

15 August 2019

APESB issues revised APES 305 *Terms of Engagement*

Accounting Professional & Ethical Standards Board Limited (APESB) today announced the issue of the revised APES 305 *Terms of Engagement* (APES 305) to replace the existing APES 305 (Issued October 2015).

The key changes in the revised APES 305 consist of:

- Revisions to reflect the restructured APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)*, issued in November 2018;
- Including references to regulations to capture requirements which may not be set out specifically in legislation;
- Revising the guidance on disclosure of fees and billing arrangements in the Terms of Engagement to include the calculation method for referral fees and commissions; and
- revising the provisions which refer to Professional Standard Schemes and limitation of liability.

Please refer to Appendix 1 of this technical update for details of all the revisions. The revised APES 305 will be effective for Engagements commencing on or after 1 January 2020 with early adoption permitted.

The revised standard is available from APESB's website: www.apesb.org.au

– ENDS –

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Appendix 1

Revision to APES 305 (Issued October 2015)

Accounting Professional & Ethical Standards Board Limited (APESB) has approved the following revisions to APES 305 *Terms of Engagement* which was originally issued in December 2007 and revised in June 2009, March 2013 and October 2015.

| Paragraph/Section Reference | Revisions |
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| 1.2 | Accounting Professional & Ethical Standards Board Limited (APESB) has revised professional standard APES 305 <i>Terms of Engagement</i> (the Standard), which is effective for Engagements commencing on or after 1 January 2016 2020 and supersedes APES 305 <i>Terms of Engagement</i> issued in March 2013 <u>October 2015</u> . 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. <u>APES 305 should be read in conjunction with other professional duties of Members, and any legal obligations that may apply.</u> 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 <i>Agreeing the Terms of Audit Engagements</i> 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. |
| 1.5 | Members in Public Practice <u>practising</u> 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 be familiar <u>comply with relevant other applicable</u> Professional Standards and be familiar with <u>relevant</u> guidance notes when providing Professional Services. All Members shall comply with the fundamental principles outlined in the Code. |
| 2 | <u>Defined terms are shown in the body of the Standard in title case.</u> For the purpose of this Standard: |
| 2 | Code means APES 110 <i>Code of Ethics for Professional Accountants (including Independence Standards)</i> . |
| 2 | Engagement Document means the document (i.e. letter, agreement or any other appropriate means) in which the Terms of Engagement are specified in a written form <u>Writing</u> . |
| 2 | Firm means: (a) a <u>A</u> sole practitioner, partnership, corporation or other entity of professional accountants; (b) a <u>An</u> entity that controls such parties, through ownership, management or other means; (c) a <u>An</u> entity controlled by such parties, through ownership, |

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| | <p>management or other means; or</p> <p>(d) aAn Auditor-General's office or department.</p> |
| 2 | <p>Member in Public Practice means a Member, irrespective of functional classification (e.g. 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.</p> |
| 2 | <p>Professional Activity means an activity requiring accountancy or related skills undertaken by a Member, including accounting, auditing, taxation, management consulting, and financial management.</p> |
| 2 | <p>Professional Standards means all Sstandards issued by Accounting Professional & Ethical Standards Board Limited and all professional and ethical requirements of the applicable Professional Body.</p> |
| 2 | <p>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.</p> |
| 3.3 | <p>It is in the interests of both the Client and Member in Public Practice that the Member in Public Practice documents and communicates the Terms of Engagement, preferably before its commencement <u>the Engagement commences</u>, to avoid misunderstandings with respect to the Engagement.</p> |
| 3.5 | <p>The Terms of Engagement 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.</p> |
| 3.6 | <p>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 Sstatute, a Member in Public Practice should refer to the applicable provisions of the law in the Engagement Document.</p> |
| 4.4 | <p><i>Scope of the Engagement.</i> Pertinent details of such matters as:</p> <ul style="list-style-type: none"> (a) time periods covered by the Engagement; (b) period of appointment and time schedules; (c) references to any legislation, <u>regulations</u>, 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. <p>The Member in Public Practice should consider the implications of a recurring Engagement when documenting the details noted above.</p> |

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| 4.5 | <p><i>Engagement output:</i> Details of reports or other anticipated outputs, including:</p> <ul style="list-style-type: none"> (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 (<u>for example, appropriate limitation of liability clauses for Members in Public Practice participating in Professional Standards Legislation schemes</u>) with respect to the Client or any other user of the results of the Engagement. |
| 4.6 | <p><i>Relative responsibilities:</i> Responsibilities agreed upon, detailing those acknowledged to be the responsibility of:</p> <ul style="list-style-type: none"> (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, <u>and the Member's obligations on responding to actual or suspected non-compliance with laws and regulations (NOCLAR);</u> (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. |
| 4.8 | <p><i>Fees and billing arrangements:</i> Reference to the basis <u>and calculation</u> of fees (e.g. for example, time based billing, fixed price contracts, <u>referral fees and commissions,</u> contingent fee arrangements or other similar agreement). Details of agreed upon billing schedules should also be included.</p> |
| 4.9 | <p><i>Ownership of documents:</i> 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.</p> |
| 4.10 | <p><i>Confirmation by the Client:</i> 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 a written form <u>Writing.</u></p> |
| 6. | <p><u>Limitation of liability Professional Standards Schemes</u></p> |
| 6.1 | <p><u>A Member in Public Practice who is participating in a limitation of liability Professional Standards Scheme that limits liability shall be familiar comply with the relevant Professional Standards Legislation and applicable regulations of the Professional Body. A Member in Public Practice, who incorporates a limitation of liability provision in the Engagement Document, shall comply with the legislation and the relevant obligations (e.g. insurance, business assets, risk management, quality control etc.) imposed.</u></p> |

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| 6.2 | A Member in Public Practice who is a participant in a scheme under Professional Standards Legislation shall advise <u>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.</u> |
| Appendix 1 | Summary of revisions to the previous APES 305 (issued in October 2015) - Amended |