

Constituents' Submissions – Specific Comments
Exposure Draft 05/12: APES 305 Terms of Engagement

Note: General comments relating to the Exposure Drafts are addressed in a separate table. This table excludes minor editorial changes.

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
1	1	GLW	<p>1. PAGE 6: “1. Scope and application.”: re-number this section from 1 to 2; introduce a new section 1 as follows:</p> <p style="padding-left: 20px;">1. “Objective: “The objective of this Standard is to set the minimum terms and conditions that are to be agreed between a Client and a Member in Practice for an Engagement.”</p> <p>COMMENT: It is preferable to make the Standard as self-contained as possible. Refer change to 1.8 (to be 2.8) below.</p>
2	1	GLW	<p>2. PAGE 6: “1. Scope and application”: amend 1.8 to replace “Objective” for “spirit” so it reads instead “In applying....but also by the Objective of the Standard and the Code.”.</p> <p>COMMENT: “spirit” is ambiguous and undefined. The aim here is to avoid the situation arising where the CEO takes the literal wording of the agreement is to be the sole guide in interpretation, and derides speculating on intent or spirits.</p>
3	2	Deloitte	<p>Whilst not a change in the proposed standard, our only observation on proposed APES 305 is its use of the term “Engagement Document”.</p> <p>Firstly, we believe that it is not necessary to have a special term “Engagement Document” given that it is, in essence, the “Terms of Engagement”. APES 305 defines Engagement Document as “<i>the document ...in which the Terms of the Engagement are specified in a written form</i>”. Terms of Engagement is defined as “<i>the terms and conditions that are agreed between the Client and the Member in Public Practice for the Engagement</i>”. Section 3.1 of APES 305 states that a “<i>Member in Public Practice shall document and communicate to the Client the Terms of Engagement</i>” (emphasis added).</p> <p>Secondly, we believe that there may be a risk that users of the APES standards may be confused as to what “Engagement Document” means and may interpret it as referring to the working papers prepared for particular engagements (as opposed to the terms and conditions). In this regard, we note that APES 320 <i>Quality Control for Firms</i> makes extensive rules about “Engagement Documentation”, which is defined as “<i>the record of work performed, results obtained, and conclusions the Member</i></p>

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			<p><i>in Public Practice reached (terms such as “working papers” or “workpapers” are sometimes used)”</i>.</p> <p>Further, “Documentation” is a distinct subject matter canvassed in the majority of the APES standards and generally separated from rules around engagement. Finally, it is only APES 315 <i>Compilation of Financial Information</i> and APES 350 <i>Participation by Members in Public Practice in Due Diligence Committees in connection with a Public Document</i> which incorporate the term “Engagement Document” in their requirements, while others discuss “Terms of Engagement” (APES 220, 225, 330 and 345).</p> <p>Overall, we believe it would be clearer and less likely to cause confusion if the term “Terms of Engagement” when referring to the terms and conditions that are agreed between the Client and the Member regarding an engagement.</p>
4	4	GLW	<p>3. PAGE 8: “4. General contents of an Engagement Document”: Introduce a new sub-section “4.5 <i>Exclusions</i>” and re-number the other sub-sections:</p> <p>“4.5 <i>Exclusions</i>: Define work which is agreed by the Client to be excluded from the Engagement. For example in a Compilation & Tax Engagement it may be agreed in advance that the Scope will not include Audit or Assurance; Valuations; Insolvency; Compilation and Tax for subsidiaries in another country; Management Accounting; Review of Internal Controls; work as a Director or Company Secretary of the Company.”</p> <p>COMMENT: It is preferable to clarify the nature of what the Engagement does not include as well as what it does include. This is not aimed to restrict the Engagement from including at any time in the future that work that is listed as Excluded at present. The aim is just to limit the Scope in the current Engagement with the currently agreed charging rates. The exercise will clarify the legal position, and may be useful as a marketing tool in discussion with the Client as it may trigger a request for widening the Scope.</p>
5	4	GLW	<p>4. PAGE 9: “4. General contents of an Engagement Document”: Introduce a new sub-section “4.12 <i>Response to Discovery of Fraud or other Illegal Activity</i>” following new numbering arising in 2 above and before sub-section on <i>Confirmation by the Client</i>.</p> <p>“4.12 <i>Response to Discovery of Fraud or other Illegal Activity</i>: It is not ordinarily an objective or responsibility of the Member in Public Practice to discover fraud or other illegal activity in the Client organisation and systems. It is preferable to agree with the Client in advance the action to be taken if, during the course of the Engagement, the Member suspects such activity.</p>

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			<p>The Member would be expected to undertake to document to the Client the findings on any fraud or other illegal activity. It is also preferable for the Member to document that, in the event that fraud or other illegal activity is discovered or confirmed, and the fraud or illegal activity is on a scale that affects the public interest, or it appears to the Member that it may affect the public interest, then the Member retains the right to independently report the fraud or illegal activity to the appropriate government authorities.”</p> <p>COMMENT: Fraud is reported to be at a significant level in Australia and overseas countries. It is important to maintain a focus on preventative controls, and on action to be taken in the event that fraud or other illegal activity is discovered. Members in Public Practice should not be accomplices, nor should they be seen in any way to be accomplices. This proposal is consistent with the thrust of the ED from IESBA on “Responding to a Suspected Illegal Act” dated August 2012, but with more flexibility at this stage on disclosure. A factor, in not yet advocating more rigorous requirements on Australian accountants, is that if the Engagement includes work overseas then the judiciary and police in some developing countries may not be reliable, and may not protect Australian residents who do report fraud or illegal activity to authorities.</p>
6	4	GLW	<p>5. PAGE 9: “4. General contents of an Engagement Document”: Introduce a new sub-section “4.13 <i>Limitation of Liability</i>” following new numbering arising in 2 and 3 above and before sub-section on <i>Confirmation by the Client</i>.</p> <p>“4.13 <i>Limitation of Liability</i>(where appropriate) : A Member in Public Practice who is a participant in a scheme under Professional Standards Legislation shall document in Terms of Engagements that the Member’s liability may be limited under the scheme, and shall comply with the Legislation and the relevant obligations imposed (e.g. insurance, business assets, risk management, quality control, etc).”</p> <p>COMMENT: This picks up section 6 Limitation of Liability succinctly at an appropriate point in the Engagement Terms documentation.</p>
7	5	AUASB	<p>We understand that the proposed changes to APES 305 are in response to stakeholders concerns over the possible misinterpretation of the term “recurring engagements”. We consider that the proposed amendments assist members in public practice in understanding the definition of a “recurring engagement”, as well as the associated documentation requirements for the terms of such an engagement. We also believe that the proposed changes are consistent with existing requirements and related guidance contained in Australian Standard ASA 210 <i>Agreeing the Terms of Audit Engagements</i> (Compiled).</p>

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8	5.1	EY	<p>Paragraph 5.1</p> <p>We do not believe that it is necessary or desirable to mandate a list of features that are required in order for an engagement to be determined to be a recurring engagement. Not all features on the list will apply to all engagements; there may be engagements where additional features are appropriate. The list would better act as guidance and, as such, the Board may wish to consider using words such as “would typically contain some or all of the following features”.</p>
9	5.2	JAB	<p>Paragraph 5.2 of the standard lists the factors that may affect the decision to reissue an Engagement Document. In this paragraph parts (b) and (c) state that these factors include:</p> <p>(b) any significant changes in the Terms of Engagement; (c) any significant changes in the scope of the Professional Services to be provided;</p> <p>We are of the opinion that in order to capture the ends, as well as the means of the engagement it is more appropriate to refer to:</p> <p>(b) any significant changes in the Engagement (c) any significant changes in the Terms of Engagement.</p> <p>Referring to any significant changes in the Engagement instead of the scope of the Professional Services to be provided would capture any changes in the scope of the Professional Services but also capture any other changes in the provision of Professional Services beyond changes in scope. An example of such changes might be a change in key client personnel. This will also be more consistent with paragraph 4.4 which refers to the Scope of the Engagement.</p>
10	5.3	JAB	<p>Paragraph 5.3 touches on the issue of when a new engagement is understood to have commenced. Our view is that this standard does not need to address that issue, because its scope is properly concerned with the requirement to document and communicate the terms of the engagement to clients, rather than with the interpretation of start dates. Therefore, we consider, that paragraph 5.3 is not required.</p> <p>Further, there has been debate within the professional accounting bodies about whether recurring engagements have a new start date on the occasion of their recurrence. While paragraph 5.3 might add to that debate, it does not clarify the issue. Rather it confirms the largely undisputed view that a new engagement commences on the issuing of a new engagement document. It also implies by corollary that a new engagement does not commence unless a new engagement document is issued for a</p>

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			<p>recurring engagement, something which we think conflicts with the description of recurring engagements and our views.</p> <p>The Institute and CPA Australia are now of the view that the interpretation of start dates for engagements is not required to be dealt with within the context of the professional standard dealing with Terms of Engagement. Accordingly we consider that paragraph 5.3 should be removed.</p>
11	5.3	EY	<p>Paragraph 5.3</p> <p>We believe this paragraph is unnecessary, and should be deleted. A recurring engagement is not the same as a continuous engagement. It will often comprise a number of separate engagements delivered under a single Engagement Document. For example, the annual audit fits readily into the definition of a recurring engagement. However, each annual audit would be viewed as (and is) a new engagement. Whilst this paragraph is not incorrect, it may give rise to an inference that new engagements do not arise under an existing recurring engagement.</p>

Staff Instructions:

- Comments of a “general” nature should be dealt with first, followed by paragraph specific comments.
- Respondents’ comments must be copied verbatim into this table.
- Comments should be dealt with in paragraph order, not respondent order.
- Use acronyms only for respondents. Update the attached table with details of additional respondents.

RESPONDENTS

1	JAB	Joint Accounting Bodies
2	EY	Ernst & Young
3	GLW	GLW Analysis Services Pty Ltd
4	Deloitte	Deloitte Touche Tohmatsu
5	AUASB	Auditing and Assurance Standards Board