

# CLIENT RELATIONSHIP GUIDE

## ISSUES TO CONSIDER FOR NEW, EXISTING AND DEPARTING CLIENTS IN AUSTRALIA

### FORWARD

This guide addresses issues that must be considered or may arise when accepting a new client or farewelling an existing client.

Pertinent issues that may arise in client relationships include those related to client acceptance, engagement acceptance, changes in professional appointment, and terms of engagement.

This publication also offers guidance on how to communicate with potential clients so that possible conflicts or disagreements are avoided, as well as issues surrounding document ownership, including liens. It will also assist you by outlining your rights and obligations in the event of a client leaving your firm.

Acceptance of new clients or engagements may create threats to compliance with the fundamental principles of integrity, objectivity, professional competence and due care, confidentiality and professional behaviour, as described in APES 110 *Code of Ethics for Professional Accountants (the Code)*.

The Code deals with client acceptance (paragraphs 210.1 to 4), engagement acceptance (210.5 to 6) and changes in professional appointment (210.8 to AUS 210.15.1), while APES 305 *Terms of Engagement (APES 305)*, issued by the Accounting Professional and Ethical Standards Board (APESB), sets the standards for members in public practice in the provision of quality and ethical professional services to clients.

The guide references legislative and ethical requirements particularly for members in Australia, but members in other jurisdictions may also find the contents of the guide useful.

As a CPA Australia member, it is critical that you act ethically and professionally in accordance with not only the By-Laws and standards imposed on CPA Australia members, but also in compliance with any laws and regulations. For members in public practice in Australia this includes the *Tax Agent Services Act (2009)*. All members practising in Australia are required to comply with the requirements of the Accounting Professional and Ethical Standards (APESs). Members practising outside Australia are required to comply with APESs to the extent to which they are not prevented from doing so by local laws or regulations.

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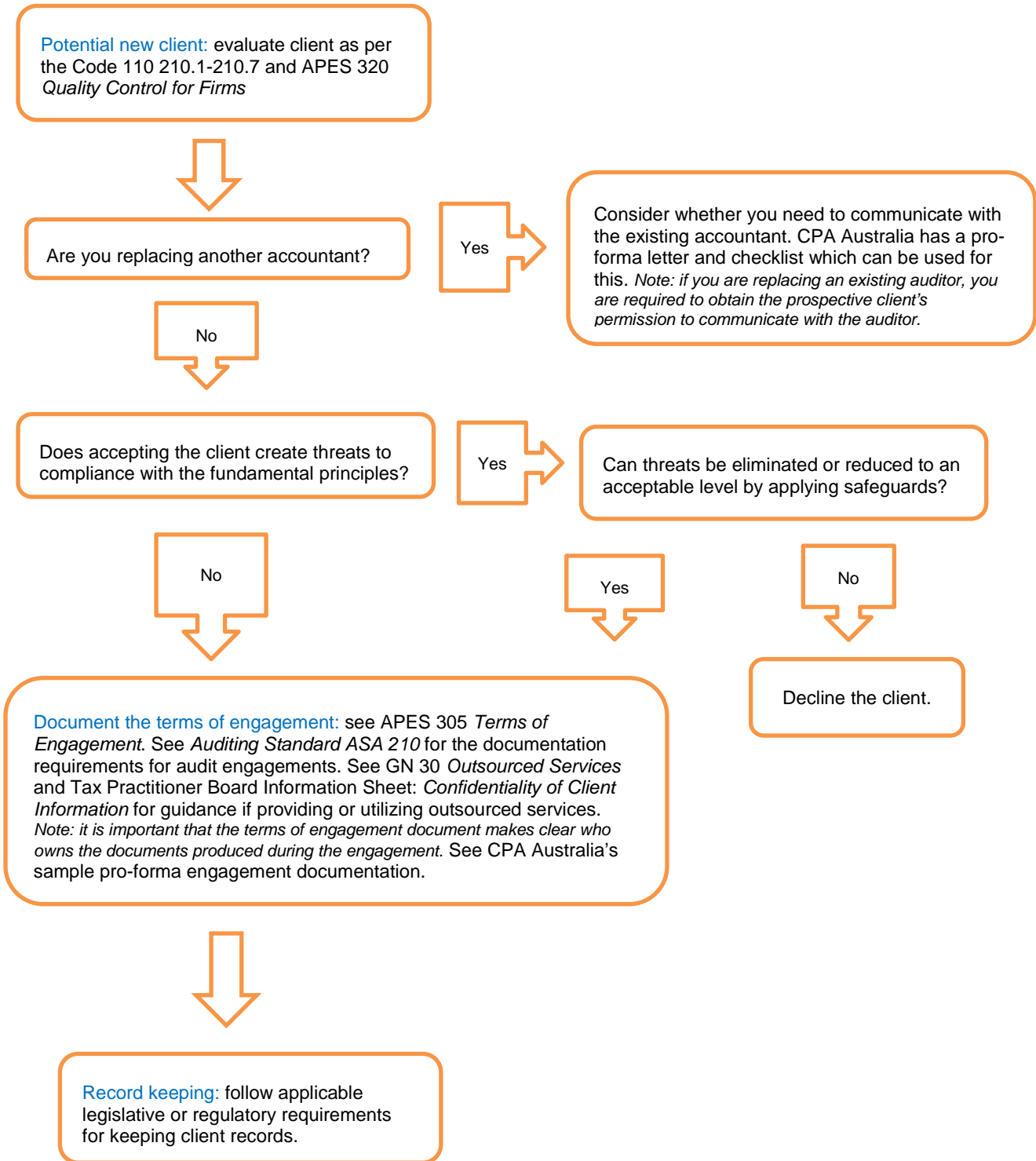
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# CLIENT RELATIONSHIPS FLOW CHART



# ACCEPTING A NEW CLIENT OR ENGAGEMENT

Before accepting a new client or a new engagement it is important to determine whether the acceptance would create any threats to compliance with the fundamental principles of integrity, objectivity, professional competence and due care, confidentiality and professional behaviour, as described in APES 110 *Code of Ethics for Professional Accountants (the Code)*. Section 210 of the Code deals with Client Acceptance, Engagement Acceptance and Changes in Professional Appointment. A copy of the Code can be found on the [APESB website](#).

The requirements of section 210 of the Code apply whether you are replacing or are being replaced by an accountant and whether the accountant you are replacing or is replacing you is a member or not.

This section covers issues related to:

- client acceptance
- engagement acceptance
- changes in professional appointments
- confidentiality and client permission
- audit engagements.

Please note that members in public practice in Australia may have additional obligations when they accept a new client or engagement under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*. These obligations include: customer identification and verification of identity; record-keeping, establishing and maintaining an AML/CTF program; and ongoing customer due diligence and reporting (suspicious matters, threshold transactions and international funds transfer instructions). For more details, please see the [AUSTRAC website](#).

Paragraphs 210.1 to 210.7 of the Code deal with accepting a new client. Accepting a new client may create threats to compliance with the fundamental principles. Such threats may be created, for example, as a result of a potential client's involvement in illegal activities or questionable financial reporting practices. The Code requires that you identify any potential threats and evaluate their significance before accepting a new client relationship.

If you identify any threats, you are required to apply safeguards to eliminate the threats or reduce them to an Acceptable Level<sup>1</sup>. If that is not possible you must decline to enter into a relationship with the potential client.

Examples of safeguards that can be applied include:

- obtaining knowledge and understanding about the client, or the client's owners, managers and those responsible for its governance and business activities
- securing the client's commitment to improve governance practices or internal controls.

The Code further recommends that you review recurring client engagements for any threats that may have arisen.

In addition to the Code, APES 320 *Quality Control for Firms (APES 320)* paragraphs 38 to 46 deals with acceptance and continuance of client relationships and specific engagements (for audit and other assurance engagements, it should be noted that APES 320 incorporates the requirements of ISQC 1 *Quality Control for Firms that Perform*

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<sup>1</sup> **Acceptable Level** is defined in the Code as 'a level at which a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances available to the Member at that time, that compliance with the fundamental principles is not compromised'.

*Audits and Reviews of Financial Statements, and Other Assurance and Related Services Engagements*). APES 320 requires firms to establish policies and procedures for the acceptance and continuance of client relationships and specific engagements, designed to provide the firm with reasonable assurance that it will only undertake or continue relationships and engagements where the firm has considered the integrity of the client and does not have information that would lead it to conclude that the client lacks integrity. Communications with existing and previous providers of professional accountancy services to the client in accordance with relevant ethical requirements are relevant sources of information for the firm.

Paragraph 42 requires the firm to obtain such information as it considers necessary in the circumstances before accepting an engagement with a new client, when deciding whether to continue an existing engagement, and when considering acceptance of a new engagement with an existing client.

A copy of APES 320 is available on the [APESB website](#).

For further information, please refer to CPA Australia's Quality Control Manual on the [CPA Australia website](#).

## Engagement acceptance

Before accepting a new client engagement, you are required to determine whether acceptance would create any threats to compliance with the fundamental principles (please see paragraphs 210.5 to 210.7 of the Code). For example, the fundamental principle of professional competence and due care imposes an obligation to only provide services that you are competent to perform. If you do not possess, or cannot acquire, the necessary competences to properly carry out the engagement, a self-interest threat to the principle of professional competence and due care is created.

When you are considering a new client engagement, you are required to identify any threats to compliance with the fundamental principles, evaluate their significance and when necessary apply safeguards to eliminate them or reduce them to an acceptable level. If that is not possible you are required to decline the engagement.

Examples of safeguards include (paragraph 210.6):

- acquiring an appropriate understanding of the client's business, the complexity of its operations and the specific requirements of the engagements
- assigning sufficient staff with the necessary competencies.

## Changes in professional appointments

Paragraphs 210.8 to AUST 210.15.1 of the Code deal with changes in professional appointment. If you are asked to replace another accountant, or you are considering tendering for an engagement that is currently held by another accountant, you are required to determine whether there are reasons for not accepting the engagement. Reasons may include any circumstances that create threats to compliance with the fundamental principles that cannot be eliminated or reduced to an acceptable level by the application of safeguards.

In order to identify any possible threats and evaluate their significance, you may be required to communicate with the existing accountant to establish facts and acquire understanding.

Please note that the Code does not explicitly require you to correspond with the existing accountant unless you consider this communication necessary in order to identify or evaluate possible threats or to apply as a safeguard for an identified threat (audit engagements are an exception, see the audit engagements section below for further details). The requirement for what was termed 'Ethical Letters' has changed from an obligation for all acceptances of new appointments to a communication with the existing accountant in circumstances where you

think it is necessary to obtain facts and circumstances so that you can identify or evaluate threats (see paragraph 210.9 of the Code).

Communication with the existing accountant is used in the Code as an example of possible safeguards that can be used to eliminate threats or reduce them to an acceptable level. Paragraph 210.9 of the Code states that 'asking the Existing Accountant to provide known information on any facts or circumstances that, in the Existing Accountant's opinion, the proposed accountant needs to be aware of before deciding whether to accept the engagement'.

If threats exist and they cannot be eliminated or reduced to an acceptable level, you are required to decline the engagement.

If the proposed accountant is unable to communicate with the existing accountant, the proposed accountant is required to take reasonable steps to obtain information from other sources such as through inquiries to third parties, or about senior management or those charged with governance.

## Confidentiality and client permission

The existing accountant is bound by confidentiality. It is important that the existing accountant obtains the client's permission to discuss the affairs of the client with the proposed accountant. In some circumstances the existing accountant may be required to disclose the affairs of the client by law or regulation. Section 140 of the Code deals with confidentiality and outlines some examples when members may be required to disclose confidential information. It is strongly advised that a member who is considering disclosing confidential information without client permission to first obtain legal advice.

Provided client permission has been granted, the information the existing accountant provides to the proposed accountant must be honest and unambiguous (paragraph 210.13 of the Code). An exception to 210.13 is in respect to the existing accountant providing the proposed accountant with information pertaining to non-conformance with laws and regulations. The member shall, on request by the proposed accountant, provide all information concerning the identified or suspected non-compliance that, in the predecessor accountant's opinion, the proposed successor accountant needs to be aware of before deciding whether to accept the audit appointment. The predecessor accountant shall do so despite paragraph 210.14, unless prohibited by law or regulation (110.225.31).

## Non-Conformance with Laws and Regulations (NoCLAR)

Accountants' obligations with respect to client confidentiality have changed with the introduction of NoCLAR to the Code. NoCLAR articulates that the distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest (paragraph 225.4).

The Code has been amended to include members' obligations with respect to non-compliance or suspected non-compliance with laws and regulations in the course of carrying out a client engagement. Paragraphs 225.1 to 225.56 provide members with guidance to assist those who may have identified or suspect NoCLAR.

NoCLAR presents a fundamental shift in the accountant's mindset and the accountant/client relationship. It is imperative that both clients and accountants understand what these changes mean for their ongoing relationships. These changes apply to both new and existing clients, therefore, present a significant change to engagement terms and conditions.

## Audit engagements

If you are asked to replace an existing auditor or are tendering for an audit engagement currently undertaken by another auditor, you are required to obtain the prospective client's permission before you communicate with the existing auditor (see paragraph AUST 210.13-14 of the Code).

- If the prospective client does not provide this permission the Code requires that you carefully consider such failure or refusal when determining whether or not to accept the appointment.
- If you receive permission to communicate with the existing auditor, you will need to request or obtain all the information that will enable you to make the decision as to whether you should accept the audit engagement, which may include:
  - whether the existing auditor has any professional or other reasons why the appointment should not be accepted
  - known information on any facts or circumstances that, in the existing auditor's opinion, you need to be aware of before deciding whether to accept the engagement, such as disagreements
  - necessary information from sources other than the existing auditor.

If you accept the engagement, Auditing Standard ASA 210 *Agreeing to the Term of Audit Engagements* (paragraphs 9 and 10) requires you to agree on the terms of the audit engagement with the client in writing. The agreed terms can be recorded in an audit engagement letter or other suitable agreement. The audit engagement letter where relevant should include the arrangements to be made with the predecessor auditor, if any, in the case of an initial audit.

## Fee for the provision of documents

Please ensure that clients are informed about potential fees charged by the existing accountant for the provision of documents.

## Referral fees and commissions

The Code sets out in paragraphs 240.5 to 240.8 the obligations of a member receiving a referral fee or commission in relation to a client. Examples include fees received when referring a client to another member or to an expert and fees or commission received from a third party (e.g. software vendor) in connection with the sale of goods or services to a client by the third party. Paragraph AUST 240.7.1 requires a member who is undertaking an engagement in Australia and receives a referral fee or commission to inform the client in writing of the existence of such arrangement, the identification of the other party or parties, and the method of calculation of the referral fee, commission or other benefit accruing directly or indirectly to the member.

Members are reminded that when providing financial planning services, they must also follow the specific requirements set out in APES 230 *Financial Planning Services* (**APES 230**).

## Outsourced services

Recognising the increase in outsourced services being provided and utilised by members, the APESB has developed and issued Guidance Note 30 *Outsourced Services* (**GN 30**). GN 30 provides guidance and suggestions to members providing or utilising outsourced services but does not prescribe or create any new professional requirements.

It should be noted that a member utilising outsourced services retains primary responsibility to deliver the professional services in accordance with the terms of engagement with the client and in compliance with the ethical requirements of the Code and applicable Professional and Ethical Standards.

According to GN 30, a member utilising outsourced services should disclose to the client the geographical location of the outsourced service provider and the nature and extent to which outsourced services are used in the delivery of professional services to the client. GN 30 also states that the member should obtain written consent from the client to use outsourced services and appropriate forms of written consent from a client, which include a signed engagement letter incorporating details of the intended outsourced services and the acknowledgement of the acceptance of the use of outsourced services.

It is important to note, however, that under Tax Practitioner Board (TPB) regulations a tax agent must ensure that clients are aware of any outsourcing arrangement and have given their permission for third parties to have access to their information. The TPB has available a practice note on [Outsourcing and offshoring of tax services](#).

CPA Australia has produced a [guide to outsourced services](#) to assist you and your clients assess the suitability of an outsourcing arrangement for your business requirements, including extensive checklists as well as peer and supplier case studies.

A copy of GN 30 can be found on the [APESB website](#).

## Further information

Visit [cpaaustralia.com.au/clientengagement](http://cpaaustralia.com.au/clientengagement) to access the following resources:

- pro-forma letter for communication with the existing accountant
- checklist of information that may be required from the existing accountant
- sample pro-forma engagement letter.

## LETTER OF ENGAGEMENT

Whenever you are engaged by a client to provide professional services, you are required to document and communicate the specific terms of that engagement to the client under APES 305 *Terms of Engagement* (**APES 305**) issued by the Accounting Professional and Ethical Standards Board (APESB).

Essentially, this standard requires all CPA Australia members (or firms of members) in public practice to document and communicate the 'terms of engagement' when providing professional services to clients. In this context 'professional services' means services requiring accountancy or related skills performed by a professional accountant including accounting, auditing, taxation, management consulting and financial management services.

The purpose of the communication is to ensure that there is a clear understanding between the client and you (or your firm) as to the scope of the services performed and the basis on which fees will be paid. This process should be finalised before the commencement of the engagement and a schedule of fees or billing schedule should be included in order to avoid any misunderstandings once the engagement has commenced. An initial consultation with a prospective client is not regarded as part of an engagement and thus does not need to be documented. It is, however, necessary to advise a potential client if the initial consultation incurs a fee.

Whilst a formal letter or agreement is preferable, the terms of engagement could also be in the form of a standard format handout, leaflet, brochure or email which would be acceptable for certain recurrent assignments



such as the annual preparation of an income tax return for an individual client provided all relevant terms of the engagement are appropriately documented.

The key topics that should be included in any engagement letter are as follows:

- purpose of the engagement letter
- objectives of the engagement
- scope of the work performed including relevant timelines
- anticipated deliverables
- respective responsibilities of the client and the member firm
- obligations of the practitioner with respect to NoCLAR APES 110.225
- involvement of other professionals
- fees and billing arrangements
- ownership of documents including any liens over client records in the event of a client dispute
- limitation of liability
- confirmation that the client understands the terms of the engagement
- reference to the file being available for a quality review or to comply with requirements of professional standards (such as those under APES 310 *Dealing with Client Monies*).

A detailed description of the above points can be located in sections 4 and 6 of APES 305.

A large number of complaints and queries received by the CPA Australia Professional Conduct Unit relate to document ownership. Clarifying 'who-owns-what' in the engagement letter assists clients and members to clarify document ownership and avoids future conflict and potential problems.

A copy of APES 305 can be downloaded from the [APESB website](#).

A sample pro-forma engagement letter can be downloaded at [cpaaustralia.com.au/clientengagement](http://cpaaustralia.com.au/clientengagement). This engagement letter has been updated to include a member's responsibilities with respect to compliance with NoCLAR. It is important that the engagement letter is adapted and developed so that it addresses the individual requirements and circumstances of each engagement.

## RETENTION AND OWNERSHIP OF DOCUMENTS (INCLUDING LIENS OVER RECORDS)

One of the most contentious issues that can arise in accepting a new client or farewelling an existing client is 'who-owns-what'. To avoid such issues, it is important that the terms of engagement document makes clear who owns the documents produced during the engagement. Documents include any data or information on paper or stored electronically, including data held with an outsourced service provider, or with a cloud service provider. Normally when the practitioner subscribes to a cloud service, the cloud service provider would recognise the practitioner as the owner of the information and documents held on the cloud service platform. However, the platform on which the information is held (including through a cloud service provider) will not change the attributes of the information ownership between the practitioner and client.

Unless the terms of engagement provide otherwise, source documents (e.g. ledgers and journals), correspondence between the Australian Taxation Office (ATO) and the client or the ATO and the member as agent of the client, letters of advice to the client and financial statements belong to the client. By contrast, draft

working papers of the accountant belong to the accountant providing professional services unless they are part of the agreed work under a fee engagement.

In determining such ownership issues, three matters should usually be considered:

1. capacity: whether the accountant is acting as an agent for the client, or as the principal
2. purpose: the purpose for which the documents exist or have been brought into existence
3. contract: the contract or letter of engagement between the accountant and the client.

## Capacity

Accountants are acting as agents for their clients when, for example, preparing taxation returns or filing company accounts with the Australian Securities and Investments Commission (ASIC) or negotiating a matter on behalf of the client. The agency relationship would encompass the most common forms of dealing between accountants and their clients.

The general rule applicable is that whilst acting as an agent for a client, all documents brought into existence by the accountant are the property of the client. Such documents could be subject to a lien if the client has outstanding debts owing to the accountant in respect of work carried out on or in relation to the documents.

Australian courts have decided that when an accountant conducts an audit, the accountant is not acting as an agent. In this situation, the accountant owns the documents which the accountant's staff has prepared to assist the accountant in such work (e.g. working drafts and notes brought into existence during the course of performing the audit work). The accountant would be entitled to retain possession of such documents as the principal. Documents provided by the client to the accountant to enable the accountant to provide professional advice or conduct an audit remain the property of the client (e.g. the original bank statements of the client).

## Purpose

The purpose for which documents exist also determines the ownership of records. Generally, if the purpose requires that the member acts as the principal then the documents belong to the member while if the member acts as the agent for a client then the documents belong to the client.

## Contract

APES 305 in paragraph 4.9 recommends that members deal with the issue of ownership of documents in the contract or letter of engagement and set out clearly an agreed position between the accountant and the client regarding the ownership of books, records, and other documents including electronic data on which the accountant will work or which are created in the performance of the work.

Whilst exercising rights of ownership, practitioners need to be aware of accompanying statutory obligations e.g. those set out in Privacy legislation, which may require a practitioner to make documents available for inspection by the client. *See Section Effectiveness of a Lien.* Subject to any such statutory obligations, a specific agreement reached between the member and a client relating to the ownership of documents will normally mean there is no need to look further.

Excerpt from the CPA Australia sample [pro-forma engagement letter](#):

*All original documents obtained from the client arising from the engagement shall remain the property of the client. However, we reserve the right to make a reasonable number of copies of the original documents for our records.*

*Our engagement will result in the production of <identify the output documents of the engagement including, if applicable, electronic documents or files, which will be supplied to the client, such as income tax returns or financial statements>.*

*Ownership of these documents will vest in you. All other documents produced by us in respect of this engagement will remain the property of the firm, subject to any statutory obligations.*

*The firm has a policy of exploring a legal right of lien over any client documents in our possession in the event of a dispute. The firm has also established dispute resolution processes.*

If the contract or letter of engagement is silent as to the subject of ownership of documents, then the accountant must consider the exact instruction given by the client and the nature and purpose of the work completed.

In the absence of agreement to the contrary, generally primary documents such as books of account, invoices, receipts and journals, tax returns, notices of assessment, the final financial statements and letters of advice, belong to the client. Working papers of the practitioner would belong to the practitioner.

The below table provides further information about the documents that will usually be owned by the client and the accountant.

Type of Work	Client Ownership	Member Ownership
(a) Audit	Audit report	Any documents prepared by the member and related to the audit.
(b) Accounting		
i. Books prepared for accounting	Completed books belong to the client.	
ii. Profit and loss accounts, balance sheets, etc.	Completed accounts belong to the client.	
iii. Drafts and office copies of final accounts of profit and loss, balance sheets etc.		These records belong to the accountant unless the client specifically instructed the agent to prepare such drafts as part of the engagement.

iv.	Final reports, memoranda and notes requested by the client.	Final reports, memoranda and notes belong to the client.	
v.	Draft and office copies of final reports, memoranda and notes requested by the client.		These records belong to the accountant unless the client specifically instructed the agent to prepare such drafts as part of the engagement.
vi.	Production of documents from incomplete records.		
-	Where the client is incorporated.	If the client company has not complied with statutory provisions to keep accounting records, then schedules prepared by the accountant will belong to the client company.	
-	Where the client is not incorporated.		Where an accountant is instructed by a client, not being an incorporated body, to produce final accounts from incomplete records and receives no instructions to work on actual records, the schedules prepared for the purpose of producing accounts belong to the accountant (unless as part of the tax compliance).
-	Depreciation schedules		Depreciation schedules belong to the accountant unless the client specifically instructed the agent to prepare such schedules as part of the engagement or unless the client incorporated as part of tax compliance.

(c) Taxation	Where an accountant prepares and submits to the Australian Taxation Office accounts, tax returns and other relevant computation, these documents belong to the client.	Copies of income tax returns, financial statements and work sheets which originate in an accountant's office for such purpose belong to the accountant.
(d) Tax Advice	The original letters of advice and documents prepared for the client for purposes of giving advice belong to the client.	Draft letters, papers and correspondence in connection with work belongs to the accountant.
(e) Correspondence	Where a member is acting as an agent for a client and communicates with a third party, the copy of the correspondence will belong to the client.	Where the accountant: <ul style="list-style-type: none"> <li>- receives a letter written by the client, that letter belongs to the accountant</li> <li>- writes to the client and keeps a copy of the correspondence for his/her own purposes, that letter belongs to the accountant</li> <li>- makes notes of questions and answers during the client consultation, that belongs to the accountant.</li> </ul>
(f) Client's Documents	Documents received by an accountant from the client are the property of the client.	

Paragraph 4.9 of APES 305 suggests that if a member has a policy of seeking to exercise a right of lien over documents in the event of a dispute with the client, such a policy must be disclosed in the terms of engagement including any reference to any process for dealing with disputes over the lien.

## Liens

Where there is a fee dispute it is often thought that a member can claim a right of lien over the work performed by the member for a client. Whilst such a remedy may be potentially available it should be stressed that a member should appropriately explore all opportunities (e.g. mediation, litigation or initiating debt recovery action) to recover outstanding fees before exercising such a right, and that it would be prudent to seek independent legal advice on whether such a right can be exercised.

Members are also reminded that although a legal right to exercise a lien may exist, members are also expected to act in a professional and ethical manner when dealing with clients. Compliance with the fundamental ethical principles contained in the Code is mandatory. Section 270 of the Code states that a member in public practice shall not assume custody of client monies or other assets unless permitted to do so by law and, if so, in compliance with any additional legal duties imposed on a member in public practice holding of assets.

The improper exercise of a lien may result in disciplinary action being taken against the member under Article 39 of the Constitution of CPA Australia. It can also lead to complaints being made to the Tax Practitioners' Board in Australia where the lien is improperly exercised in respect of a fee dispute concerning a tax agent service.

## What is a lien?

A lien is the right to hold someone's property as security for the performance of an obligation or the payment of debt. It is a common law right which permits A to retain B's property until B satisfies an outstanding claim to A. For example, an accountant is engaged to prepare and balance a general ledger and prepare a draft income tax return. If the accountant performs these services and the client refuses to pay, the accountant may be potentially entitled to exercise a lien over the documents until such time as payment is made.

## Types of liens

Essentially, there are two kinds of liens which are relevant to accountants being 'general' and 'particular' liens.

General liens are recognised in favour of a particular class of person (e.g. solicitors, bankers and stockbroker) and entitle them to retain possession of property until the owner of the property (e.g. the client) has settled all outstanding obligations to that class of person.

With a particular or specific lien, there is a right to retain a particular piece of property until the obligation in respect to that property has been settled by the owner of the property.

## What sort of lien do accountants have?

Although the question has not been settled by the Australian courts, it is prudent to proceed on the basis that the law does not recognise a general lien in favour of accountants over their client's property unless such right has been expressly granted in writing by the client to the accountant (for example, in the letter of engagement between the accountant and client).

The Tax Practitioners' Board has issued an [Information Sheet](#) (TPB[1] 02/2011) on liens over client property in respect of unpaid tax agent fees which states that in most cases a registered tax or BAS agent will be dealing with a particular or specific lien.

## When will a 'particular' lien arise?

A 'particular lien' will be available to an accountant where each of the following criteria is satisfied:

- the documents held by the accountant are the property of the client who owes money, (and are not the property of a third party or company irrespective of how closely they are connected)
- the documents must have come into the possession of the accountant by proper means
- work must have been done by the accountant upon the documents retained. Whilst the law is not entirely clear in this area, it appears that a lien only attaches to items of property on which the accountant has expended labour and thereby added value. For example, Australian courts have determined that a lien would attach over a general ledger, balance sheet and draft income tax return prepared by an accountant but it would not attach to a sales journal and invoices as these had been provided to the accountant for checking only and are not the result of the accountant's labour
- the fees for which the lien is exercised must be outstanding in respect of such work and not be in respect of other unrelated work (i.e. the documents retained must be particular to the outstanding fees).

An accountant's lien is therefore limited to the particular records on which the accountant has performed work. Compliance with the above criteria is not always straight forward, particularly when determining 'ownership' of the documents.

## Effectiveness of lien

A lien claimed by an accountant is only effective if the documents over which the lien is exercised belong to the client who owes the accountant fees.

Accordingly, if the accountant owns the property (e.g. a document) the client has no claim to it and the issue of a lien is not relevant. Of course the accountant may choose to make the information contained in the document available to a client. Alternatively, if the property is owned neither by the accountant nor the client then the accountant is not permitted to exercise a lien over that property. For example, where a client provides the accountant with a document such as a share certificate which the client holds on trust for a third party a lien cannot be exercised over that share certificate.

In addition, a lien cannot be applied in the following circumstances:

- where the client has become bankrupt
- where a client is an incorporated body and its books and documents must be available for public inspection by statute or the company's constitution. In Australia the *Corporations Act 2001* requires the company register to be kept at the registered office of the company and therefore, an accountant cannot retain possession of the register or other books, records and documents that must be held at the company's registered office.

Under Australian Commonwealth privacy laws, individuals have a right to access personal information which organisations hold about them. 'Personal information' is information which identifies an individual or from which the identity of an individual can reasonably be ascertained. In some situations, the privacy laws will require accountants to provide to a client (where the client is an individual) access to records which contain the client's personal information.

Accounting practitioners are required to comply with the privacy laws regardless of whether they are working as sole practitioners or in a firm. As a general rule, the privacy laws only apply to accounting businesses whose annual turnover exceeds \$3 million or are 'related' (as defined in the *Corporations Act 2001*) to a business with such a turnover. If the privacy laws apply, the accountant must adhere to a set of standards known as the Australian Privacy Principles (APPs). The APPs give individuals a right to access their personal information. A lien will not be effective to circumvent the APPs unless one of the exceptions to these principles can be established.

Accountants should note that 'access' under the APPs may require but does not necessarily mean giving a client a copy of the records. In most cases allowing clients to inspect the records will be sufficient. As the right of privacy is granted to individuals, the privacy laws will not give corporate clients a right to access materials that are the subject of a lien. The privacy laws are complex and accountants should seek legal advice about them to ensure they and their business are compliant and to ascertain what to do in the event of an access request made under the APPs.

Guidance on the Privacy Act, including a privacy policy checklist, is available on the [CPA Australia website](#).

## A third parties' right to possession of documents despite the existence of accountants' liens

A lien held by an accountant may also be overridden in certain circumstances as set out below.

- The Australian Commissioner of Taxation has the power to serve a notice concerning a client's affairs requesting the accountant to produce any documents in possession even though they are the subject of a lien.
- The accountant must provide information to police conducting an investigation of a client's books and records or an accountant's working papers. Should the police wish to take possession of the books and records of a client and the accountant's own working files they must first obtain a search warrant. The search warrant enables them to impound the accountant's files and client's documents in the possession of the accountant.
- ASIC, pursuant to its powers of investigation, may order an accountant to produce all of a client company's documents. Such an investigation resulting in inspection or seizure of books will not prejudice the accountant's lien (see Section 37(6) of the *Australian Securities and Investments Commission Act 2001*).
- A lien cannot be claimed over documents which come into the possession of the accountant after commencement of a liquidation. Where a compulsory liquidation has been ordered by the court, the court is empowered to require an accountant to produce any books or documents in his or her custody. The production of such books by the accountant, where the accountant claims a lien, is without prejudice to that lien. (See section 597(10) of the *Corporations Act 2001*).

### **Does an accountant acting as a tax agent have a lien over a client's tax refund cheque?**

It is general practice for the ATO to post refund cheques to a taxpayer 'care of' a tax agent where that tax agents' address has been specified as the address for service of that taxpayer.

The relationship between the taxpayer and the tax agent is contractual and it is open for the parties to agree or contract that the tax agent negotiates the taxpayer's cheques or deduct the professional fees from the proceeds of the cheque. Paragraph 9.2 of APES 220 *Taxation Services* states that an accountant shall not appropriate tax refunds to settle fees unless agreed to by the client in writing. Any such authorisation granted to an accountant should be expressly stated in a written agreement or engagement letter. In the absence of such authorisation there is no implied authority for a tax agent to deduct their professional fees from the proceeds of a tax refund cheque. Members who incorrectly negotiate a tax refund cheque or who deduct fees without written permission may be subject to disciplinary action, as well as being held liable for conversion to the client.

The question as to whether an income tax refund cheque may properly be the subject of a particular lien is unclear and the conservative answer to the question would be no.

Even if a particular lien was exercised successfully over a tax refund cheque, such possessory lien only entitles the accountant to hold or 'possess' the cheque until the outstanding fees in respect of the work done in preparing and resubmitting the client's income tax return, is paid. Such a right would not entitle the accountant to bank the cheque and access the funds or hold the cheque pending payment of outstanding fees for other accounting work.

For members in Queensland, regard must also be had to the *Trust Accounts Act 1973*, particularly section 8 which prohibits members applying client trust money towards outstanding fees unless the client has authorised the member to do so in writing.

## **CLIENT RECORD KEEPING**

Members are required to follow the applicable legislative or regulatory requirements for keeping client records. These requirements include privacy obligations to take such steps as are reasonable in the circumstances to protect the information from misuse, interference and loss, from unauthorised access, modification or disclosure and to securely destroy or de-identify the records when no longer needed.



Record keeping requirements vary depending on the type of professional service performed, as described in the table below.

Type of service	Legislation / Regulation	Length required to retain documents	By Whom
Taxation	<i>Income Tax Assessment Act 1936 - Sect 262A</i>	5 years (after records were prepared or obtained, or the completion of the transactions or acts to which those records relate, whichever is the later)	Client
Audit	ASA 230 paragraph Aus A23.1; <i>Corporations Act 2001</i> Section 307 B	7 years (after the date of the audit report or review to which the audit working papers relate)	Member
Trust account transactions		The period may vary depending on applicable legislation and the terms of engagement, but 7 years could be considered a guideline retention period	Member
Superannuation	<i>Superannuation Industry (Supervision) Act 1993 - Sect 103</i>	Trustees must keep records for 10 years	Trustee
Financial records – companies	<i>Corporations Act 2001</i> Section 286	7 years after the transactions covered by the records are completed	Client

In addition to legal and regulatory requirements, members are reminded of their obligations for keeping client records arising from the terms of engagement agreed with the client, both during the time they are a client and subsequently, when no longer a client.

## REHABILITATING OR FAREWELLING CLIENTS

A forthcoming podcast with Clare Mann: Rehabilitate or dismiss: Managing your client base, will outline how the Pareto Principle shows that 80% of problems, and most of the effort, come from and goes to 20% of clients. You can alleviate unnecessary stress and the financial burden of this 20% by adopting a different approach.

The first step is to identify the source of the problem. What is it about the client that bothers you specifically?

The below questions may help you to determine whether you want to retain the client or dismiss the client.

- Do you still enjoy working with the client?
- Do you over-service the client?
- Does the client cause you financial strife?
- Is the client too demanding of your time and effort?
- Does the client have unrealistic expectations?

- Is the client no longer a good fit with your practice?
- Does the client have behaviour issues that concern you?
- Have employees or other partners expressed any concerns about the client?
- Do employees believe that you should keep the client?

## Rehabilitating clients

If you decide to retain the client but want to address the behavior or issue that concerns you, implement a no-exceptions rule. Determine the outcome you want from the conversation with the client and plan that conversation. During that conversation, focus on logic and reason and share the responsibility using 'we' terminology. Describe the issue or behavior that concerns you and outline the consequences if it continues. Set clear boundaries and give the client options. Make a contract with the client for behaviour going forward.

In doing this, consider your obligations under NoCLAR and Auditing Standard ASA 210. (see pages 6-7 of this guide).

## Farewelling clients

If you decide to dismiss the client, there are three ways to achieve this:

- meet with the client
- send the client a letter
- sell the client to another practice.

If you meet with the client, plan the conversation that you want to have with the client. State what the problem is and your intention. Stop. Give the client an opportunity to respond. Reiterate the solution and don't back down. It is important not to get bogged down with detail. A face-to-face meeting is most highly regarded by clients and allows for any misunderstandings to be cleared up.

While it is preferable to have such conversations in person, you can use a letter. If there are ethical reasons for dismissing the client, you may prefer to send them a letter. These letters tend to be brief and to the point. How much detail you include tends to depend on the relationship the practice has had with the client over the years. It is important that the letter is clear that you no longer represent them and that their information will be removed from any client portals from a specific date.

The third option is to consider bundling a number of clients together and sell them to another firm.

You can terminate client relationships in a positive way by having a solution to offer the client that allows both of you to move forward. If the client relationship is ending because they are no longer a good fit with your practice, then recommending them to someone else maintains the firm's credibility in the eyes of the client.

## Forestalling client issues

To help manage client relationships in the future, mutual commitments and non-negotiable behaviour criteria can be put into place at the start of a client engagement.

The ideal place to cover expectations and reciprocal obligations is in the initial client meeting. A set of mutually agreed commitments can then be included in a letter of engagement. It is recommended that you have a set of non-negotiable criteria under which clients will be asked to leave. This could include rude or offensive behaviour, not paying fees on time and consistently failing to provide information in a timely manner.

Fee surprise can be a factor in client disputes so transparency with the fee and payment arrangements when you first take on a client is recommended.

## Reviewing your client base

Over time the needs of the client may change. A client who was once a good fit may no longer be so. Reviewing your client base should be an annual activity. You may wish to consider seeking feedback from both clients and staff for this annual review. There are differing levels of complexity to these reviews, from the simple discussion with stakeholders to the more complex client attributes classification system.

If behaviours develop that don't meet your expectations it is critical to address it immediately.

The important thing is that this is your practice, it is appropriate to take action to resolve a situation that you are not happy with. Focus on the clients that bring the best return and with whom you enjoy working.

## Further information

You can read more about how to manage your client relationships, including client classification and how to deal with conflict, in [Module six of the IFAC SMP Guide](#) (from page 365).

### Acknowledgement

CPA Australia acknowledges the contribution of Clare Mann and Scott Charlton in the section on Rehabilitating or farewelling clients.

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November 2018