

**Constituents' Submissions – Specific Comments  
Exposure Draft 01/12: APES GN30 Outsourced Services**

**Note:** General comments relating to APES GN 30 are addressed in a separate table. This table excludes minor editorial changes.

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
1	1.2	APPC	<b>Coverage:</b> The proposed guidance note should not deal with the provision of outsourced services, which is already subject to existing professional standards and guidance.
2	1.2	Deloitte	<p><b><u>Provision of Outsourced Services</u></b></p> <p>GN 30 as drafted covers both the use of and the provision of Outsourced Services. Many of the professional services that we provide to clients could be classified as Outsourced Services, for example, tax compliance and self-managed superfund administration. The provision of these services is governed by our obligations under APES 305 Terms of Engagement, APES 320 Quality Control for Firms and other relevant professional standards and legislation. Accordingly, we believe that GN 30 should only deal with the use of outsourcing services and not the provision of outsourced services.</p>
3	1.2	E&Y	<p><b>Provision of Outsourced Services</b></p> <p>The scope of the Proposed Guidance includes both the provision and utilisation of Outsourced Services. We do not consider it necessary or appropriate to include the provision of Outsourced Services within the scope of this Proposed Guidance.</p> <p>In our opinion, outsourcing should not be viewed as a stand-alone service offering. Rather, it is a method by which an underlying professional service (such as accounts preparation or tax compliance services) is delivered. The various professional services that Members provide are addressed by existing standards and guidance.</p> <p>In addition to service specific standards and guidance, Members are required to comply with other existing requirements such as APES 110 <i>Code of Ethics for Professional Accountants</i>, APES 305 <i>Terms of Engagement</i> and International Standards on Quality ISQC1.</p> <p>In these circumstances, we do not advocate including the provision of Outsourced Services by Members in the scope of the Proposed Guidance.</p>

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
4	1.2	E&Y	<p><i>4. The Proposed Guidance should not address the provision of Outsourced Services</i></p> <p>Outsourcing is not a professional service in and of itself. It is a method of delivering an underlying service to a client. There are existing standards and guidance statements that address the provision of professional services. There is no need for further standards or guidance where that underlying service is provided through an outsourcing arrangement.</p>
5	1.2	KPMG	<p>At item 1.2 the ED acknowledges other professional duties and legal obligations of Members. KPMG considers it would be of practical benefit for any guidance to provide an indicative list or some common examples of such other professional duties and legal obligations.</p>
6	1.2	PWC	<p>Any guidance should be limited to the utilisation, rather than the provision, of outsourced services. There are existing professional standards and guidance in relation to the latter. This guidance cuts across auditing standards ASA 600 (Audit of a Group Financial Report) and ASA (Using the Work of an Auditor's Expert) and it is unclear what would take precedence.</p>
7	1.5	KPMG	<p>At item 1.5 the ED emphasises the point at 1.2 by stating, "The Guidance Note is not intended to detract from any responsibilities which may be imposed by law or regulation." Later in the ED, contractual arrangements for outsourced services are addressed. In many instances of outsourced services there will be contracts already in place. It is clear that legally binding obligations will arise from any such existing contracts. KPMG considers that any guidance must give priority to existing contractual obligations. Any Guidance Note needs to provide clear principle based guidance in relation to transition.</p>
8	1.5 1.6	APPC	<p><b>Relationship with existing standards:</b> The scope of the proposed guidance note should specifically exclude assurance engagements under ASA 600. The proposed guidance note should also provide guidance to members in situations where its provisions overlap with other sources of guidance for members (e.g. guidance issued by the Tax Practitioners Board in relation to the Tax Agents Services Act "code of conduct").</p>
9	1.7	Deloitte	<p>As drafted, we believe that there are instances where GN 30 appears to be in conflict with the authoritative APESB pronouncements. For example, paragraph 1.7 states "<i>Members in Public Practice should be familiar with relevant Professional Standards, including guidance notes when providing Professional Services</i>". Whilst the equivalent paragraph in APES 215, states "<i>Members in Public Practice shall be familiar with relevant standards, including guidance notes when providing Professional Services</i>". The wording in the guidance note appears to suggest that Members have a lesser obligation in respect of familiarity with professional standards that is required in standards.</p>
10	1.4 1.9	KPMG	<p>Items 1.4 and 1.9 are unclear as to their scope and impact. KPMG considers they should be removed.</p>

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
11	1.9	E&Y	<p><b>Application to Members in Business</b></p> <p>"Members in Business" are also required to apply the Proposed Guidance to the extent practicable when they provide or utilise Outsourced Services. We can envisage a number of practical issues in application to Members in Business who comply with other regulatory bodies' guidance and standards for relevant specific industries. Examples of this are the Prudential Standard APS 231 <i>Outsourcing</i>, covering outsourcing arrangements entered into by authorised deposit-taking institutions, CPS 231 <i>Outsourcing</i> covering general and life insurance companies and Superannuation Guidance Note SGN 130.1 <i>Outsourcing</i> covering superannuation entities.</p>
12	1.9	GT	<p>Grant Thornton notes that Para 1.9 of ED 01/12 states that Members in Business should apply this Guidance Note to the extent practicable. We do not see why Members in Business should have such discretion particularly when they are competing with Members in Practice in providing Outsourcing Services.</p>
13	2	APPC	<p><b>Definitions:</b> There is a lack of clarity with regard to key definitions (in particular the definition of "outsourcing" and related terms and of "material business activity"). Cross-border teaming (i.e. utilisation of firm network resources offshore) should not be regarded as outsourcing, whether or not these are subject to the "control" of the Australian practice. Similarly, internal support services which have no direct role in the delivery of professional services should not be regarded as outsourced services.</p>
14	2	E&Y	<p>Material Business Activity – further explanation is required in the definitions section regarding the definition of "materially impact".</p> <p>Further clarity is required to understand the term "scale of business operations". Does this refer to the Members Firm's ability to deliver professional services committed to in signed engagement agreements?</p>
15	2	E&Y	<p><b>Definitions of Material Business Activity and Outsourcing</b></p> <p>The Proposed Guidance defines a Material Business Activity as "<i>an activity of an entity that has the potential, if not delivered, to materially impact upon the quality, timeliness or scale of the business operations of a Member in Public Practice or a Client</i>".</p> <p>We note that it would rarely be the case that an Outsourced Service could be brought back in-house, or redirected to another Outsourced Service Provider instantaneously. It would be helpful if the Proposed Guidance more explicitly linked this definition to the need for adequate contingency planning.</p>

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			<p>Consistent with our views expressed earlier in relation to internal support services, we suggest that the definition of a Material Business Activity should be limited to the “delivery of a professional service” rather than “business operations”.</p> <p>Outsourcing is defined as “<i>the transfer of responsibility for conducting processes to an Outsourced Service Provider...</i>”. There is potential for the use of the term “responsibility” in this context to cause confusion, given that paragraph 3.9 correctly notes that a Member in Public Practice should “retain the primary responsibility to deliver the Professional Service”.</p>
16	2	E&Y	<p>3. <i>Only Outsourced Services directly related to the provision of a professional service should be covered</i></p> <p>The Proposed Guidance should clearly state that it does not apply to activities, such as data hosting, that are not directly related to the provision of a service to a client.</p>
17	2	GT	<p>The definitions as they relate to ‘outsourcing’ and ‘material business activity’ need clarification to ensure that using the services of a network firm where there are already common controls and procedures such as for audits which are covered by Auditing Standards, need to be excluded from the scope of this Guidance Note, particularly as there are at present, mandatory requirements in ED 01/12.</p>
18	2	JAB	<p><b>Definitions</b></p> <p>In our view the definitions in the ED do not adequately define the term <i>Outsourcing</i>.</p> <p>The ED defines <i>Outsourcing</i> to mean the transfer of responsibility for conducting processes to an Outsourced Service Provider. An <i>Outsourced Service Provider</i> is defined to mean an entity that is providing services in accordance with an Outsourcing Agreement. An <i>Outsourcing Agreement</i> is defined to mean the document in which the terms and conditions of an Outsourced Service are set out. An <i>Outsourced Service</i> is defined to mean a service involved in <i>Outsourcing</i> a Material Business Activity to an Outsourced Service Provider.</p> <p>The effect of all this is that, because each of the definitions refers to another, the term Outsourcing is never ultimately defined. The references between the definitions set up a circular path, so that if you start with the definition of Outsourcing, you ultimately return to it.</p>
19	2	KPMG	<p>a) It is anticipated that the definition of <b>Client</b> excludes a Member in Public Practice, where the Member in Public Practice is receiving the outsourced service. It is recommended that any APES Board guidance provides clarity on this point.</p>

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
20	2	KPMG	b) It is anticipated that the definition of <b>Engagement</b> excludes an agreement or contract for the provision of outsourced services to a Member in Public Practice. It is recommended that any APES Board guidance provides clarity on this point.
21	2	KPMG	c) The definition of <b>Material Business Activity</b> employs the terminology “materially impact”. It is recommended that any APES Board guidance employs more specific terminology to facilitate consistency in relation to “materially impact” as well as clear examples, which support the specific guidance and are realistic. For example, it should be unambiguous whether it would capture activity which represents a small proportion of the engagement being undertaken by the engagement hours or nature of activity being undertaken, for example, routine non-complex tasks.
22	2	PWC	<p><b>Definitions</b>  <i>Definition of “Material Business Activity”</i></p> <p>The definition of “Material Business Activity” is not clear. Whilst the definition notes that a “material business activity means an activity that has the potential, if not delivered, to materially impact on the quality, timeliness or scale of business operations” the examples provided in Appendix 1 assess materiality purely on size (defined by hours or percentage of revenue) of the outsourced service, with no reference or consideration of other relevant factors, such as the nature or risk associated with the outsourced activity.</p> <p>We do not think that the size of the outsourced service should be the sole determining factor for materiality. When outsourcing services, we might engage an outsourcing provider to perform 10-12% of the total engagement hours, which on size may appear material, however, the nature of the activities being outsourced may be simple procedural activities which a member oversees and the responsibility for those services remains with the member, meaning there is a limited risk in outsourcing those services.</p> <p>We therefore request that the definition of “Material Business Activity” is amended to note that materiality should be determined by a range of factors including size of the activity being outsourced and risk to the Member in Public Practice or client.</p>
23	2	JAB	The ED’s definition of Outsourcing does refer to “the transfer of responsibility for conducting processes”, and further states that “Outsourcing can be from a Client to a Member in Public Practice or from a Member to an external service provider.” Although there is no definition of an external service provider, in our view the implication here is that the ED

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			<p>means that the transfer of responsibility should be to an external party in order to constitute outsourcing.</p> <p>In relation to the use of the words “the transfer of responsibility”, we note the reference in paragraph 3.9 to the member retaining “the primary responsibility” to deliver the professional service, and in paragraph 4.5 to the member retaining the responsibility to monitor and review the outsourced service. We therefore query whether a definition of outsourcing should focus on the transfer of a function rather than a responsibility.</p> <p>We consider that the APESB should clarify the meaning of outsourcing for the purposes of this guidance note, by means of a stand-alone definition.</p> <p>Consequential adjustments to other definitions would be required.</p>
24	2	KPMG	<p>d) The definition of <b>Outsourcing</b> refers to the transfer of responsibility for conducting processes. This concept appears to be potentially inconsistent with the point in item 3.9, which states, “A Member in Public Practice who utilises an Outsourced Service Provider retains the primary responsibility to deliver the Professional Service...” It is recommended that the definition is modified to avoid the potential for misunderstanding that responsibility is not being transferred and remains with the receiver of outsourced services.</p>
25	2	KPMG	<p>e) It is further recommended that the definition of <b>Outsourcing</b> is modified specifically to exclude arrangements put in place with a component auditor by a group auditor in the conduct of group audits. In addition the outsourcing of operational activity between inter-firm entities (for example IT hosting) should be excluded.</p>
26	2	KPMG	<p>f) The definition of <b>Outsourcing</b> includes the statement, “Outsourcing can be <u>from a Client</u> to a Member in Public Practice or from a Member <u>to an external service provider</u>.” The definition appears to express the reverse of what is intended. KPMG considers the following style of definition to be preferable, “An entity engaging a party on a continuing basis to perform on the entity’s behalf, a business activity that is, has been, or could be performed by the entity.”</p>
27	2	KPMG	<p>g) The definition of Professional Services appears to unintentionally capture the work of experts as defined by Auditing Standard ASA 620. KPMG recommends that the definition is modified to specifically exclude this work.</p>
28	2	JAB	<p><b>Meaning of ‘external’</b></p> <p>If, as indicated above, outsourcing were to be defined in relation to transfers to an external entity, then in our view the guidance would need to clarify what constitutes an external entity in this context.</p>

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29	2	JAB	<p>We note that transfers of organisational functions can sometimes occur within firms or within networks of firms. It is our view that such transfers are not characteristic of the type of transfers which are the focus of this guidance note. We understand that the principal area of concern that the guidance is seeking to address is where a transfer is made to an entity which is completely external to the entity that originally performed that function, such that there would be no <i>existing</i> safeguards in place to address the implications of the transfer. We consider that where transfers occur within firms, there are likely to be adequate procedures in place to address the risks associated with that transfer, as part of a firm's system of quality control. And where transfers occur within a network of firms, the due diligence undertaken at the time of establishing the network, and the risk management and quality control processes already in place will adequately deal with the associated risks.</p> <p>The risks associated with transfers to an external entity, where there would be an absence of existing safeguards and those higher risks arising where the service provider is external to the firm, should in our view be the appropriate focus of this guidance.</p>
30	2	PWC	<p><i>Definition of "Outsourcing"</i></p> <p>The definition states that "outsourcing means the transfer of responsibility for conducting processes to an Outsourced Service Provider ....". The meaning of "transfer of responsibility" is not clear.</p> <p>When a member firm within a network of firms is asked to perform a service or to perform a part of a group audit we do not think this should be categorised as outsourcing. The responsibility for the service ultimately remains with the engagement partner and so there is not a transfer of responsibility. In addition, the provision of internal support services to a member by a third party which have no direct link to the provision of professional services should not be categorised as an outsourced service.</p> <p>We do not believe that there is sufficient clarity as to whether group audits, where some of the audit work is performed by other auditors (either within a firm or network of firms), are intended to be captured by the definition. Our view is that they should not be as group audits are already sufficiently covered by auditing standard ASA 600.</p> <p>We request that the definition of "Outsourcing" is amended so that group audits, services being provided within a network of firms, and services which are covered under sub-contracting arrangements are not categorised as outsourced services.</p>

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31	2	Deloitte	<p><b><u>Scope of GN 30</u></b></p> <p>GN 30 defines Outsourcing as “the transfer of responsibility for conducting processes to an Outsourced Service Provider and includes the remote hosting of business systems by an Outsourced Service Provider. Outsourcing can be from a client to a Member in Public Practice or from a Member to an external service provider”.</p> <p>It is unclear to us what is meant by the phrase the “transfer of responsibility for conducting processes” as in all instances responsibility for the delivery of the professional services rests with the Member in Public Practice. We believe that there is a conflict between the definition and paragraph 3.9 of GN 30. There is also the potential for confusion with paragraph 4.5.</p>
32	2	Deloitte	<p>Whilst we believe that GN 30 is not intended to apply where a group audit is being performed, we believe that this needs to be clarified. ASA 600 <i>Using the Work of Another Auditor</i>, which is based on the international equivalent standards ISA 600, contains requirements and application material for the conduct of group audits. ISA 600 was issued after the extensive consultation and in our view clearly establishes the auditor’s obligations in respect of the use of other auditor for the purpose of audit engagements.</p>
33	3.2 3.3	KPMG	<p>a) Item 3.2 is not supported. It employs the terms “threat” and “safeguard” in the context of the applicable laws and regulations. Whilst their relevance is understood in terms of their applicability to the fundamental principles, KPMG considers that the terms are inappropriate in the context of compliance with laws and regulations. It is expected that in relation to laws and regulation, the intention of the ED is to address risks of non-compliance. It is submitted that in the context of laws and regulations, the terms “risks” and “controls” or “compliance arrangements” should be employed. This comment is relevant to item 3.3 also.</p>
34	3.2 3.3	KPMG	<p>b) It is noted that there is potential for an unintended consequence that the prescriptive nature of items 3.2 and 3.3 of the Guidance Note requires members to discontinue services, creating legal problems with existing contracts and exposing members to risk of litigation for failure to deliver under existing contracts.</p>
35	3.3	KPMG	<p>c) Item 3.3 – see comments 3a), 3b) and 3c) above.</p>
36	3.3	KPMG	<p>d) Item 3.3 does not discuss an additional risk that may arise from the use of an Outsourced Service Provider. That is the risk that the ability of the Member in Public Practice to perform an engagement may be impaired as a result of poor performance by the Outsourced Service Provider. KPMG considers that this risk requires robust</p>



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			<p>controls to be considered by Members in Practice.</p> <p>e) Item 3.3 is not supported. It concludes with, "If appropriate safeguards are not available to reduce the threats to an Acceptable Level, then the Member should decline or discontinue the use of the Outsourced Service Provider." This component of the guidance presupposes that an alternative arrangement is available or that the Member has the capacity to perform the function and that existing contractual constraints permit. This may not be the case and could expose the Member to greater litigation risks.</p>
37	3.3	E&Y	<p>Referring to paragraph 3.3 "The provision of Outsourced Services/use of an Outsourced Provider may create threats to compliance with the fundamental principles of the Code as well as compliance with applicable laws and regulations, for example, the <i>Privacy Act</i>."</p> <p>► This statement is not detailed enough to explain the fundamental risks that the Proposed Guidance is designed to mitigate.</p> <p>► It is not clear exactly how the provisions of APES 110 <i>Code of Ethics for Professional Accountants</i> are threatened by outsourcing arrangements.</p>
38	3.8	KPMG	<p>f) Item 3.8 refers to determining that a proposed outsourced service provider has the required professional competence, etc. There is no guidance to the effect that the Member in Public Practice should have the capability and capacity to oversight the quality of the service received. KPMG considers this to be a critical factor for the successful management of outsourcing.</p>
39	3.8	E&Y	<p>Consideration as to whether an exemption from the requirements to assess "professional skills capacity, policies and procedures" would be granted for Outsourced Service Providers who are ISQC1 certified.</p>
40	3.10	E&Y	<p>Paragraph 3.10 notes that it is not necessary to obtain written consent by clients in regard to Members' internal functions (record storage or software application hosting) which do not involve an active role in the Professional Service.</p> <p>Clarity is required regarding whether internal services such as central IT services, software application hosting are out of scope of the requirements of the Proposed Guidance or solely the provisions of paragraph 3.10. The definition of "outsourcing" in section 2 and Appendix 1 Example 5 suggests that these services are in scope but further clarification is required.</p>
41	3.10	KPMG	<p>f) Item 3.10 is not supported. Since the Member in Public Practice retains the primary responsibility to deliver the</p>

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			<p>professional service, the extent to which outsourced services are used is no more relevant for disclosure to a client than any other valid business practices employed by the Member in Public Practice. Furthermore it would be unwieldy and burdensome for large firms to obtain consent from each client.</p>
42	3.10	E&Y	<p><b>Application to internal support services</b></p> <p>There is a lack of clarity in the Proposed Guidance as to the extent to which it covers internal support services.</p> <p>Paragraph 3.10 states that <i>“This does not include the Member’s internal functions (e.g. record storage or software application hosting) which do not involve an active role in the Professional Service”</i>. However, this statement appears to be made solely in the context of disclosure to the Client of the use of Outsourced Services.</p> <p>The definition of Outsourced Services, however, includes <i>“the remote hosting of business systems”</i>.</p> <p>Internal support services such as those described below, do not have a direct role in the delivery of professional services:</p> <ul style="list-style-type: none"> <li>▶ Software applications where licences are held with external providers, such as tax return preparation software, assurance methodology guidance and data storage systems and off-the-shelf accounting packages.</li> <li>▶ Applications hosted in the cloud and on outsourced providers’ servers.</li> </ul> <p>We therefore believe that internal support services detailed above should be excluded from the scope of the Proposed Guidance.</p>
43	3.10	APPC	<p><b>Client disclosure:</b> There are a number of practical issues associated with paragraph 3.10 of the proposed guidance note (for example, the engagement agreement is ordinarily executed prior to the commencement of the engagement work and the extent to which outsourced services might be utilised might not be fully known at that stage). Whilst we appreciate the need for appropriate disclosure of relevant matters to clients we do not think there needs to be an obligation to disclose the nature and extent of outsourcing and to obtain clients’ written consent for such outsourcing.</p>
44	3.10	Deloitte	<p>GN 30 is very prescriptive in nature. In our view this is not necessary in a guidance note. Moreover, some of the proposals would be very difficult to adhere to and are impracticable. For example,</p> <ul style="list-style-type: none"> <li>• Paragraph 3.10 states the Member <i>“should disclose to the Client the nature and extent to which Outsourced Services are used in the delivery of Professional Services and to obtain written consent from the Client to use those</i></li> </ul>

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			<p><i>Outsourced Services</i>". Whilst it is possible to indicate to a client in the engagement letter that it is intended to use Outsourced Services in the delivery of Professional Services, the exact nature and extent will evolve as the engagement is conducted. It would be impracticable to obtain written consent from the client each time the scope of the Outsourced Service changes.</p>
45	3.10	E&Y	<p><b>Disclosure of the nature and extent of Outsourced Services to Clients</b></p> <p>The Proposed Guidance requires a Member in Public Practice to disclose the nature and extent to which Outsourced Services are used in the delivery of professional services and obtain written consent from the client (paragraph 3.10).</p> <p>We do not agree that the suggested disclosures and related requirements are appropriate or necessary, given the fact that the Member retains total responsibility for the delivery of the professional service to the client in conformity with the Member's professional and legal obligations.</p> <p>We see no persuasive rationale as to why the use of an Outsourced Service Provider requires separate disclosure and agreement, any more than does any other aspect of the way in which the Member plans, resources or executes the service.</p>
			<p>We also see a number of practical issues with the proposal, including:</p> <ul style="list-style-type: none"> <li>▶ The engagement agreement is ordinarily executed prior to the commencement of the actual engagement work and the planned "nature" and "extent" of the utilisation of Outsourced Services may not be fully known in order to be formally agreed at this stage.</li> <li>▶ The extent of the services outsourced may evolve as more information is received throughout an engagement. It would be impractical to obtain agreement from a client each time the scope of the Outsourced Services alters as and when information is obtained.</li> <li>▶ The level of detail and complexity involved may differ between engagements which would hinder a standardised approach to documenting the "nature" and "extent" of Outsourced Services</li> <li>▶ Compliance costs to documentation of "nature" and "extent" of Outsourced Services to each client where such services occur on a frequent basis.</li> </ul>

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			<ul style="list-style-type: none"> <li>▶ Influencing the content of engagement agreements agreed in other jurisdictions (overseas) would be particularly challenging.</li> <li>▶ Clarity in respect of what form a client's written consent should take, if a separate explicit written consent is required.</li> <li>▶ Clarity in respect of how frequently written consent would need to be obtained, annually from the service provider, per service provided or according to the terms of the client engagement.</li> </ul>
46	3.10	PWC	<p><b>Paragraph 3.10 – disclosure to clients</b></p> <p>Paragraph 3.10 notes that the nature and extent to which outsourced services are being provided should be disclosed to the client and written consent from the client to use those outsourcing services should be obtained. We believe this is unduly onerous.</p> <p>Standard engagement terms which state that part of the services for a client may be outsourced or provided outside of Australia, in our opinion is sufficient disclosure to clients. We do not think it is necessary to disclose the nature and extent of the services being outsourced, nor are we aware of any other industry which is required to do so.</p> <p>The guidance is also inconsistent with requirements in legislation which applies to members, for example, the Tax Agent Services Act requires that clients are notified that services are being outsourced but does not require clients' written consent.</p>
47	4	E&Y	<p>Consideration as to whether an exemption from the requirements of the section "Management of risks associated with Outsourced Services" would be granted for Outsourced Service Providers who are ISQC1 certified.</p>
48	4.1	E&Y	<p>Where a Member Firm provides Outsourced Services to clients, the terms of these services are contractually specified in an engagement agreement which articulates the approach, the management of client specific risks and the terms and conditions of the service being provided. The requirement for an "Outsourcing policy framework" over and above these contractual conditions appears overly onerous. We would request that the nature of the framework is further defined and detailed.</p>
49	4.2	KPMG	<p><b>Management of risks associated with Outsourced Services</b></p> <p>As a general principle, any frameworks should be open, flexible and dynamic and not rigid, with policies and procedures incorporated and removed as the nature of the Outsourcing evolves.</p>

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			<p>a) The management of risks associated with Outsourced Services is inextricably linked to the Fundamental Responsibilities of Members in Public Practice addressed under section 3. Therefore KPMG's comments under this section should be read in the context of our points under the previous heading.</p> <p>b) Item 4.2 employs the term "all relevant personnel". It is too broad for the level of prescription indicated. KPMG recommends paragraph 4.2 is modified to remove the second part of the first sentence to read as follows, "A Member in Public Practice utilising Outsourced Services should develop and document an Outsourcing policy framework. The framework should set out the Member's approach to utilising Outsourced Services and include the Member's approach to managing business, operational and other risks associated with the performance of the Outsourcing Agreement".</p>
50	4.3	KPMG	<p>c) At item 4.3, the assessment of a range of factors is indicated. There may be circumstances where some of these factors are not dependencies in the delivery of a service. This is too prescriptive and it should be at the discretion of the member how the suitability of the service provided is assessed. It is recommended that any APES Board guidance is objectives based and not at this level of detail.</p> <p>d) At item 4.3 f) the assessment of the Member's understanding of the file review and error correction processes of the outsourced service provider is indicated. This is too prescriptive and it should be at the discretion of the member how the suitability of the service provided is assessed. It is recommended that any APES Board guidance is objectives based and not at this level of detail.</p> <p>e) Item 4.3 k) is not supported. It refers to the adoption of monitoring procedures to ensure the effective performance, etc. of the outsourced service provider. KPMG considers the use of the word "ensure" is inappropriate. It is submitted that monitoring procedures are incapable of ensuring performance in this context.</p>
51	4.3	JAB	<p>Paragraph 4.3 enumerates a number of issues that should be assessed prior to entering in to an Outsourcing Agreement. At (g) this is stated to include "the communication skills of the Outsourced Service Provider and its personnel". We consider that this issue is a generic business concern between any contracting parties, and is therefore not necessary to be identified in the context of outsourced services.</p>
52	4.5	KPMG	<p>f) Item 4.5 is not supported. It refers to the movement of managerial responsibility. KPMG considers that responsibility remains with the person receiving the outsourced service. The conduct, supervision and reporting of particular activities may move to the outsourced service provider, however ultimate responsibility remains with</p>

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			<p>the acquirer of the outsourced services.</p> <p>g) Item 4.5 is not supported. It uses the term “ensure”. KPMG considers this an inappropriate term. It is recommended that “ensure that” is replaced with “assess whether”.</p>
53	5.2	JAB	<p>Notwithstanding our concerns with the overall language of the guidance note, it has been raised with us that the meaning of paragraph 5.2 is somewhat difficult to comprehend in its current form, and we raise for your consideration whether alternative wording would bring greater clarity to the reader.</p>
54	5.2	KPMG	<p>a) Item 5.2 is not supported. It refers to the disclosure of details of subcontracting arrangements, which might be arrangements between firms in the same network, subject to clarification of the scope of the Guidance Note as referred to at 2 e) above. KPMG submits that the details of any subcontracting by a Member in Public Practice are commercially sensitive and should not be disclosed to clients as a matter of course. It is acknowledged that it may be seen as appropriate by a Member in Public Practice to use any contract to reserve the right to employ outsourced services.</p>
55	5.3 5.5	KPMG	<p>b) Item 5.5 (and 5.3 by reference) are not supported. KPMG considers that it is too prescriptive. It emphasises certain features, which fundamentally require negotiation between the parties to an outsourced service. Further, some of the proposed requirements appear to be inconsistent with some of the fundamentals of the draft GN. For example, in 5.5 (x) it is unclear how a service provider can be responsible when the GN establishes that the member retains responsibility for what is outsourced; and in 5.5 (p) it is unclear if the member has responsibility, why professional bodies should not need right of access. KPMG considers that there are likely to be many contracts already in place industry-wide, which will not contain all the proposed requirements.</p>
56	5.5	APPC	<p><b>Contents of outsourcing agreements:</b> In its current form and language paragraph 5.5 is overly prescriptive and detailed. Not all of these terms will be applicable in all situations. There is also concern that the proposed guidance note should not duplicate the existing requirements of APES 305 <i>Terms of Engagement</i>.</p>
57	5.5	E&Y	<p><b>Terms of the Outsourcing Agreement</b></p> <p>We support the need for an outsourcing agreement for the utilisation of Outsourced Services, as properly defined.</p> <p>However the proposed list of requirements for Member Firms to consider (paragraph 5.5) comprises an extensive list of possible provisions that may or may not be appropriate to a particular outsourcing arrangement, depending on the specific circumstances. We think this list is better put into an Appendix to the Guidance, clearly identified as being intended to be tailored to the relevant circumstances. In the event that cross-border teaming engagements are included</p>

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			<p>in the scope of the Proposed Guidance, we suggest that paragraph 5.5 should not apply to these arrangements, given the extensive internal monitoring and quality arrangements Members of the same global network employ.</p> <p>We also recommend that the Proposed Guidance does not duplicate the existing requirements of APES 305 <i>Terms of Engagement</i>.</p> <p>We note that the requirements detailed in the Proposed Guidance are also not in line with the requirements of other professional standards. For example when considering Assurance services, the requirements of the Proposed Guidance with regard to terms of engagement are more excessive than those that guide our interactions with Member Affiliate Firms undertaking audit engagements in compliance with ASA 600: <i>Special Considerations—Audits of a Group Financial Report (Including the Work of Component Auditors)</i>.</p>
58	5.5	Deloitte	<ul style="list-style-type: none"> <li>• Paragraph 5.5 sets out the basic content of the Outsourcing Agreement that the Member should seek to negotiate. We have number of concerns about this:                             <ul style="list-style-type: none"> <li>• Our ability to influence the content of Outsourcing Agreements, which have been agreed in other jurisdictions, is limited</li> <li>• Section (p) seeks to include a clause in the agreement to allow Australian Professional Bodies access to premises of Outsourced Service Providers, which may not be possible where those providers are located in foreign jurisdictions where local laws and other regulations would have to be considered and have to be complied with.</li> </ul> </li> </ul>
59	5.5	PWC	<p><b>Paragraph 5.5 – contents of Outsourcing Agreement</b></p> <p>Paragraph 5.5 sets out the terms which should be included in an Outsourcing Agreement. Whilst we understand that this guidance may be useful, particularly to Members in Public Practice who do not have legal teams to draft and negotiate their Outsourcing Agreements, we do not think it is appropriate to require Members in Public Practice to have these terms in all Outsourcing Agreements. There are many factors which might be relevant to the final terms of an Outsourcing Agreement and all of the terms in paragraph 5.5 may not be applicable in every circumstance.</p> <p>If, notwithstanding these comments, paragraph 5.5 remains in the guidance, we seek confirmation that existing Outsourcing Agreements are not required to comply.</p>

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
60	5.7	KPMG	b) The content of item 5.7 sets an expectation about the maintenance of professional indemnity insurance by a Member in Public Practice who provides Outsourced Services. KPMG considers this a commercial matter for members to consider and is a matter covered by Institute of Chartered Accountants in Australia Regulation R4A. It should not be the subject of the Guidance Note.
61	6.3 6.4 6.7	KPMG	b) The terms of items 6.3, 6.4 and 6.7 are not supported. They are prescriptive and may not be the most appropriate guidance to support monitoring and management of performance in all circumstances.
62	6.6	KPMG	<p><b>Performance of the Outsourcing Agreement</b></p> <p>a) Item 6.6 is not supported. The first, third and fourth bullet points employ the term “ensure”. The term “assess whether” is more practicable than “ensure that” in this context.</p>
63	Appendix 1 – Examples	KPMG	c) The examples describe materiality from a client’s perspective. It is unclear how a member can be in a position to make this assessment as clients often don’t understand materiality and are likely to have a different concept of materiality to that outlined in the GN. It is recommended that materiality to a client should be omitted as a criterion.
64	Appendix 1 – Examples	KPMG	a) It is noted that none of the examples included describe the situation where a firm contracts with an entity to perform routine and mechanical work in support of the firm’s client engagement.
65	Appendix 1 - Examples	E&Y	<p>The example scenarios given in Appendix 1 do not make clear what the actual ethical dilemmas are in each case, and why guidance is needed to regulate such scenarios.</p> <p>In addition, the examples described in Appendix 1 do not cover the arrangements commonly in operation in large global network firms.</p> <p>We believe the examples should be kept narrow in focus, so as to provide clarity on the exclusion of the following arrangements:</p> <ul style="list-style-type: none"> <li>▶ Cross-border teaming arrangements with shared service centers undertaken by Affiliate Firms.</li> <li>▶ Software applications where licenses are held with external providers, such as tax return preparation software, Assurance methodology guidance and data storage, and off the shelf accounting packages</li> </ul>



Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			► Applications hosted in the cloud and on outsourced providers' servers.
66	Example 1	KPMG	b) Example 1 describes outsourcing an activity to a family trust. KPMG submits that typically a trust is incapable of entering such an arrangement because in most circumstances it is not a legal entity.
67	Example 1	Deloitte	The first example in appendix 1 states that if a “ <i>substantial portion of the Professional Services provided to one Client is Outsourced then the Outsourcing arrangement would be Material Business Activity from that Client’s perspective and the arrangement is within the scope of APES GN 30</i> ”. This appears to suggest that evaluation of whether or not a firm is Outsourcing may need to be done on an engagement by engagement basis. Furthermore, this appears to be in conflict with the definition of an Outsourced Service which suggests that the evaluation is done from the perspective of the Professional Services provider and whether they have outsourced a “material business activity”.
68	Example 4	KPMG	c) Example 4 leaves uncertainty about whether the Indian service provider must comply with the guidance. KPMG recommends the insertion of a statement that provides clarity that this example is stating that the guidance applies to the user of services and not the Indian service provider.
69	Example 5 Example 6	E&Y	We note that cloud computing is only mentioned in the Appendix and not further explained in the body of the Proposed Guidance. Given the legal and regulatory complexities for consideration relating to cloud computing (particularly cross-border into other countries) we would suggest the APESB to explicitly define the scope of application of the Proposed Guidance in relation to cloud computing, or exclude cloud computing from the examples within the Appendix of the guidance.
70	Proposed operative date	APPC	<b>Application:</b> The proposed guidance note should clearly state that it provides guidance prospectively with regard to arrangements entered into by members from the date of issue of the guidance note.
71	Proposed operative date	Deloitte	<b><u>Transitional Provisions and grandfathering</u></b> We note GN 30 is not a standard and therefore it would not be appropriate to include formal transitional provisions. However, in the interests of certainty, some clarity is needed as to whether the guidance only has prospective application, which we would support.
72	Proposed operative date	E&Y	<b><u>Application date</u></b> We note that the Proposed Guidance will be operative from the date it is issued. However, the guidance is not explicit as to whether it is to be retrospectively applied, with transitional arrangements in place, or a prospective application is intended. In our opinion, the Proposed Guidance should clearly state that it applies prospectively to new arrangements entered into

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			after the guidance takes effect. To do otherwise would potentially place a significant compliance burden, both on Members and their clients, to amend existing arrangements.

**Staff Instructions**

- Comments of a “general” nature should be dealt with first, followed by paragraph specific comments.
- Respondents’ comments must be copied verbatim into this table.
- Comments should be dealt with in paragraph order, not respondent order.
- Use acronyms only for respondents. Update the attached table with details of additional respondents.

**RESPONDENTS**

1	APPC	Australian Public Policy Committee
2	Deloitte	Deloitte Touch Tohmatsu
3	E&Y	Ernst & Young Australia
4	GT	Grant Thornton Australia Limited
5	JAB	Joint Accounting Bodies
6	KPMG	KPMG Australia
7	PwC	PricewaterhouseCoopers