

Practice Note**Ethics and NOCLAR – A Toothless Tiger?**

Janek Ratnatunga¹

The *International Ethics Standards Board for Accountants (IESBA)* recently released the **Non-Compliance with Laws and Regulations (NOCLAR)** amending standard to the *Code of Ethics for Professional Accountants (the Code)* to redefine the accountants' role when laws or regulations are broken.

NOCLAR is supposedly an international ethics standard for auditors and other professional accountants. It sets out a framework to guide professional accountants in what actions to take in the public interest; when they become aware of a potential illegal act committed by a client or employer.

The standard applies to all Professional Accountants. However, it stipulates a different but proportionate approach for the following four categories of Professional Accountants: (a) Auditors; (b) Other Professional accountants in public practice; (c) Professional Accountants in business who are in senior-level roles—directors, officers, or senior employees in their employing organizations; and (d) Other Professional accountants in business — those with whom Professional Accountants may raise NOCLAR matters — including those in management positions or on boards of directors, and regulators or other public authorities.

NOCLAR came into effect globally on the 15th of July 2017.

Against this backdrop, it makes interesting reading the bad press accountants are receiving from all quarters of professional practice; teaching and research — and also the professional accounting bodies that are supposed to implement NOCLAR with their members.

The first example of very bad news was the news in January 2018 that India's capital market regulator had barred *Pricewaterhouse Coopers (PwC)* from auditing listed companies in the country for two years, after a probe into a nearly decade-old accounting fraud case in a software services company that became India's biggest corporate scandal.

This followed the admission in January 2009 by Mr. Ramalinga Raju, founder and former chairman of the erstwhile software services exporter Satyam Computer Services, that the firm had overstated earnings and assets for several years, in a fraud of more than \$1 billion sometimes referred to as "India's Enron".

Price Waterhouse was Satyam's auditor during the period in which the fraud was perpetrated. In its order, the Securities and Exchange Board of India (SEBI) said that any entities or firms practicing as chartered accountants in India under the brand and banner of PwC, shall not directly or indirectly issue any certificate of audit of listed companies, or their intermediaries that are registered with the regulator for a period of two years.

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"The network structure of operations adopted by the international accounting firm should not be used as a shield to avoid legal implications arising out of the certifications issued under the brand name of the network," SEBI said in a 108-page order.

In India, all audit functions within the group are conducted under the Price Waterhouse (PwC) brand, with a network of local firms operating under the banner. The broader PwC entity handles consulting, tax advisory and other businesses. Price Waterhouse's India network is made up of 11 chartered accountant firms with about 3,000 employees, and has around 75 listed companies as clients, a PW spokesman said.

In its order, SEBI said while PwC's "loose-knit network arrangement" enabled partner firms to derive the advantage of its global brand value but did not lay down any supervisory mechanisms to check the quality of the performance of the firms. The United States Securities and Exchange Commission and the Public Company Accounting Oversight Board had also pointed at failure of quality control in PwC India, it said.

If PwC loses its appeal, it will be interesting to see if the NOCLAR framework was used as a guide for the professional chartered accountants at PwC if they took any action in the public interest; when they became aware of a potential illegal act committed by a client or their own employer.

The second was the bad news story that four academics from *RMIT University* (Melbourne, Australia) have been stood down after allegedly charging students to sit online tests. RMIT's College of Business students were told they had to purchase textbooks written by their lecturers to access the mandatory tests. These textbooks were sold on a website which was found to be owned by an RMIT lecturer.

As part of the particular course in question, supposedly the Business Finance course, about 50 per cent of our tests are done online and they are done through that website. Students could only access their online tests by buying the textbook.

A student in the course had to buy a \$52 online textbook from the site which was written by his/her lecturer. When students bought a book from the site they received a password, which they then used to access the tests. When a student asked their lecturer if there was any other way of obtaining the test, the answer was, "no, you have to buy the textbook'." Many students only bought a textbook from the site so that they could sit their tests. Students' grades were placed behind a paywall and their money went into the course coordinator's pocket, and not RMIT's.

In November 2017, RMIT University on Thursday said the academics in question have been dismissed following an independent audit. The audit was done by PricewaterhouseCoopers.

With regards to NOCLAR, as it covers Professional Accountants in business who are in senior-level roles — directors, officers, or senior employees in their employing organizations — it surely covers accounting academics such as professors, senior lecturers etc, who are members of professional accounting bodies? If the unethical practices of the lecturers were known to such senior accounting academics, I believe they had an obligation to report such in the public interest.

The third was the news story in November 2017 that university research projects which attract taxpayers funding will be given a greater level of scrutiny to make sure they directly tackle some of the issues facing Australians. The Australian Government announced that they would move to ensure university research is having a *real-life impact* for the \$3.5 billion which Australian taxpayers invest in research.

For example, current research projects which have attracted almost \$500,000 in taxpayer funds at Melbourne universities include a study of how *“male and female artisans and producers of manufactured goods in the 18th century played a largely forgotten role in transferring applied knowledge between European centres”*. In another example, more than \$180,000 went towards a group of Melbourne University academics to analyse *“shifts and changes in women’s language, discourse and identities by examining ethnographic data of a longitudinal research project into working-class women’s life trajectories in Kobe, Japan”*.

An RMIT project was given \$175,000 to study *“South African asbestos and gold miners’ political and legal struggles for social justice”*.

Unfortunately, examples of accounting research that has no impact on professional practice is more the norm than the exception in the western academic world. In December 2012, I wrote an article titled *“Ivory Towers and Legal Powers: Attitudes and Behaviour of Town and Gown to the Accounting Research-Practice Gap”* in the *Journal of Applied Management Accounting Research* (Vol. 10, No.2); where I demonstrated that accounting academic research: (1) has failed to lead practice in contrast to medical research; (2) lacks innovation; (3) has failed to arrive at solutions to the fundamental issues in accounting practice; and (4) has no demand outside of the university context.

A Productivity Commission report a week before the government announcement found that universities were too focused on publishing research, with the prospects of staff depending more on their publishing resume than teaching record. The commission earlier found in 2011 that 80 per cent staff wanted to *“raise their publication profile”* or *“find more time for research”*. It said university rankings were more driven towards the quality of staff research instead of teaching performance.

Hopefully this will change under the new measures from next year, where Australian universities will have to make clear how much income has been made by commercialising research and how much income is made for each researcher. Institutions will also be required to make detailed explanations — in plain English — of how their research has had an impact.

With regards to NOCLAR, as many accounting researchers are members of professional accounting bodies, do they have an obligation to report research projects that they become aware of that have no conceivable impact on professional practice, so that Australian Taxpayers funds are saved in the public interest? I cannot see it happening.

The last example is the big one. Does NOCLAR apply to the very professional accounting bodies that are supposed to impose ethical standards on their members and police NOCLAR? The case in point is the enormous damage done to the brand CPA Australia by the professional accountants who were part of its former board. I have covered the issue of the out-of-control CPA culture on this forum before, so I won’t dwell on it.

However, where NOCLAR is concerned, the thousands of CPA members who raised issues of excessive CEO and Directors’ remunerations; of ordinary members being shut-out of Board appointments; and of AGMs being moved to Singapore were labelled *“rouge members”*.

Now that these *“rouge members”* have been vindicated; and proved to have genuine concerns that fall under the NOCLAR framework, the true test of real change at CPA Australia will be if the new board take legal action against those responsible for breaches of director’s duties (if any).

Any professional accountant should be able to even report any concerns they have with the current board of CPA Australia, and be taken seriously. Otherwise NOCLAR is a toothless tiger!

