

AGENDA PAPER

Item Number: 2

Date of Meeting: 29 November 2016

Subject: Progress update on proposed revision of APES 310 *Dealing with Client Monies* (APES 310)

☐ Action required	☒ For discussion	☒ For noting	☐ For information
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Purpose

To provide the Board with:

- an update on the proposed revision of APES 310; and
- an evaluation of the respondents' comments received on Exposure Draft 01/16 *Proposed Standard: APES 310 Client Monies* (the ED) including any proposed amendments to address matters raised in submission received.

Background

APES 310 was originally issued in December 2010 and was subsequently revised and re-issued in July 2013.

A project on the review of APES 310 has been ongoing since 2014/15 (refer to *Project Developments to date* section below for the details). The key issue with the review has been for the consideration of e-commerce and other technological developments. The APESB Board agreed at their February 2016 meeting that digital disruption and other technological advancements will be dealt with in a more holistic manner as a separate project as it is likely to impact on a number of other APESB standards. The Board also agreed that the review of APES 310 should progress to address the current issues listed on the Issues Register.

At the May 2016 Board Meeting the APESB Board agreed to issue the ED on Client Monies. The ED was issued on 15 July 2016 with feedback to be provided by stakeholders by 9 September 2016.

Project Developments to date

This paper provides an update on key developments and issues considered on this project since May 2016, when this project was last discussed with the Board.

The timeline of key developments in this project are set out in Table 1.

Table 1: Key project developments

Period	Development
September 2014	APES 310 Review Taskforce consisting of Professional Body representatives and practising members was established.
October 2014	Technical Staff met with taskforce participants from the Professional Bodies to identify practical issues and concerns in relation to APES 310. Technical Staff summarised the issues raised and developed proposals for further consideration by the taskforce.
March 2015	Technical Staff and representatives of the taskforce met with the Australian Bankers Association (ABA) to discuss issues Members were experiencing in respect to opening Trust Accounts with financial institutions. ABA agreed to discuss this matter with the retail banks and update the APESB on any developments.
July 2015	The taskforce discussed potential amendments to APES 310. Based on this meeting a proposed revised standard was drafted for presentation to the Board.
November 2015	The Board considered an Agenda paper which included a proposed exposure draft of APES 310, including changing the name of the standard to APES 310 <i>Client Monies</i>. The Board did not finalise the revisions to APES 310. Technical staff were to consider the broader issues that impact the standard such as technological developments and digital disruption and present options to the Board at the February 2016 meeting.
February 2016	The Board were presented with an Agenda paper which proposed a two phase approach to reviewing APES 310. The Board acknowledged that a project to consider technological advances and digital disruption would be lengthy and could impact more APESB pronouncements than APES 310. The Board then agreed to the two phase step proposed by Technical Staff.
April 2016	The ABA advised that due to more pressing issues arising in the banking industry they could not assist with the issue of accountants opening trust accounts at this point in time.
May 2016	The Board agreed to issue Exposure Draft 01/16 <i>Proposed Standard APES 310 Client Monies</i> with a 45 day comment period.
November 2016	Technical Staff met with the Taskforce to discuss proposed revisions to APES 310 based on submissions received on the ED.

Consideration of Issues

ASAE 3100 Compliance Engagements

Appendix 1 of APES 310 includes an example of an audit report which is drafted to be consistent with the requirements in ASAE 3100 *Compliance Engagements* (ASAE 3100).

The Auditing and Assurance Standards Board (AUASB) is revising a number of their standards to accommodate revisions to the audit report formats, including ASAE 3100. The AUASB released ED 04/16 Proposed Standard on Assurance Engagements ASAE 3100 *Compliance Engagements* in August 2016. AUASB Staff are currently considering the submissions in response to their exposure draft, and are expected to present a revised version of ASAE 3100 to the AUASB at their 29 November 2016 meeting for approval.

It is important that the guidance within APES 310 is consistent with the requirements specified in the Australian auditing and assurance standards. Therefore APESB Technical Staff believe the revision to APES 310 should not be finalised until the AUASB completes its revision of ASAE 3100.

Submissions received

The comment period for the ED closed on 9 September 2016 and APESB received five submissions – three from the professional accounting bodies, one from a big 4 accounting firm and one from a SMP.

The respondents' comments have been tabulated as either general comments (refer to Agenda Item 2(a)) or specific comments (refer to Agenda Item 2(b)). The tables also include APESB Technical Staff comments and notes whether additional changes are proposed to APES 310.

The overall response to the ED was positive, with respondents supportive of the revisions to APES 310 subject to specific matters noted in the comment tables.

The revision proposed to paragraph 1.9 in the ED to include a specific reference to legislation for Trust accounts or client bank accounts was not supported. This paragraph will therefore remain the same as in the extant standard.

Clarification of assurance engagement requirements and the terminology used in APES 310 for audits and reviews was a common matter across a number of submissions (refer to specific comments table items 15,16,18,19 and 20). The Australian auditing and assurance standards refers to reasonable assurance engagements and limited assurance engagements rather than the terms audit and review engagements. Technical Staff will ensure that these terms and relevant references are updated throughout APES 310.

A respondent was concerned that the objective of the standard (paragraph 1.1) implied the standard specifies professional obligations of members undertaking assurance engagements (refer to specific comments table item 2). This is not the intention of the standard. Rather than referring to assurance engagements this paragraph will be revised to refer to compliance with independence requirements and applicable Auditing and Assurance Standards.

Allowing members in public practice the ability to donate to charity any interest that cannot be reasonably allocated was suggested by a respondent (refer to specific comments table item 13). This would correlate to the proposed revision in the ED to donate unclaimed monies below the legal threshold to a charity. This suggestion will be incorporated into the revised APES 310.

Another key suggestion proposed in the submission was strengthening the documentation of processes followed for identifying clients (refer to specific comments table item 14). This was raised in relation to identifying the intended recipient of direct deposits received. Including requirements in the standard that relate specifically to direct deposits was not considered necessary. However, Technical Staff see the merit of members documenting the procedures undertaken to try to identify the intended recipient of funds when they have had to return money to the sender or drawer. An additional guidance paragraph will be included in the revised APES 310 to address this matter.

Other editorials and enhancements to the pronouncements proposed by the respondents have been addressed by Technical Staff as noted in the specific comments table Items No. 1, 5, 7, 9, 11, 25 and 26.

Refer to Agenda Items 2(c) and (d) for updated marked up and clean versions of proposed APES 310 which highlight the additional amendments to the standard from the exposure draft process.

Consultation with APES 310 Taskforce

A taskforce meeting was held on 7 November 2016 to consider the respondents comments to the ED and any related revisions proposed by Technical Staff. Refer to Agenda Item 2(e) for the draft minutes for the APES 310 Taskforce meeting.

The taskforce discussed the additional amendments to APES 310 arising from the exposure draft process. The proposed changes were noted with minor revisions required to paragraph 1.6 dealing with exclusions for directors and officeholders and the proposed paragraph 6.6 to clarify the documentation in respect of paragraphs 6.4 and 6.5. These amendments have been incorporated into updated versions of the proposed APES 310 (Agenda items 2(c) and (d)).

At this meeting the Taskforce also discussed other issues that they believe should be considered in the revision of APES 310. These matters were:

(a) 3 month deadline to issue audit report

The Taskforce discussed whether the 3 month deadline for issuing an audit report on client monies should be extended. Technical Staff have compared the existing deadline specified in APES 310 paragraph 8.1 to requirements sets out in other legislation or regulations that deal with trust accounts. The results of the comparison are set out in Table 2.

Table 2: Comparison of audit report deadlines for other types of trust accounts

Law/ Regulation	Type of trust account	Deadline for audit reports	Extensions allowed
<i>Legal Profession Uniform General Rules (NSW & Vic):</i> - section 69	Solicitors	by 15 May (31 March year-end) (45 days)	No
<i>Legal Profession Act 2007 (Qld):</i> - sections 268 and 274	Solicitors	60 days after year-end	Allowed under s 274(1) if the practice has a reasonable excuse.
<i>Trust Accounts Act 1973 (Qld):</i> - section 16	Trust accounts held by trustees (includes accountants)	2 months after year-end	Yes – up to 3 month extension but to be approved by the supervising entity (The Queensland Department of Justice or the Attorney General)
<i>Estate Agents Act 1980 (Vic):</i> - section 64	Real Estate Agents	3 months after year-end	No

Technical Staff also considered the provisions in the New Zealand Institute of Chartered Accountants (NZICA) Professional Standard no 2 *Client Monies* (NZ's PS2). Under this standard there are no prescribed deadlines as members are directed to relevant laws and regulations relating to trust accounts.

Based on the comparison with the reporting deadlines for other types of trust accounts, the extant deadline in APES 310 appears appropriate. Technical Staff do not recommend changing the existing deadline specified in paragraph 8.1 of APES 310.

Further another reason for the 3 month timeframe is that there is an element of public interest associated with client monies.

(b) the scope of the term deficiency

The Taskforce discussed the scope of the term deficiency that is used in APES 310. There has been some conjecture about whether this applies to just the bank accounts or does it also include related ledger balances.

The current definition of deficiency in the extant APES 310 refers to “a deficit or shortfall of Client Monies, as disclosed by Records maintained by a Member in Public Practice, or in the records of a Financial Institution at which an account is held...”. The definition is intended to cover both bank accounts and records or ledgers.

Technical Staff considered how deficiencies are covered in a selection of comparative standards and legislation. Under section 259 of the *Legal Profession Act 2007 (QLD)* it specifically references both the trust account and trust account ledger. NZ’s PS2 includes guidance paragraph A23 which states that ‘...individual client monies balances that constitute the trust account balance should not be overdrawn at any time.’

Technical Staff propose to amend paragraph 8.8 to ensure it captures deficiencies in the Trust Account, the Client Bank Account and the records of individual client ledgers.

The taskforce also raised the issue of timing and whether correcting a deficit or shortfall within a certain timeframe would mean that it was not a deficiency. Technical Staff noted that under the *Estate Agents Act 1980 (Vic)* an auditor does not have to report a deficiency to the supervisory entity if it is corrected within 2 days of its discovery. The laws on solicitors trust accounts do not set out an equivalent timeframe.

Subject to amendment outlined above to clarify the scope of the term deficiency, Technical Staff are of the view that the extant provisions in APES 310 are appropriate and should not be amended.

(c) application of APES 310 when a dual signatory with the client

The Taskforce queried whether APES 310 should apply to accountants who have the ability to authorise transactions on a client’s bank account in conjunction with another party, as is currently required in the extant standard. It was suggested that transactions where the accountant and the client are dual signatories should be outside of the scope of APES 310.

As this would be a significant change to the current application of APES 310, Technical Staff require further time to explore this issue. It is proposed that this matter be investigated by Technical Staff and presented to the Board at their February 2017 Board meeting for resolution with the new audit report format.

(d) approval for removal or resignation of auditors

The extant provisions in APES 310 require that approval should be sought from the relevant professional body before an auditor can resign or if a member proposes to change their existing auditor.

Technical Staff have noted that across the comparable laws and regulations (referred to in Table 2) the practice varies. For solicitors trust accounts in NSW and Victoria, approval is needed from the legal authority body before a practice can terminate the appointment of the auditor/external examiner. In QLD, solicitors do not need to seek

approval to terminate an auditor's appointment but they must notify the supervising body immediately of the change.

The *Trust Account Act 1973 (QLD)* does not require approval to be provided before there is a change of auditor, but again there is a need to 'immediately' advise the supervising entity when an auditor resigns (section 15 clause 10).

It should be noted that across this legislation there was also a requirement to appoint a replacement auditor (or examiner) within a fairly short timeframe ranging from 7 – 14 days.

The provisions around seeking approval from a supervising entity or professional body is a control mechanism to ensure that there is an orderly process in respect of changes which is subject to oversight and to minimise the time that there is an absence of an auditor. The controls in the extant APES 310 are consistent with practices for other Trust Accounts. Technical Staff do not propose any changes to the extant provisions in APES 310 for this matter.

Matters to be resolved

The following matters need to be resolved before the Board can issue a revised version of APES 310:

- format of the audit opinion in Appendix 1(as noted in the section *ASAE 3100 Compliance Engagements*); and
- consideration of dual signatories scenarios and whether these are captured within the scope of APES 310.

APESB Technical Staff will consider these issues and make recommendations to the Board on these matters at the February 2017 Board meeting.

Technical Staff Recommendations

That the Board note the project progress on the revision of APES 310.

Material Presented

Agenda Item 2(a)	APES 310 General Comments Table;
Agenda Item 2(b)	APES 310 Specific Comments Table;
Agenda Item 2(c)	Proposed APES 310 incorporating revisions from ED process (marked-up);
Agenda Item 2(d)	Proposed APES 310 incorporating revisions from ED process (clean); and
Agenda Item 2(e)	Draft minutes of APES 310 taskforce meeting held on 7 November 2016.

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