

Proposed Standard: APES 305 *Terms of Engagement*

[Supersedes APES 305 *Terms of Engagement* issued in August 2019]

EXPOSURE DRAFT
ISSUED:

02/20
June 2020

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Commenting on this Exposure Draft

This Exposure Draft, Proposed Standard APES 305 *Terms of Engagement*, was developed and approved by the Accounting Professional & Ethical Standards Board Limited (APESB).

The proposals in this Exposure Draft may be modified in light of comments received before being issued in final form. Comments are requested by **27 July 2020**.

Comments should be addressed to:

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APESB would prefer that respondents express a clear overall opinion on whether the proposed amendments, as a whole, are supported and that this opinion be supplemented by detailed comments, whether supportive or critical, on any matter. APESB regards both critical and supportive comments as essential to a balanced view of the proposed amendments.

Respondents are asked to submit their comments electronically through the APESB website, using the link <https://www.apesb.org.au/apesb-exposure-drafts-open-for-comment>.

Please submit comments in both a PDF and Word file. All comments will be considered a matter of public record and will ultimately be posted on the website www.apesb.org.au.

APESB prefers that comments are submitted via its website. However, if there are practical difficulties, comments can also be sent to sub@apesb.org.au or mailed to the address noted above.

Obtaining a copy of this Exposure Draft

This Exposure Draft is available on the APESB website: www.apesb.org.au

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Reasons for issuing Exposure Draft 02/20

In November 2017, APESB commenced a project to review the effectiveness and use by Members in Public Practice of APES GN 30 *Outsourced Services* (APES GN 30) in view of the business risks associated with outsourcing and recent technological developments ([APES GN 30 Project](#)). The project has highlighted that APES GN 30 remains relevant and useful to members.

However, APESB recognises that in providing quality and ethical professional services to clients, it is important that clients understand the nature of the professional services including, any outsourced services utilised, and any disclosure of confidential client information outside of the firm (including cloud computing). As such, APESB proposes to revise APES 305 *Terms of Engagement* (APES 305) issued in August 2019 to require the disclosure of certain information to clients, which is summarised in the following section.

Key requirements and guidance in Exposure Draft 02/20

The key revisions to APES 305 proposed in ED 02/20 include the addition of:

- Definitions (from APES GN 30 *Outsourced Services* (APES GN 30)) for cloud computing, material business activity, outsourced service, outsourced service provider, outsourcing and outsourcing agreement;
- a requirement paragraph on the obligations of members in public practice under Subsection 114 *Confidentiality* of the Code including to not disclose confidential client information to third parties without proper and specific authority (paragraph 3.4);
- application material highlighting the impact on risk and management of the client's confidential information when utilising outsourced services or cloud computing and to refer members in public practice to APES GN 30 for guidance in determining when a service is an outsourced service and professional and ethical obligations in respect of outsourced services (paragraph 3.5);
- a requirement that where a member in public practice utilises outsourced services in delivering professional services to a client that the member must document and communicate the details of the outsource service provider, the geographic location of where the outsourced service will be performed and the nature and extent of outsourced services (paragraph 3.6); and
- application material that when cloud computing is utilised that the member in public practice should document and communicate the details of the cloud computing provider, the geographic location of the cloud computing, where client data will be stored and the nature and extent of the cloud computing (paragraph 3.7).

Stakeholders should not rely on this summary in the Exposure Draft to determine what changes, if any, are required to their current practices, policies or methodologies. Stakeholders should read the entire Exposure Draft to determine the significance of its proposals.

Should the changes proposed to APES 305 in this Exposure Draft be implemented, APESB will consider whether a subsequent exposure draft proposing necessary changes to APES GN 30 is required.

Proposed Operative Date

It is proposed that this Standard will be effective for engagements commencing on or after 1 January 2021.

Early adoption of the revised Standard will be permitted.

APES 305 Terms of Engagement

[Supersedes APES 305 Terms of Engagement issued in [August 2019](#)]

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REVISED: [\[Date\]](#)

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Conformity with International Pronouncements

Appendix 1: Summary of revisions to the previous APES 305 (Issued in [August 2019](#))

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1. Scope and application

- 1.1 The objectives of APES 305 *Terms of Engagement* are to specify a **Member in Public Practice's** professional and ethical obligations in respect of:
- documentation and communication of the **Terms of Engagement** to a **Client**;
 - matters to be included in an **Engagement Document**;
 - circumstances in which an **Engagement Document** should be reissued in respect of a recurring **Engagement**; and
 - limitation of liability schemes.
- 1.2 Accounting Professional & Ethical Standards Board Limited (APESB) has revised professional standard APES 305 *Terms of Engagement* (**the Standard**), which is effective for **Engagements** commencing on or after 1 January 2021, and supersedes APES 305 *Terms of Engagement* issued in **August 2019**. Earlier adoption of this Standard is permitted.
- 1.3 APES 305 sets the standards in respect of **Terms of Engagement** for **Members in Public Practice** in the provision of quality and ethical **Professional Services** to **Clients**. The mandatory requirements of this Standard are in **bold-type**, preceded or followed by discussion or explanations in normal type. APES 305 should be read in conjunction with other professional duties of **Members**, and any legal obligations that may apply. In some instances there are specific standards applicable to **Members in Public Practice** issued by other standard setting bodies or specific requirements of statutes in respect of **Terms of Engagement**, for example ASA 210 *Agreeing the Terms of Audit Engagements* issued by the Auditing and Assurance Standards Board which governs audit **Engagements**. Compliance with these other standards or statutes should result in compliance with APES 305.
- 1.4 **Members in Public Practice in Australia shall follow the mandatory requirements of APES 305 when they provide Professional Services to Clients.**
- 1.5 **Members in Public Practice practising outside of Australia shall follow the provisions of APES 305 to the extent to which they are not prevented from so doing by specific requirements of local laws and/or regulations.**
- 1.6 **Members in Public Practice shall comply with other applicable Professional Standards and be familiar with relevant guidance notes when providing Professional Services. All Members shall comply with the fundamental principles outlined in the Code.**
- 1.7 The Standard is not intended to detract from any responsibilities which may be imposed by law or regulation.
- 1.8 All references to **Professional Standards**, guidance notes and legislation are references to those provisions as amended from time to time.
- 1.9 In applying the requirements outlined in APES 305, **Members in Public Practice** should be guided not merely by the words but also by the spirit of this Standard and the **Code**.
- 1.10 In this Standard, unless otherwise specified, words in the singular include the plural and vice versa, words of one gender include another gender, and words referring to persons include corporations or organisations, whether incorporated or not.

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2. Definitions

Defined terms are shown in the body of the Standard in title case.

For the purpose of this Standard:

Client means an individual, firm, entity or organisation to whom or to which **Professional Activities** are provided by a **Member in Public Practice** in respect of **Engagements** of either a recurring or demand nature.

Cloud Computing means the use of computing resources that are delivered as a service over the internet. Cloud Computing entrusts remote services with a user's data, software and computation.

Code means APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)*.

Engagement means an agreement, whether written or otherwise, between a **Member in Public Practice** and a **Client** relating to the provision of **Professional Services** by a **Member in Public Practice**. However, consultations with a prospective **Client** prior to such agreement are not part of an Engagement.

Engagement Document means the document (i.e. letter, agreement or any other appropriate means) in which the **Terms of Engagement** are specified in **Writing**.

Firm means:

- (a) A sole practitioner, partnership, corporation or other entity of professional accountants;
- (b) An entity that controls such parties, through ownership, management or other means;
- (c) An entity controlled by such parties, through ownership, management or other means; or
- (d) An Auditor-General's office or department.

Material Business Activity means an activity of an entity or a Firm that has the potential, if disrupted, to significantly impact upon the quality, timeliness or scale of **Professional Services** offered by a **Member in Public Practice** or received by a **Client**. Whether a business activity is a **Material Business Activity** should be based on an assessment of the risks associated with the nature and size of the activity and the business activity's relevance to the **Professional Service** delivered to the **Client**. **Material Business Activities** exclude the internal activities of a Firm such as record storage or software application hosting where these internal activities merely support the **Professional Services** delivered to the **Client**.

Member means a member of a **Professional Body** that has adopted this Standard as applicable to their membership, as defined by that **Professional Body**.

Member in Public Practice means a **Member**, irrespective of functional classification (for example, audit, tax or consulting) in a **Firm** that provides **Professional Services**. This term is also used to refer to a **Firm** of **Members in Public Practice** and means a practice entity and a participant in that practice entity as defined by the applicable **Professional Body**.

Outsourced Service means a service involved in Outsourcing a **Material Business Activity** to an **Outsourced Service Provider**.¹

Outsourced Service Provider means an entity including a person that is providing services in accordance with an **Outsourcing Agreement**. The **Outsourced Service Provider** may not be located in the same country as the **Member in Public Practice** or the **Client** and may not even be a **Member**.

¹ Appendix 1 to APES GN 30 *Outsourced Services* includes a series of examples of **Outsourced Services** including considerations relevant to what is a **Material Business Activity**.

Outsourcing means an activity where an entity or a Firm engages a party, on a continuing basis, to perform a business activity that is being, has been, or could be performed by that entity or Firm. Outsourcing can be from a Client to a Member in Public Practice or from a Member in Public Practice to another service provider to assist with the delivery of a Professional Service to a Client.

Outsourcing Agreement means the document (i.e. letter, agreement or any other appropriate means) in which the terms and conditions of an Outsourced Service are set out.

Professional Activity means an activity requiring accountancy or related skills undertaken by a Member, including accounting, auditing, tax, management consulting, and financial management.

Professional Bodies means Chartered Accountants Australia and New Zealand, CPA Australia and the Institute of Public Accountants.

Professional Services means Professional Activities performed for Clients.

Professional Standards means all standards issued by Accounting Professional & Ethical Standards Board Limited and all professional and ethical requirements of the applicable Professional Body.

Terms of Engagement means the terms and conditions that are agreed between the Client and the Member in Public Practice for the Engagement.

Writing means a mode of representing or reproducing words in a visible form and includes words in an electronic format capable of being converted to printed text.

3. Terms of Engagement for Professional Services

3.1 A Member in Public Practice shall document and communicate to the Client the Terms of Engagement.

3.2 The practice of documenting and communicating the Terms of Engagement should ensure that there is a clear understanding between the Client and the Member in Public Practice regarding the Terms of Engagement.

3.3 It is in the interests of both the Client and Member in Public Practice that the Member documents and communicates the Terms of Engagement, preferably before the Engagement commences, to avoid misunderstandings with respect to the Engagement.

Confidentiality

3.4 A Member in Public Practice who acquires confidential information in the provision of Professional Services to a Client shall comply with Subsection 114 Confidentiality of the Code including not disclosing confidential information to a third party without proper and specific authority from the Client, unless there is a legal or professional duty or right to disclose.

Utilising Outsourced Services or Cloud Computing

3.5 Utilising Outsourced Services or Cloud Computing in the provision of Professional Services to a Client impacts the amount of risk associated with the Professional Service being delivered and the management of the Client's confidential information. Members in Public Practice should refer to APES GN 30 Outsourced Services to determine whether a service is an Outsourced Service (which may include Cloud Computing) and for guidance in relation to professional and ethical obligations in respect of Outsourced Services.

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~~3.6 Where a Member in Public Practice utilises Outsourced Services in the provision of Professional Services to a Client, to comply with paragraph 3.1, the Member shall document and communicate the details of the Outsourced Service Provider, the geographical location of where the Outsourced Services will be performed and the nature and extent of the Outsourced Services to be utilised.~~

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~~3.7 Where a Member in Public Practice utilises Cloud Computing in the provision of Professional Services to a Client which is not an Outsourced Service, the Member in Public Practice should document and communicate to the Client the details of the Cloud Computing provider, the geographical location of where the Cloud Computing will be performed, where Client data will be stored and the nature and extent of the Cloud Computing to be utilised.~~

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Engagement Document

~~3.8 A Member in Public Practice shall document the Terms of Engagement in the Engagement Document.~~

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~~3.9 The Engagement Document need not be in the form of a letter or agreement. For example, a standard format handout, brochure, leaflet or electronic communication is also acceptable.~~

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~~3.10 The objectives and scope of some Engagements are established by law. Documentation of the Terms of Engagement cannot reduce obligations imposed by law. Where the Engagement is undertaken under statute, a Member in Public Practice should refer to the applicable provisions of the law in the Engagement Document.~~

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4. General contents of an Engagement Document

4.1 The following is a guide to matters that should, for most Engagements, be considered for inclusion in an Engagement Document. Engagement Documents will vary according to the nature of the Engagement and the terms of appointment of the Member in Public Practice. The matters referred to below in paragraphs 4.2 to 4.10 should therefore be varied to meet the individual requirements and circumstances of each Engagement.

4.2 *Purpose:* The Engagement Document should explain that its purpose is to set out and confirm the understanding of the Member in Public Practice of the Terms of Engagement.

4.3 *Objectives of the Engagement:* A brief summary of the objectives of the Engagement including reference to the fact that:

- (a) procedures to be performed will be limited exclusively to those related to the Engagement;
- (b) neither an audit nor a review will be conducted and, accordingly, no assurance will be expressed (if applicable); and
- (c) unless otherwise agreed, the Engagement cannot be relied upon to disclose irregularities, including fraud, other illegal acts and errors that may occur.

4.4 *Scope of the Engagement:* Pertinent details of such matters as:

- (a) time periods covered by the Engagement;
- (b) period of appointment and time schedules;
- (c) references to any legislation, regulations, Professional Standards, accounting or auditing and assurance standards that may be relevant to the Engagement;

- (d) any limitations on the conduct of the [Engagement](#) including scope limitations and limitations arising from legal or professional and ethical requirements;
- (e) [Client](#) operations or procedures to be included in the [Engagement](#); and
- (f) details of information to be provided by the [Client](#).

The [Member in Public Practice](#) should consider the implications of a recurring [Engagement](#) when documenting the details noted above.

4.5 [Engagement output](#): Details of reports or other anticipated outputs, including:

- (a) expected timing;
- (b) the intended use and distribution of reports; and
- (c) the nature of any anticipated disclaimer or arrangement that limits the liability of the [Member in Public Practice](#) (for example, appropriate limitation of liability clauses for [Members in Public Practice](#) participating in Professional Standards Legislation schemes) with respect to the [Client](#) or any other user of the results of the [Engagement](#).

4.6 [Relative responsibilities](#): Responsibilities agreed upon, detailing those acknowledged to be the responsibility of:

- (a) the [Member in Public Practice](#), including reference to relevant confidentiality requirements and the impact of them on the quality review program of the relevant [Professional Body](#) to which the [Member in Public Practice](#) belongs, and the [Member's](#) obligations on responding to actual or suspected non-compliance with laws and regulations (NOCLAR);
- (b) the [Client](#), noting the fact that the [Client](#) is responsible for the completeness and accuracy of information supplied to the [Member in Public Practice](#); and
- (c) any third party.

4.7 [Involvement of other Members in Public Practice](#): Where the work of another [Member in Public Practice](#) is to be used on some aspects of the [Engagement](#), the details of this involvement should be documented in the [Engagement Document](#).

4.8 [Fees and billing arrangements](#): Reference to the basis and calculation of fees (for example, time based billing, fixed price contracts, referral fees and commissions, contingent fee arrangements or other similar agreement). Details of agreed upon billing schedules should also be included.

4.9 [Ownership of documents](#): The [Engagement Document](#) should make clear who owns any documents produced as a result of the [Engagement](#) or provided by the [Client](#) for such a purpose including electronic data. If a [Member in Public Practice](#) has a policy of seeking to exercise a right of lien over such documents in the event of a dispute with the [Client](#), this policy should be disclosed in the [Engagement Document](#) communicated to the [Client](#), including the process for dealing with disputes over the lien.

4.10 [Confirmation by the Client](#): Request for a response from the [Client](#) confirming its understanding of the [Terms of Engagement](#) as outlined in the [Engagement Document](#). It is preferable for this confirmation of [Client](#) acceptance of the [Terms of Engagement](#) to be obtained in [Writing](#).

5. Recurring Engagements

- 5.1 In certain circumstances a **Member in Public Practice** will have to determine whether an **Engagement** is a recurring **Engagement**. A recurring **Engagement** generally exhibits the following features:
- unchanged **Terms of Engagement** under which the **Professional Services** are provided;
 - the same or similar **Professional Service** provided by the **Member** in each period;
 - defined or identifiable commencement and completion dates each time the **Engagement** is performed; and
 - performance of the **Engagement** is on a regular periodic basis as agreed with the **Client**, for example annually.
- 5.2 When determining the need to reissue or amend an **Engagement Document** for a recurring **Engagement**, a **Member in Public Practice** should consider the following factors:
- (a) any indication that the **Client** misunderstands the objectives and scope of the **Engagement**;
 - (b) any significant changes in the **Engagement**;
 - (c) any significant changes in the **Professional Services** to be provided or the **Terms of Engagement**;
 - (d) a recent change of **Client** management or ownership;
 - (e) a significant change in the nature or size of the **Client's** business;
 - (f) any significant changes to **Professional Standards** or applicable accounting or auditing and assurance standards; and
 - (g) any changes to legal or regulatory requirements.

6. Professional Standards Schemes

- 6.1 **A Member in Public Practice who is participating in a Professional Standards Scheme that limits liability shall comply with the relevant Professional Standards Legislation and applicable regulations of the Professional Body.**
- 6.2 **A Member in Public Practice who is a participant in a scheme under Professional Standards Legislation shall disclose to the Client that the Member's liability may be limited under the scheme in accordance with the disclosure requirements in applicable laws and/or regulations.**

Conformity with International Pronouncements

The International Ethics Standards Boards for Accountants (IESBA) has not issued a pronouncement equivalent to APES 305.

Appendix 1

Summary of revisions to the previous APES 305 (Issued in **August 2019**)

APES 305 *Terms of Engagement* was originally issued in December 2007 and revised in June 2009, March 2013, October 2015 and August 2019 (extant APES 305). APES 305 has been revised by APESB in XXXX 2020. A summary of the revisions is given in the table below.

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Table of revisions*

Paragraph affected	How affected
1.2	Amended
2 – Definition of Cloud Computing	Added
2 – Definition of Material Business Activity	Added
2 – Definition of Outsourced Service	Added
2 – Definition of Outsourced Service Provider	Added
2 – Definition of Outsourcing	Added
2 – Definition of Outsourcing Agreement	Added
3.4	Added
3.5	Added
3.6	Added
3.7	Added
3.8 – Paragraph 3.4 in extant APES 305	Relocated
3.9 – Paragraph 3.5 in extant APES 305	Relocated
3.10 – Paragraph 3.6 in extant APES 305	Relocated

* Refer Technical Update 2020/XX