

Proposed Standard: APES 305 Terms Of Engagement

Prepared and issued by
Accounting Professional & Ethical Standards Board Limited

EXPOSURE DRAFT **05/12**
ISSUED: XXXX 2012

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Commenting on this Exposure Draft

This Exposure Draft, 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 30 November 2012.**

Comments should be addressed to:

The Chairman
Accounting Professional & Ethical Standards Board Limited
Level 7, 600 Bourke Street
MELBOURNE VIC 3000
AUSTRALIA

APESB would prefer that respondents express a clear overall opinion on whether the proposed Standard, as a whole, is 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 Standard.

Respondents are asked to submit their comments electronically through the APESB website, using the link 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. Alternatively, any individual or organisation may obtain one printed copy of this Exposure Draft without charge until **30 November 2012** by contacting:

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Reasons for issuing Exposure Draft 05/12

The annual review of APES 305 *Terms of Engagement* (the Standard) highlighted concerns over the potential misinterpretation of the term “recurring engagements”. Accordingly a project to update the Standard in respect of “recurring engagements” was commenced to clarify this term.

Key requirements and guidance in ED 05/12

The following summary provides an overview of the proposed revisions to the existing professional standard APES 305. Respondents should not rely on this summary of differences to determine what changes, if any, are required to their current practices, policies or methodologies. Respondents should read the entire Exposure Draft to determine the significance of its proposals.

Continuing and recurring Engagements

Members in Public Practice have been provided with additional guidance to determine the existence of continuing and recurring Engagements.

Proposed operative date

1 July 2013.

Request for comments

Comments are invited on this Exposure Draft of APES 305 *Terms of Engagement* by **30 November 2012**. APESB would prefer that respondents express a clear overall opinion on whether the proposed Standard, as a whole, is 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 Standard.

APES 305 Terms of Engagement

[Supersedes APES 305 Terms of Engagement (Issued in December 2007 and revised June 2009)]

Revised XX 2012

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DRAFT

1. Scope and application

- 1.1 Accounting Professional & Ethical Standards Board Limited (APESB) issues the Standard APES 305 *Terms of Engagement (the Standard)*, which is effective for Engagements commencing on or after 1 July 2013 and supersedes APES 305 *Terms of Engagement* issued in December 2007 and revised June 2009.
- 1.2 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 grey type. 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: *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.
- 1.3 Members in Public Practice in Australia shall follow the mandatory requirements of APES 305 when they provide Professional Services to Clients.**
- 1.4 Members in Public Practice 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.**
- 1.5 Members in Public Practice shall be familiar with relevant professional standards and guidance notes when providing Professional Services. All Members shall comply with the fundamental principles outlined in the Code.**
- 1.6 The Standard is not intended to detract from any responsibilities which may be imposed by law or regulation.
- 1.7 All references to professional standards, guidance notes and legislation are references to those provisions as amended from time to time.
- 1.8 In applying APES 305 Members in Public Practice should be guided not merely by the words but also by the spirit of the Standard and the Code.

2. Definitions

For the purpose of this Standard:

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

Code means APES 110 *Code of Ethics for Professional Accountants*.

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 a written form.

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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.

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 (e.g. audit, tax, or consulting) in a Firm that provides Professional Services. The term is also used to refer to a Firm of Members in Public Practice and means a practice entity as defined by the applicable professional body.

Professional Services means services requiring accountancy or related skills performed by a professional accountant including accounting, auditing, taxation, management consulting and financial management services.

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

3. Terms of Engagement for Professional Services

3.1 A Member in Public Practice shall document and communicate the Terms of Engagement when providing Professional Services to Clients.

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 in Public Practice documents and communicates the Terms of Engagement, preferably before its commencement, to avoid misunderstandings with respect to the Engagement.

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

3.5 The Terms of Engagement 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.

3.6 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.

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

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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 and professional standards that may be relevant to the Engagement;
 - (d) Client operations or procedures to be included in the Engagement;
 - (e) details of information to be provided by the Client;
 - (f) any limitations on the conduct of the Engagement; and
 - (g) other matters considered necessary or appropriate.
- 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 (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;
 - (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.

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- 4.8 *Fees and billing arrangements:* Reference to the basis of fees (e.g. time based billing, fixed price contracts, 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 a written form.

5. Continuing and recurring engagements

- 5.1 In certain circumstances a Member in Public Practice will have to determine whether an Engagement is a recurring Engagement. Recurring Engagements will have the following features:
- Terms of Engagement under which the Professional Services are provided remain unchanged;
 - The same or similar Professional Service is provided by the Member in each periodic cycle;
 - There are defined or identifiable commencement and completion dates each time the Engagement reoccurs; and
 - Reoccurrence of the Engagement is on an annual basis or other regular periodic basis as agreed with the Client.
- 5.2 A Member in Public Practice should distinguish a continuing Engagement from a recurring Engagement. Continuing Engagements will have the following distinguishing features:
- There is a predefined period over which the Engagement will occur and it will terminate at the end of that period;
 - The Client will be charged a retainer fee which is determined upfront for the Professional Services to be provided over the agreed time period; and
 - The Member may provide different Professional Services over the duration of the Engagement.
- 5.3 For a recurring engagement, the Member in Public Practice may decide not to send an Engagement Document each time the Member performs the Engagement. When determining the need to issue an Engagement Document, the factors that may affect the decision of the Member include:
- (a) any indication that the Client misunderstands the objectives and scope of the Engagement;
 - (b) any significant changes in the Terms of Engagement;

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- (c) any significant changes in the scope of the Professional Services being provided;
- (d) a recent change of Client management or ownership;
- (e) a significant change in the nature or size of the Client's business; and
- (f) legal requirements.

5.4 Where a Member in Public Practice determines that the Engagement Document needs to be reissued for a recurring engagement due to some or all of the factors identified in paragraph 5.3, the existing recurring engagement will cease and a new Engagement will commence in accordance with the terms of the new Engagement Document.

6. Limitation of liability

- 6.1 **A Member in Public Practice who is participating in a limitation of liability scheme shall be familiar with the relevant Professional Standards Legislation. 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.**
- 6.2 **A Member in Public Practice who is a participant in a scheme under Professional Standards Legislation shall advise the Client that the Member's liability may be limited under the scheme.**

Conformity with International Pronouncements

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