

## 2.5.5 An auditor's obligation to notify ASIC

### Introduction

Sections 311, 601HG and 990K of the *Corporations Act 2001* (the Act) requires an auditor conducting an assurance engagement subject to the Act, to notify or report to the Australian Securities and Investment Commission (ASIC) of contraventions and suspected contraventions under those sections of the Act. Section 601HG refers to audits of registered schemes compliance plans which are not applicable to the Audit Office of NSW (the Office) but has been included for completeness.

Reporting obligations apply to the Auditor-General as the Auditor-General is deemed to be a registered company auditor for the purposes of section 1281 of the Act.

### Policies and guidance

#### Responsibilities of audit teams

- Audit team members who conduct audits under the Act must be alert to matters which indicate contraventions of the Act. Engagement Controllers (ECs) must immediately bring contraventions, suspected contraventions and attempts to unduly influence persons involved in the conduct of an audit to the attention of the:**
  - Auditor-General (A-G) and the Deputy Auditor-General (DA-G)**
  - Executive Director, Professional Services.**
- Reporting to ASIC of breaches to the Act must be made by the:**
  - A-G (or DA-G as delegate) for section 311**
  - A-G for sections 601HG** (not applicable for the Office but included for completeness) **and 990K** (only for those holding an Australian Financial Services license).

**The EC must draft the letter for the A-G / DA-G promptly, to allow reporting within the time limits imposed by the Act.**
- ASIC publication [ASIC Regulatory Guide 34 'Auditor's obligations: Reporting to ASIC'](#) (ASIC Guide) provides guidance to help auditors comply with their obligations under sections 311, 601HG and 990K of the Act to report contraventions and suspected contraventions to ASIC. The Guide includes examples of suspected contraventions and how they may be dealt with by the auditor.
- Where there is notification to ASIC of a contravention or suspected contravention of the Act (identified from the previous year or during the current year), audit teams should consider the underlying cause of the contravention or suspected contravention, and the impact to the audit, if any, for the current year audit.
- Audit teams must document in the audit file how the contravention or suspected contravention, and any reporting to ASIC, has been communicated to those charged with governance.**
- Where reporting to ASIC is required, teams should import and complete the template 'Notification to ASIC of contraventions of the *Corporations Act 2001*' from TeamStore.

## Types of contraventions that must be reported to ASIC

### Matters to report under sections 311 and 601HG of the Act

7. **Significant contravention** – the A-G must notify ASIC as soon as practicable, and in any case, within 28 days of becoming aware of circumstances that provide reasonable grounds to suspect a significant contravention of the Act.
8. The above-mentioned ASIC Guide helps the auditor determine whether a suspected contravention is significant:
  - a) paragraph RG34.29: the overarching factors for auditors to consider – such as level of penalty, effect of contravention on the financial position, any other relevant matter.
  - b) paragraph RG34.32: the type of contraventions – such as insolvent trading, breach of accounting standards or the ‘true and fair view’ requirements, suspected dishonest or misleading or deceptive conduct, breach causing significant loss
  - c) paragraph RG34.33: additional specific factors – such as whether the contravention was widespread or within a discrete department/branch of the audited entity, systemic or continuing, seniority of people involved, any previous contraventions by the audited entity of similar nature.

Auditors should be aware that the above factors and types are not exhaustive, so will need to apply professional judgement on whether a suspected contravention is significant and therefore requires reporting. The appendix to the ASIC Guide provides useful examples of significant contraventions.

**Contravention not significant** – the A-G must notify ASIC as soon as practicable, and in any case, within 28 days of becoming aware of circumstances that provide reasonable grounds to suspect a contravention of the Act that is not significant, has not, will not or cannot be adequately dealt with by commenting on it in the Independent Auditor’s Report or bringing it to the attention of the directors. The appendix to the ASIC Guide provides useful examples of non-significant contraventions.

9. **Attempt at undue influence** – the A-G must notify ASIC as soon as practicable, and in any case, within 28 days of becoming aware of circumstances that amount to an attempt to unduly influence, coerce, manipulate or mislead a person involved in the conduct of the audit, or otherwise attempt to interfere with the proper conduct of the audit.

### Matters to report under 990K – Contravention against Australian Financial Service (AFS) License

The A-G must lodge a written report to ASIC within 7 days of becoming aware of matters that constitute or may constitute contraventions or suspected contraventions of the licensee’s AFS licence conditions or specified provisions of the Act. Specific requirements are detailed in section 990K(2) of the Act. In addition, section 990K(1) of the Act requires a copy of the report also be sent to the licensee, and to each licensed market (if any) and each licensed clearing and settlement facility (if any) in which the licensee is a participant.

## Effective date

Issued August 2023 and effective August 2023.