

## AGENDA PAPER

**Item Number:** 2

**Date of Meeting:** 25 June 2020

**Subject:** Proposed revisions to APES 305 *Terms of Engagement*

---

**Action required**     **For discussion**     **For noting**     **For information**

---

### Purpose

To:

- provide the Board with an update and additional information and analysis on outsourcing; and
- obtain the Board's approval, subject to the Board's review comments and editorials, to issue an Exposure Draft on proposed revisions to APES 305 *Terms of Engagement* (APES 305).

### Background

During the 2017 annual review of APES GN 30 *Outsourced Services* (APES GN 30), the Institute of Public Accountants raised whether APES GN 30 was effective in its current form and if it should be transformed into a standard.

The Board approved a [project plan](#) to determine Members' views in respect of the use and effectiveness of APES GN 30 and whether there is a need to elevate the guidance note to a standard at its November 2017 meeting.

Technical Staff presented the results of a desktop review at the March 2018 Board meeting, and the Board considered the range of stakeholders for Technical Staff to consult with to obtain further feedback.

At the December 2018 Board meeting, Technical Staff provided an update on the project, and the Board requested that Technical Staff undertake further consultation from a consumer perspective.

During 2019 APESB restructured all of its pronouncements to align with the restructured APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* (the restructured Code) issued in November 2018.

At the August 2019 Board meeting, the Board approved the issue of an Exposure Draft for APES GN 30 to align to the restructured Code. This Exposure Draft included a request for specific comments on whether there should be a mandatory requirement to inform clients of the nature of any services outsourced and the jurisdiction in which the outsourced service is performed.

At the [November 2019 Board meeting](#), the Board approved the revised [APES GN 30](#), which was issued on 19 February 2020. The Board also determined to consider as part of the next review of APES 305 the requirement for disclosures to the client of the geographical location of the outsourced service provider and the nature and extent of the outsourced services.

At the March 2020 Board meeting, the Board:

- considered an [update on outsourcing](#) including different models of outsourcing used, the associated benefits and risks of each model and how data is accessed and stored;
- discussed what a client should know if their data or information is being processed or worked on by a party external to the firm or when that information is shared with another jurisdiction;
- noted that the Australian Prudential Regulation Authority (APRA) has extensive requirements on outsourcing in their prudential standards; and
- [determined](#) to deliberate this matter further at the June 2020 meeting, including the consideration of an exposure draft on APES 305 proposing mandatory disclosure to the client when outsourcing is used to deliver a professional service.

The Secretariat corresponded with Mr Kevin Osborn about the above matters outside of the March 2020 Board meeting to update him of the discussion and Mr Osborn indicated that he was comfortable with this approach (Board Action Item 2020/2).

## **Matters for Consideration**

The APES GN 30 Project has highlighted that:

- no clear arguments or reasons have been presented that indicates there is a compelling reason to convert APES GN 30 into a standard;
- APES 305 is the most appropriate standard to include a requirement to disclose the use of outsourced services and the geographical location of the service provider as this directly relates to the terms of engagement; and
- APES GN 30 applies to the outsourcing models identified in the March 2020 Board update and, in conjunction with relevant laws and regulations, appropriately covers the key risks identified.

The following provides additional information and analysis on APRA prudential requirements, the Tax Practitioner Board (TPB) guidance on cloud computing, and Australian Privacy Principles. Technical Staff also proposes amendments to APES 305 to require the disclosure to the client of the geographical location of any outsourced service provider and the nature and extent of outsourced services utilised.

### APRA Prudential Requirements on Outsourcing

APRA has substantial material and requirements in relation to outsourced services (and cloud computing) as highlighted by the Board at the April 2020 Board meeting, which is due to, the large number of stakeholders involved with, activities undertaken by, and inherent risks

associated with, APRA Regulated Entities. For example, [APRA Prudential Standard CPS 231 Outsourcing](#) requires APRA regulated entities that enter into outsourcing arrangements of material business activities to be “*subject to appropriate due diligence, approval and ongoing monitoring,*” including consulting with APRA in certain circumstances.

Technical Staff note that the APRA requirements, including the definitions in APRA’s CPS 231, were reviewed when developing APES GN 30 and its definitions of ‘Outsourcing,’ ‘Material Business Activity,’ ‘Outsourced Service Provider,’ ‘Outsourcing Agreement’ and ‘Outsourced Service.’ As such, Technical Staff does not propose to include additional requirements or application material in the APES 305 Exposure Draft from APRA standards.

#### TPB Practice Note 1/2017

CPA Australia has referred APESB Technical Staff to the additional guidance in [TPB\(PN\) 1/2017 Cloud computing and the Code of Professional Conduct](#), which provides registered tax agents with guidance on the TPB Code and the use of cloud computing. In particular, paragraph 12 of the practice note refers to registered tax agents’ obligation under Item 6 of the TPB Code to not disclose client information to third parties without the client’s permission and recommends that practitioners also inform the client to whom and where the information will be disclosed and where data will be stored.

If proposed revisions for APES 305 are issued for exposure, it provides an excellent opportunity to include similar provisions to those in the TPB practice note and to seek stakeholder feedback. Further, depending on the nature and extent of cloud computing utilised it may also involve an outsourced service (refer to Example 5 in APES GN 30), which is highlighted in the proposed revisions to APES 305.

#### Australian Privacy Principles

There are 13 Australian Privacy Principles (APPs) in the *Privacy Act 1988*, which govern the rights and obligations in respect of the collection, use and disclosure of personal information, governance and accountability, the integrity of personal information and rights of individuals to access their information.<sup>1</sup>

The APPs include strict requirements when sending personal information offshore, particularly relevant to certain outsourced services and cloud computing, and are summarised in the Office of the Australian Information Commissioner publication [Sending personal information overseas](#). When an Australian entity ‘discloses’<sup>2</sup> personal information overseas, that entity must take reasonable steps to ensure the overseas entity receiving the information complies with the APPs, which would generally include an “enforceable contractual arrangement.” Whereas, if the Australian entity is considered to hold the personal information still, then that entity remains subject to the APPs.

#### Proposed Revisions to APES 305

APES 305 was reissued in August 2019 as part of the APESB project to update all pronouncements to the restructured Code.

---

<sup>1</sup> <https://www.oaic.gov.au/privacy/australian-privacy-principles/>

<sup>2</sup> “an organisation or agency discloses personal information when it makes it accessible or visible to others outside the organisation or agency and releases the subsequent handling of the personal information from its effective control” <https://www.oaic.gov.au/privacy/australian-privacy-principles/>.

Technical Staff proposes amendments to APES 305, which include the addition of:

- Definitions (from APES GN 30) for cloud computing, material business activity, outsourced service, outsourced service provider, outsourcing and outsourcing agreement;
- a requirement paragraph on members' obligations 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 the member in public practice should document and communicate the details of the cloud computing provider, the geographic location of where the cloud computing will be performed, where client data will be stored and the nature and extent of the cloud computing (paragraph 3.7).

Technical Staff propose that due to the limited nature of the proposed changes, the Exposure Draft be open for public comment for a 30-day period and that the amended standard be effective for engagements commencing on or after 1 January 2021. This timeline would provide members sufficient time to implement any necessary changes to systems, policies and procedures. A marked-up version of the proposals is included in Agenda Item 2(a).

### APES GN 30

Should the proposals in this Exposure Draft be implemented, Technical Staff will subsequently consider whether changes to APES GN 30 are necessary as some of the guidance material therein would have become mandatory. Technical Staff propose this be undertaken after the exposure period for APES 305 is completed.

### **Way Forward**

Subject to the Board's approval:

- issue the APES 305 Exposure Draft 02/20 (Agenda Item 2(a)) by 26 June 2020;
- request public comments on ED 02/20 over a 30-day period ending on 27 July 2020;
- review and analyse submissions received on ED 02/20 and consider whether any required revisions to APES GN 30 will be required by mid-August 2020;
- seek approval from the Board to issue the revised APES 305 at the August 2020 Board meeting; and

- release the revised APES 305 during September 2020 with an effective date of 1 January 2021; and
- If required, issue an Exposure Draft for APES GN 30 and finalise the APES GN 30 Project.

### **Recommendations**

The Board:

- note the additional information and analysis on outsourcing; and
- approve, subject to the Board's review comments and editorials, the issue of an Exposure Draft on proposed revisions to APES 305 (ED 02/20).

### **Materials presented**

Agenda Item 2(a)      Marked-up Exposure Draft APES 305 ED 02/20

**Author**                      Jon Reid

**Date**                          10 June 2020