurrence, of non-compliance with laws and regulations to supervisory authorities. Also, in some jurisdictions, the auditor has a duty to report misstatements to authorities in those cases where management and, where applicable, those charged with governance fail to take corrective action. The auditor may consider it appropriate to obtain legal advice to determine the appropriate course of action.

Aus A19.1 In certain circumstances, the auditor has a statutory responsibility to report non-compliances. For example, where the auditor has reasonable grounds to suspect a contravention of the *Corporations Act 2001*, the auditor is required to report to ASIC.* Establishing the appropriate authority to which 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.

Considerations Specific to Public Sector Entities

A20. A public sector auditor may be obliged to report on instances of non-compliance to governing authorities or to report them in the auditor's report.

[#] [sec. 308(3)]

^{*} See the Australian Securities & Investments Commission website for further information such as Practice Note 34 "*Auditors' obligations: reporting to ASIC*" which provides guidance on an auditor's responsibilities, under sec. 311, 601HG and 990K, to report suspected contraventions of the *Corporations Act 2001* to ASIC.

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Documentation (Ref: Para. 29)

A21. The auditor's documentation of findings regarding identified or suspected non-compliance with laws and regulations may include, for example:

- Copies of records or documents.
- Minutes of discussions held with management, those charged with governance or parties outside the entity.

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Conformity with International Standards on Auditing

This Auditing Standard conforms with International Standard on Auditing ISA 250 *Consideration of Laws and Regulations in an Audit of Financial Statements* (Redrafted), issued by the International Auditing and Assurance Standards Board (IAASB), an independent standard-setting board of the International Federation of Accountants (IFAC).

Paragraphs that have been added to this Auditing Standard (and do not appear in the text of the equivalent ISA) are identified with the prefix “Aus”.

Compliance with this Auditing Standard enables compliance with ISA 250.

Tables of Differences — ASA 250 (Revised and Redrafted) and Extant ASA 250

Underlying Standard

ISA 250 *Consideration of Laws and Regulations in an Audit of Financial Statements* (Revised and Redrafted) is used as the underlying Auditing Standard for the purpose of re-drafting this proposed Auditing Standard. The underlying Auditing Standard will be amended for the following matters:

- Australian Laws and Regulations (including the *Corporations Act 2001*);
- Changes considered necessary because this Auditing Standard is a legislative instrument; and
- Changes considered necessary in the public interest.

Summary of Main Differences — ASA 250 (Revised and Redrafted) and Extant ASA 250

The table below details the main differences (excluding editorial amendments) between this proposed Auditing Standard and extant ASA 250.

ASA 250 (Revised and Redrafted) Requirements not in Extant ASA

Item #	ASA (Revised & Redrafted) Para. #	ASA (Revised & Redrafted) Requirements	Commentary
Objectives			
1	10	The objectives of the auditor are: (a) To obtain sufficient appropriate audit evidence regarding compliance with the provisions of those laws and regulations generally recognised to have a direct effect on the determination of material amounts and disclosures in the financial report; (b) To perform specified audit procedures to help identify instances of non-compliance with other laws and regulations that may have a material effect on the financial report; and (c) To respond appropriately to non-compliance or suspected	New Objectives.

Item #	ASA (Revised & Redrafted) Para. #	ASA (Revised & Redrafted) Requirements	Commentary
		non-compliance with laws and regulations identified during the audit.	
Definitions			
2	11	<p>For purposes of this Auditing Standard, the following term has the meanings attributed below:</p> <p>Non-compliance means acts of omission or commission by the entity, either intentional or unintentional, which are contrary to the prevailing laws or regulations. Such acts include transactions entered into by, or in the name of, the entity, or on its behalf, by those charged with governance, management or employees. Non-compliance does not include personal misconduct (unrelated to the business activities of the entity) by those charged with governance, management or employees of the entity.</p>	<p>New definition.</p> <p>[See extant paragraph 7—equivalent meaning]</p>
The Auditor’s Consideration of Compliance with Laws and Regulations			
3	17	<p>In the absence of identified or suspected non-compliance, the auditor is not required to perform audit procedures regarding the entity’s compliance with laws and regulations, other than those set out in paragraphs 12-16.</p>	<p>Elevation of extant ASA Explanatory Guidance.</p> <p>[Elevation of para 26 (in the context of para 30)—equivalent Explanatory Guidance]</p>
Audit Procedures when Non-compliance is Identified or Suspected			
4	19	<p>If the auditor suspects there may be non-compliance, the auditor shall discuss the matter with management and, where appropriate, those charged with governance. If management, or as appropriate those charged with governance, do not provide sufficient information that supports that the entity is in compliance with laws and regulations and, in the auditor’s judgement, the effect of the suspected non-</p>	<p>Unshaded text is equivalent in meaning to the extant ASA Requirement (para 34).</p> <p>Shaded text is an elevation of Explanatory Guidance</p>

Item #	ASA (Revised & Redrafted) Para. #	ASA (Revised & Redrafted) Requirements	Commentary
		compliance may be material to the financial report, the auditor shall consider the need to obtain legal advice.	[Extant ASA 250 para 36 —equivalent Explanatory Guidance]
Reporting of Identified or Suspected Non-compliance <i>Reporting Non-compliance to Those Charged with Governance</i>			
5	22	<p>Unless all of those charged with governance are involved in management of the entity, and therefore are aware of matters¹ involving identified or suspected non-compliance already communicated by the auditor, <u>the auditor shall communicate with those charged with governance matters involving non-compliance with laws and regulations that come to the auditor’s attention during the course of the audit, other than when the matters are clearly inconsequential.</u></p> <p>¹ See ASA 260 (Revised and Redrafted), <i>Communication with Those Charged with Governance</i>, paragraph 9.</p>	<p>Text that is neither underlined nor shaded is new. However, it is consistent with the extant Requirements and Guidance included under the sub-heading “Relevant Persons” (paras 9-14).</p> <p>Underlined text is equivalent in meaning to extant Requirement para 40.</p> <p>Shaded text is elevation of equivalent extant ASA Explanatory Guidance.</p> <p>(Extant ASA 250 para 41—equivalent Explanatory Guidance)</p>
Matters to be Communicated			
6	24	<p>If the auditor suspects that management or those charged with governance are involved in non-compliance, the auditor shall communicate the matter to the next higher level of authority at the entity, if it exists, such as an audit committee or supervisory board. <u>Where no higher authority exists, or if the auditor believes that the communication may not be acted upon or is unsure as to the person to whom to report, the auditor shall consider the need to obtain legal advice.</u></p>	<p>Unshaded text is similar to extant Requirement at para 43.</p> <p>Shaded text is elevation of Extant ASA Explanatory Guidance.</p> <p>(Extant ASA 250 para 44—equivalent Explanatory Guidance)</p>

Item #	ASA (Revised & Redrafted) Para. #	ASA (Revised & Redrafted) Requirements	Commentary
<i>Reporting Non-compliance to Regulatory and Enforcement Authorities</i>			
7	28	If the auditor has identified or suspects non-compliance with laws and regulations, the auditor shall determine whether the auditor has a responsibility to report the identified or suspected non-compliance to parties outside the entity.	Elevation of extant ASA Explanatory Guidance [Extant ASA 250 para 49—equivalent Explanatory Guidance]

Extant ASA Requirements not in ASA 250 (Revised and Redrafted)

Item #	Extant ASA Para. #	Extant ASA Requirement	Commentary
Not Retained in ASA [Revised & Redrafted]			
Introduction			
1	5	When designing and performing audit procedures and in evaluating and reporting the results thereof, the auditor shall recognise that non-compliance by the entity with laws and regulations may materially affect the financial report.	ASA 250 (Revised and Redrafted) includes no direct equivalent. However, ASA 315 (Revised and Redrafted) <i>Identifying and Assessing the Risk of Material Misstatement Through Understanding the Entity and Its Environment</i> effectively covers the requirement for auditors to recognise/understand the causes, and potential causes, of misstatement. Furthermore, ASA 250 (Revised and Redrafted) has

Item #	Extant ASA Para. #	Extant ASA Requirement	Commentary
			<p>been rewritten, using positive expression of terms, that require the auditor to consider, and obtain evidence, that non-compliance with laws and regulations may result in material misstatement. See sub-heading “The Auditor’s Consideration of Compliance with Laws and Regulations” (paras 12 to 17).</p> <p>Omission of this extant Requirement will not result in a diminution of the auditor’s obligations under the Australian Auditing Standards.</p>
The Auditor’s Consideration of Compliance with Laws and Regulations			
2	18	<p>In accordance with ASA 200 <i>Objective and General Principles Governing an Audit of a Financial Report</i>, the auditor shall plan and perform the audit with an attitude of professional scepticism recognising that the audit may reveal conditions or events that would lead to questioning whether an entity is complying with laws and regulations.</p>	<p>Extant ASA Requirement covered in another Auditing Standard.</p> <p>See ASA 200 (Revised and Redrafted) <i>Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Australian Auditing Standards</i> [Ref: ASA 200 (Revised and Redrafted) paras 15 and A18-A22]</p>
3	24	<p>Further, the auditor shall obtain sufficient appropriate audit evidence about compliance with those laws and regulations generally recognised by the auditor to have an effect on the determination of material amounts and disclosures in the financial report. The auditor shall have a sufficient understanding of these laws and regulations in order to consider them when auditing the assertions related to the determination of the amounts to be recorded and the disclosures to be made.</p>	<p>Unshaded text covered by Requirement at para. 13 [ASA 250 Revised and Redrafted].</p> <p>Shaded text is not included in ASA 250 (Revised and Redrafted).</p> <p>The Requirement is implicit and reinforces the Requirement at para. 12 [ASA 250 Revised and Redrafted], which requires the auditor to “obtain a general understanding” [in accordance with ASA 315 (Revised and Redrafted)].</p>

Item #	Extant ASA Para. #	Extant ASA Requirement	Commentary
Auditor Unable to Complete the Engagement			
4	56	When the auditor receives an enquiry from the proposed auditor, pursuant to the relevant ethical requirements relating to the audit engagement, the existing auditor shall advise whether there are any professional reasons why the proposed auditor ought not to accept the appointment.	<ul style="list-style-type: none"> • This paragraph makes no specific reference to the impact of laws and regulations with respect to any consideration the auditor might undertake regarding withdrawal from an engagement; and • The requirement to comply with relevant ethical requirements relating to audit engagements is contained in ASA 200 (Revised and Redrafted). • APES 110 <i>Code of Ethics for Professional Accountants</i> Section 210, Professional Appointment, deals with this subject matter.
5	58	If permission from the client to discuss its affairs with the proposed auditor is denied by the client, that fact shall be disclosed to the proposed auditor.	Refer comments at Item # 4 (directly above).

Extant Appendices not in ASA 250 (Revised and Redrafted)

Item #	Extant ASA Para. #	Extant ASA Appendix	Commentary
Appendix 1			

Item #	Extant ASA Para. #	Extant ASA Appendix	Commentary
1	All	Understanding the Legal and Regulatory Framework Applicable to the Entity and the Industry	The essence of extant ASA Appendix 1 is contained within the Application and Other Explanatory Material of ASA 250 (Revised and Redrafted), albeit expressed differently. Application and Other Explanatory Material linked to the Requirement at para 12.
Appendix 2			
2	All	Examples of Indications that Non-compliance may have Occurred	The main contents of extant ASA Appendix 2 are included in ASA 250 (Revised and Redrafted) at para A13.

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