

AGENDA PAPER

Item Number: 9

Date of Meeting: 17 November 2023

Subject: Proposed revised APES 310 *Client Monies*

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

Purpose

To:

- provide the Board with details of submissions received on Exposure Draft ED 04/23 Proposed Standard: APES 310 *Client Monies* (ED 04/23); and
- seek the Board's approval, subject to the Board's review comments and editorials, to issue a revised APES 310 *Client Monies* (APES 310) and related guidance document.

Background

APESB originally issued APES 310 *Dealing with Client Monies* in December 2010. It was based on APS 10 *Trust Accounts*, which was originally issued in June 1997 by the Australian Society of Certified Practising Accountants (now CPA Australia) and the Institute of Chartered Accountants in Australia (now CA ANZ) and Joint Guidance Note GN 3 *Operation of Trust Accounts*, issued by CPA Australia and the Institute of Chartered Accountants in Australia (now CA ANZ) in December 2003.

APES 310 was revised in 2013 and 2018 (when the standard was renamed to Client Monies). The current version of APES 310 *Client Monies* (APES 310) was released in November 2019 and incorporated revisions to align with the restructured APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* (the Code).

In 2021, the Issues Register was updated to include matters raised by a professional body about some Members in Public Practice experiencing difficulties in establishing bank accounts complying with APES 310 requirements as the trust accounts are not considered statutory trust accounts, the bank account terms do not exclude the right of set-off, and the bank account name will not include the word 'trust'. APESB had determined to conduct a post-implementation review (PIR) during the current strategic period to obtain practitioners' feedback on the challenges they face in complying with the requirements of APES 310.

In March 2022, the Board approved a [project plan](#) to revise certain APESB pronouncements, including APES 310, for quality management-related conforming amendments resulting from the reissue of APES 320 *Quality Control for Firms* as APES 320 *Quality Management for Firms that provide Non-Assurance Services* and the new quality management standards issued by the Auditing and Assurance Standards Board (AUASB).

At the May 2023 Board Meeting ([Agenda Item 9](#)), the Board approved the release of [ED 04/23](#), which proposed revisions to APES 310 to incorporate quality management-related conforming amendments and changes to align with AUASB issued standards. The exposure draft also included a request for specific comments on whether Members have experienced issues applying the requirements in APES 310. The comment period for the exposure draft closed on 18 August 2023.

Matters for Consideration

APESB received three submissions on [ED 04/23](#) from three professional accounting bodies, who generally supported the proposed amendments. The Respondents' comments are tabulated in general and specific comment tables at Agenda Items 9(a) and 9(b), respectively.

The respondents provided feedback that Members in Public Practice are experiencing difficulties in opening Trust accounts, either as a response to the request for specific comments (specific comment table items 1 and 2) or on comments related to extant paragraphs 5.1 and 5.3 (specific comment table items 4 to 7). The key matters raised in the submissions were as follows:

a) The title of the Trust Account

A common concern raised in the submissions was that banks are not willing to open a trust account for Members in Public Practice, which included the term 'trust account' in its name.

Respondents recommended potential amendments to APES 310, including the removal of the requirement for the term 'trust account' to be included in the title of the account or replacing the term with a different name that clearly differentiates the account from the firm's other operating accounts.

In considering the suggestions made by respondents, Technical Staff performed desktop research of requirements for accountants relating to trust accounts or client monies, specifically the requirements in New Zealand (issued by the New Zealand Institute of Chartered Accountants (NZICA) and the United Kingdom (issued by the Institute of Chartered Accountants in England and Wales (ICAEW)). Refer to agenda item 9(f) for the summary of relevant requirements in those countries.

The NZICA professional standard PS2 requires the term 'Trust Account' to be included in the title of the Trust Account set up by professional accountants. This requirement has been in place since at least 2003, and potentially from 1995.

The professional standard issued by the Institute of Chartered Accountants in England and Wales (ICAEW) applies to client monies held by the firm. The standard does not use the term Trust Account but rather uses the term Client Bank Account, which covers money held by a firm that belongs to a client. The term 'Client' must be used in the title of the

account established at the bank. This requirement has been in place since at least 2004, and potentially from 1992.

In Australia, the extant requirement to include the term 'Trust Account' in the title of the Trust Account held at a Financial Institution has been in place since 1997, and there are many accountants in public practice who have established Trust Accounts since that time, which includes this term in the title of their Trust Account.

Technical Staff are strongly of the view that a Member in Public Practice must clearly delineate their trust accounts from other operating bank accounts of the Member or firm. This is about safeguarding clients' funds and is clearly in the public interest. We also note that it is consistent with best practice adopted in other comparable jurisdictions.

During the engagement with the Australian Banking Association (ABA) in 2018 to develop the Client Monies Information sheet, the ABA made it clear that it is a commercial decision for each bank as to whether they will open a Trust Account for an accountant in public practice. Due to this reason, since that time, APESB has encouraged professional bodies to approach the big four Australian banks to develop a commercial solution, as it is unlikely that an individual member would be able to sway the banks.

In considering the suggestions from respondents, Technical Staff are concerned about the unintended consequences that may occur if the extant requirement in paragraph 5.1 is amended to remove the term 'trust account' as it has been a longstanding requirement. Therefore, Technical Staff propose to retain extant paragraph 5.1 substantively in its current form.

However, to address the issue of Members who are having difficulties opening a bank account with the description Trust Account in the name, Technical Staff considered whether additional terms could be used to clearly delineate the account from the Member's other accounts and would not replicate other terms that are used in APES 310 (e.g., 'client monies' or 'client bank account'). Technical Staff are of the view that the term 'client account' used in conjunction with the Member or Firm's name would be a suitable alternative to the use of the term 'Trust Account' in the event that a bank refuses to open an account including the term "trust account."

Accordingly, Technical Staff propose the inclusion of a new requirement (proposed paragraph 5.2), which provides an exception to paragraph 5.1 to allow the use of the term 'Client Account' instead of "Trust Account" in the title of the Trust Account. The exception can only be used if the Member has made reasonable efforts to establish a Trust Account complying with paragraph 5.1, but their bank will not agree to establish a bank account using the traditional naming convention.

b) Establishing a right of set-off arrangement that complies with APES 310

Two respondents raised concerns that it is exceptionally difficult to open a bank account that excludes a right of set-off as required by paragraph 5.3 in APES 310 (set out in the specific comment table at items 6 and 7). The respondents noted that they advise Members to open their Trust Accounts at a separate Financial Institution to where the Members and Firm accounts are held. Technical Staff note this is a practical solution to comply with the extant requirements in APES 310.

The exclusion of the right of set-off is an important feature in protecting client monies and is in the public interest. Technical Staff note that both the New Zealand and UK requirements for client monies require the Trust Account or Client Account to exclude a right of set off by the bank.

Therefore, Technical Staff propose the addition of a new paragraph (proposed paragraph 5.5) which states that when a bank will not agree to the terms required in extant APES 310 (i.e., the exclusion of a right of set-off), Members shall open their Trust Account at a Financial Institution where no other firm bank accounts or credit facilities are held.

c) Limited Assurance Engagement is required for co-authorised client banking transactions

When APESB issued the first version of APES 310 in 2010, it required Members to have their compliance with the requirements of APES 310 audited. This applied consistently to Trust Accounts and Client Bank Accounts.

As part of the revision of APES 310 undertaken in 2018, the Board provided some relief for co-authorised client transactions by allowing a limited assurance engagement to be performed rather than a reasonable assurance engagement. This position recognised that there is a joint responsibility for the transaction.

Technical Staff are of the view that for co-authorised client transactions to occur, that would mean that those charged with governance of the Client have determined for commercial or governance reasons that the involvement of the accountant in public practice is important. If the Client or those charged with governance did not place reliance on the involvement of the Member in Public Practice, the Client could authorise the transactions without the Member's involvement. Therefore, it is important to have appropriate safeguards and controls in place to protect the Client and the handling of their monies.

Two respondents to ED 04/23 raised concerns about the requirement for Members to have a limited Assurance Engagement performed where they have acted as a co-signatory for authorising client transactions (set out in the specific comments table at items 8 and 10). They were of the view that any risks associated with being a co-signatory on client banking transactions could be addressed through other alternatives to a Limited Assurance Engagement, such as:

- requiring the Member in Public Practice to detail the processes for the Firm to address associated risks in their Risk Management Framework, noting this may include an external review at the request of the Client and
- specific disclosure in the engagement letter of the risks of co-authorised transactions and the responsibilities of the Client to reduce these risks to an acceptable level.

While the co-authorising of client banking transactions should be included in an engagement letter, the letter does not provide assurance over the adequacy and effectiveness of a client's internal controls or the Member's internal processes. It is the view of Technical Staff that disclosure in an engagement letter would not provide an adequate form of protection for clients.

Technical Staff do not support the position that a client should deem whether a review of external transactions is necessary. They are not privy to information on how the firm's internal operations are performed and, therefore, do not have the knowledge to make an informed assessment.

Recent media coverage highlights instances where some accountants have acted unethically when accessing client bank accounts (refer to agenda paper 9(g)). These cases highlight that dealing with client monies is a critical matter, which, if not performed appropriately, can have a significant impact on the standing and reputation of the accounting profession. As such, Technical Staff believe there needs to be adequate safeguards in place, and in the current environment, professional standards should not be lowered.

Based on these considerations, Technical Staff do not recommend any changes to paragraph 7.3 for the respondents' comments.

d) Costs of Limited Assurance Engagement

Two respondents were concerned that Members may be declining to act as a co-signatory for authorising client transactions due to the costs associated with obtaining a Limited Assurance Engagement over these transactions (set out in the specific comments table at items 9 and 10). One respondent suggested that paragraph 7.5 be amended to clearly indicate that the costs of having this engagement performed may be recouped via an appropriate overhead allocation rate.

Extant paragraph 7.5 requires the Member to Firm to bear the costs of any assurance engagement undertaken in relation to compliance with the requirements of APES 310. It covers all assurance engagements performed over Trust Accounts and Client Bank Accounts. Technical Staff are of the view that the recouping of the cost of the assurance reviews through overhead allocation is a commercial decision rather than a professional and ethical matter that needs to be addressed in APES 310. Accordingly, Technical Staff do not recommend any changes to paragraph 7.5 of APES 310.

Engagement with Stakeholders

Technical Staff met with representatives of the professional bodies on 24 October 2023 to discuss the feedback provided in the submissions and to consider potential amendments to APES 310 in light of the submissions received. There were mixed views on the proposed solution to address the difficulty some Members face in opening a bank account with 'Trust Account' in its title. One Body suggested the removal of the requirements on the naming conventions of the Trust Accounts, with other bodies preferring a different term to 'client account' being used. Technical Staff have considered these positions and still believe that the appropriate way forward is to retain the existing requirement with the addition of an exception to allow an alternative naming convention if the bank will not accept the term 'trust account.'

The professional bodies were supportive of the proposed addition of paragraph 5.5 and understood the reasons why Technical Staff would not propose changes to paragraphs within Section 7 of the APES 310.

Based on the outcome of the exposure draft due process and the desktop reviews performed, Technical Staff have prepared a proposed revised APES 310 for the Board's consideration. A version with marked-up changes from the exposure draft (ED 04/23) is included at Agenda Item 9(c), and a clean version is at Agenda Item 9(d). The proposed effective date is 1 April 2024, with early adoption permitted.

Technical Staff have also updated a related guidance document (e.g., the Trust Account Information Sheet) for the proposed changes to APES 310. The draft revised document is set out at Agenda Item 9(e).

Technical Staff seek the Board's approval to issue the proposed revised APES 310.

Small and Medium Practices (SMPs)

Technical Staff believe the proposed revisions for APES 310 provide practical solutions to current challenges faced by SMPs in complying with APES 310. The amendments should assist them in complying with current professional requirements.

Staff Recommendation

The Board:

- note the submissions received on ED 04/23; and
- subject to the Board's review comments, the Board approve the issue of:
 - (a) the revised APES 310 Client Monies; and
 - (b) the revised Trust Account Information Sheet.

Materials presented

Agenda Item 9 (a)	General Comments Table ED 04/23
Agenda Item 9 (b)	Specific Comments Table ED 04/23
Agenda Item 9 (c)	Proposed Revised APES 310 (marked-up)
Agenda Item 9 (d)	Proposed Revised APES 310 (clean)
Agenda Item 9 (e)	Revised Information Sheet on Opening Trust Accounts
Agenda Item 9 (f)	Desktop Review - client money regulations
Agenda Item 9 (g)	Desktop Review – unethical behaviours involving client monies

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