

**EXPOSURE DRAFT**

**ED 04/07**  
(May 2007)



**Proposed Standard: APES 305 Terms of Engagement  
(Formerly APS 2)**

Prepared and issued by **Accounting Professional & Ethical Standards  
Board Limited**

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## **Commenting on this Exposure Draft**

Comments on this Exposure Draft should be forwarded so as to arrive by **14 September 2007**.

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A copy of all non-confidential submissions will be placed on public record on the APESB website: [www.apesb.org.au](http://www.apesb.org.au).

## **Obtaining a copy of this Exposure Draft**

This Exposure Draft is available on the APESB website: [www.apesb.org.au](http://www.apesb.org.au). Alternatively, any individual or organisation may obtain one printed copy of this exposure draft without charge until 14 September 2007 by contacting:

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## Reasons for issuing Exposure Draft 04/07

Accounting Professional & Ethical Standards Board Limited (APESB) proposes to issue the Standard APES 305: *Terms of Engagement* setting out mandatory requirements and guidance for those Members in Public Practice who provide Professional Services to Clients.

The predecessor Standard APS 2: *Terms of Engagement* was issued in August 2000. Since that time there has been significant regulatory change which has affected the accounting profession. Thus the key changes in APES 305: *Terms of Engagement* are:

- Mandating the documentation and communication of Terms of Engagement;
- As all states have now enacted professional services legislation, references to the New South Wales legislation have been removed. The proposed standard now includes mandatory requirements that Members in Public Practice need to comply with when participating in a limitation of liability scheme under the relevant state legislation; and
- Examples of engagement letters have been removed. APESB believes it is more appropriate for the accounting professional bodies to provide guidance and examples to their Members based on the principles stated in this Standard and applicable legislation.

## Key requirements and guidance in ED 04/07

The proposed APES 305 includes mandatory requirements and guidance in respect of:

- Terms of Engagement for Professional Services;
- General contents of an Engagement Letter;
- Recurring Engagements; and
- Limitation of liability.

## Proposed operative date

It is intended that this Standard will be operative from 01 January 2008.

## Development of APESB Framework

APESB is in the process of developing a framework for Professional Standards and Guidance Notes (the APESB Framework). The finalisation of the APESB Framework may result in changes to previously issued Professional Standards and Guidance Notes.

## Request for comments

Comments are invited on this Exposure Draft of APES 305: *Terms of Engagement* by **14 September 2007**. 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.

**ACCOUNTING PROFESSIONAL & ETHICAL STANDARDS BOARD  
LIMITED**



**APES 305  
Terms of Engagement**

(Operative date 1 January 2008)

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## 1. Scope and application

- 1.1 Accounting Professional & Ethical Standards Board Limited (APESB) issues the Standard APES 305 *Terms of Engagement (the Standard)*, which will become effective from the operative date.
- 1.2 APES 305 sets out mandatory requirements and guidance in respect of Terms of Engagement for Members in Public Practice providing Professional Services to Clients. The mandatory requirements of this Standard are in **bold** type, preceded or followed by discussion or amplification 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 Engagement Letters, 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 and guidance notes 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 services by a Member in Public Practice. Consultations with a prospective client prior to such agreement are not part of an Engagement.

**Engagement Letter** means the letter that documents and confirms the acceptance of the appointment by the Member in Public Practice, the objectives and scope of the Engagement, the extent of responsibilities of the Member in Public Practice to the Client and the form of any reports.

**Firm** means (a) a sole practitioner, partnership, corporation or other entity of professional accountants;  
(b) an entity that controls such parties;  
(c) an entity controlled by such parties; and  
(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.

**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.

**Non-assurance Services** include but are not limited to taxation services, valuation services, preparing accounting records and financial statements, internal audit services, provision of IT systems services, temporary staff assignments, provision of litigation support, legal services, recruiting senior management, corporate finance or similar activities as described in the Code.

**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 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. Documented Terms of Engagement should also facilitate the management of the business relationship with the Client as well as the Client's expectations regarding the 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. The Terms of Engagement are ordinarily documented in the form of an Engagement Letter.

3.4 The Terms of Engagement need not be in the form of a letter. For example, a standard format handout, brochure, leaflet or electronic communication may be acceptable in certain circumstances.

- 3.5 The objectives and scope of some Engagements are established by law. Documentation of the Terms of Engagement cannot reduce obligations imposed by law. A Member in Public Practice may, however, still find that documentation of the Terms of Engagement is informative and useful for the Client, notwithstanding that the Engagement is undertaken under statute.

#### **4. General contents of an Engagement Letter**

- 4.1 The following is a guide to matters that should, for most Engagements, be considered for inclusion in an Engagement Letter. Engagement Letters 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 4.9 should therefore be varied to meet the individual requirements and circumstances of each Engagement.

- 4.2 *Introduction:* The letter 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 (applicable to Non-assurance Services only); 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) applicability of any legislation and of professional standards 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.

- 4.5 *Engagement output:* Details of reports or other anticipated outputs, including:

- (a) expected timing;
- (b) the intended use and distribution of reports;
- (c) the nature and effect 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 Services 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 *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.
- 4.8 *Ownership of documents*: The Engagement Letter 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 retains a lien over such documents, this should be set out in the Engagement Letter, including the process for dealing with disputes over the lien.
- 4.9 *Confirmation by the Client*: Request for a written response from the Client confirming its understanding of the Terms of Engagement as outlined in the Engagement Letter. This may take the form of a duplicate of the Engagement Letter signed by the Client and returned to the Member in Public Practice.

## **5. Recurring Engagements**

- 5.1 For a recurring Engagement, the Member in Public Practice may decide not to send an Engagement Letter on each occasion. The following factors may affect the decision of the Member in Public Practice to issue an Engagement Letter:
- (a) any indication that the Client misunderstands the objectives and scope of the Engagement;
  - (b) any significant changes in the Terms of Engagement;
  - (c) a recent change of Client management or ownership;
  - (d) a significant change in the nature or size of the Client's business; or
  - (e) legal requirements.

## **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 Services Legislation. A Member in Public Practice, who incorporates a limitation of liability provision in the Terms of Engagement, 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 shall communicate to the Client the limitation of liability provisions under the relevant Professional Services Legislation and advise the Client that it may wish to seek its own legal advice, both as to the nature of the provisions and their impact.**