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Dear Merran

ED 04/16 Proposed Standard on Assurance Engagements ASAE 3100 *Compliance Engagements*

CPA Australia welcomes the opportunity to respond to ED 04/16. CPA Australia represents the diverse interests of more than 155,000 members in 118 countries. Our vision is to make CPA Australia the global accountancy designation for strategic business leaders. We make this submission on behalf of our members and in the broader public interest.

We support the AUASB's revision of ASAE 3100 as well as the scope and the overall approach of the proposed standard. Nevertheless, we consider that there are a number of matters which need to be addressed prior to finalisation of the standard. Our overall comments on ED 04/16 are set out below and further detailed comments are included as attachments.

1. Use of the Term Compliance Framework

We consider that the term "compliance framework" is not appropriate for the proposed definition provided and will be misunderstood. A plain English understanding of the term "compliance framework" would typically be a reference to the legislation, regulation and other requirements which make up the compliance requirements, effectively the criteria in a compliance engagement. This meaning does not align with the definition of compliance framework in ED 04/16 being: "*A framework adopted by the entity, which is designed to ensure that the entity achieves compliance, and includes governance structures, programs, processes, systems, controls and procedures*". This definition encompasses controls to mitigate the risk of non-compliance with the compliance requirements.

Consequently, we consider that the term "compliance framework" should be replaced with a term such as "controls", "system of controls" or "controls relevant to compliance". And the term chosen should be consistent with other AUASB Standards, including ASAE 3150 *Assurance Engagements on Controls*. We do not suggest use of the term control framework as this is the framework (such as COSO or COBIT), including the control components, used to design the controls, rather the controls themselves.

2. Compliance Framework as a Subject Matter

The manner in which the term compliance framework, meaning controls as discussed above, is used in the standard suggests that controls are included in the subject matter of compliance engagements. However the subject matter in these engagements is the compliance activities to meet the compliance requirements, not the controls over those compliance activities. We consider that the subject matter of a compliance engagement relates to compliance with requirements only and not controls over compliance.

The objective of a compliance engagement is to obtain assurance “about whether the entity has complied in all material respects with compliance requirements as evaluated by the suitable criteria”. However ED 04/16 repeatedly makes reference to “material deficiency in the compliance framework”, implying that the objective of the engagement also includes identification of material deficiencies in the “compliance framework”, that is the controls relating to compliance. We do not consider that the objective of the engagement includes concluding on the “compliance framework” as defined or controls therein. Even if maintenance of effective controls to ensure compliance with requirements is a compliance requirement itself, reference to controls as part of the subject matter is still not necessary in the proposed standard.

In order to remove reference to compliance framework as part of the subject matter of the proposed standard, we suggest that:

- a. Reference to compliance framework is removed from the definition of materiality and that materiality is applied directly to compliance activities and identified deficiencies and not to deficiencies in the compliance framework/controls.
- b. Deficiencies in compliance framework/controls would not normally be accumulated as such, only deficiencies in compliance.
- c. If the assurance practitioner believes that there are deficiencies in the compliance framework/controls, they would not necessarily need to investigate those deficiencies, but would instead no longer rely on those controls and conduct further substantive testing directly on compliance.
- d. Even though the effectiveness of controls at mitigating the risks of non-compliance need to be evaluated in determining which controls the assurance practitioner intends to rely upon to reduced substantive testing, we consider that additional procedures which the assurance practitioner performs are responsive to the risks of non-compliance and not the risks relating to deficiencies in compliance framework/controls.
- e. The engagement letter examples and modified report examples should not refer to material deficiencies in compliance framework/controls.

3. Suitable criteria

We do not consider that the phrase “evaluated by the suitable criteria” which is used throughout ED 04/16, after compliance requirements, is useful or communicates any useful meaning, as paragraph 9 states “the criteria may be the compliance requirements, or a subset thereof” anyway. Consequently, we consider that it simply serves to complicate the proposed standard. Compliance requirements are the criteria for a compliance engagement and whilst they may be broken down into greater detail in order to test the compliance activities, we do not see how repeated use of this phrase aids clarity. In addition, the example engagement letters and reports include “[compliance requirements] evaluated by the [suitable criteria]” requiring both terms to be specified or described. We consider that this would be unnecessarily onerous and in many cases not be possible. For example for a compliance engagement on a SMSF the “compliance requirements” are: SIS Act Sections 17A, 35AE, 35B, 35C(2), 62, 65, 66, 67,67A, 67B, 82-85, 103, 104, 104A, 105, 109 and 126K and SIS Regulations 1.06(9A), 4.09, 4.09A, 5.03, 5.08, 6.17, 7.04, 8.02B, 13.12, 13.13, 13.14 and 13.18AA. We are not clear how the “suitable criteria” could be described in addition to these compliance requirements or add any value to the assurance report on a SMSF.

We suggest that the phrase “evaluated by the suitable criteria” and “using the criteria” should be deleted throughout ED 04/16.

For our comments on specific questions raised in the ED please see Attachment 1, specific paragraphs of ED 04/16 please see Attachment 2 and for our comments on specific Appendices please see Attachment 3.

If you require further information on our views expressed in this submission please contact Claire Grayston on (03) 9606 5183 or at claire.grayston@cpaaustralia.com.au.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Stuart Dignam', with a long horizontal stroke extending to the right.

Stuart Dignam
General Manager, Policy & Corporate Affairs

Attachment 1: Response to Specific Questions Raised

1. *Have applicable laws and regulations been appropriately addressed in the proposed standard?*

Yes.

2. *Are there any references to relevant laws or regulations that have been omitted?*

No.

3. *Are there any laws or regulations that may, or do, prevent or impede the application of the proposed standard, or may conflict with the proposed standard?*

No.

4. *Are the considerations for conducting a direct engagement adequately differentiated from an attestation engagement?*

Yes.

In addition, we suggest that the requirements reflect direct engagements by ensuring that non-compliance is included as well as misstatements, which are only relevant to attestation engagements where a Statement is provided. For example in paragraphs 17(u) and 50 insert, after "possible misstatement", "or non-compliance".

5. *Are the procedures required for limited and reasonable assurance appropriate and adequately distinguished?*

Yes.

6. *What, if any, are the additional significant costs to/benefits for assurance practitioners and the business community arising from compliance with the requirements of this proposed standard? If there are significant costs, do these outweigh the benefits to the users of compliance engagements?*

We have not identified any significant additional costs in complying with the proposed standard. Benefits may not be realised in terms of cost savings but the standard provides greater clarity about how to conduct compliance engagements.

7. *Are there any other significant public interest matters that constituents wish to raise?*

No.

Attachment 2: Comments on Specific Paragraphs

- Para. 3: We suggest that the phrase “*using the criteria*” is unnecessary. Likewise it should be deleted from paragraphs 9 and 17(e).
- Sub-para. 17(q)(i) The use of “matter of”, “matters of” or “matter(s) of” non-compliance is unnecessary and does not aid clarity nor will it be well understood. We suggest the words “matter/s of” are deleted or, if necessary, replaced with “instances of” in this sub-paragraph and throughout ED 04/16, including paragraphs 25(h), 29, 40, 44L, 45R, 51, 54, 55, 63, A27, A28, A29, A30, A33, A45, A46, A49 and Appendix 7 Example 1.
- Sub-para. 17(q)(ii) We consider that materiality is relevant to non-compliance only in a compliance engagement and not to the controls in place to address the risk of non-compliance. We suggest deleting this sub-paragraph: Material in the context of a compliance engagement -
- (ii) *“in relation to the compliance framework and controls – instance(s) of deficiency that are significant in the context of the entity’s control environment and that may raise the compliance engagement risk sufficiently to affect the assurance practitioner’s conclusion.”*
- Para. 32: We understand that this paragraph is equivalent to ASAE 3000, paragraphs 46 and 47, and so we consider that the title to this section needs to be amended. We do not consider that this section does nor should relate primarily to understanding the compliance framework (controls) or compliance requirements. Understanding of the compliance requirements should have been gained in assessing the suitability of the criteria which is addressed in paragraph 23. Understanding of controls is addressed for reasonable assurance engagements but controls do not need to be evaluated necessarily in a limited assurance engagement. Consequently, we suggest that this section should be titled “Obtaining an understanding of the compliance activities and other engagement circumstances”.
- We consider that the wording of this paragraph, both 32L and 32R, should reflect the need to understand the compliance activities. The phrase “entity’s compliance framework and its key elements, the compliance requirements” should be replaced with “entity’s compliance activities to meet the compliance requirements”.
- We do not consider that it is usually necessary in a compliance engagement to select or develop further suitable criteria, so we suggest that sub-paragraphs 32L(a) and 32R(a) are deleted. This requirement is necessary in a controls engagement where identification of the controls which meet the control objectives maybe an involved process.
- It may be necessary to develop a requirement for limited assurance engagements equivalent to paragraph 32R(c), which could be drawn from ASAE 3000 paragraph 47L.
- Para. 40: To remove implied objective regarding controls delete: *“material deficiency in the compliance framework”*.
- Para. A3: We suggest deleting this paragraph as it does not add any further information, and maybe misleading. We do not consider that compliance engagements particularly address “risks, compliance requirements and related controls”. As consideration of risk and controls are simply part of the assurance process not matters addressed in their own right in the same way as a controls engagement must consider them. In addition, the definition of compliance requirements already covers the sources of requirements listed in this paragraph, so there is no need to repeat compliance with these as the “subject matter”.
- Para. A4: We suggest that this paragraph is redundant and so should be deleted. We note that this paragraph is included in ASAE 3150, but controls engagements are quite different to compliance engagements. In a controls engagement identifying the relevant control objectives and controls may be an involved process in a direct engagement where there

is no description of the system. A “description” is mentioned in this paragraph but it is not relevant to a compliance engagement and identification of the compliance requirements in an attestation versus a direct compliance engagement is not typically significantly different.

- Para. A9(b): This sub-paragraph does not fit grammatically after “An appropriate subject matter is:”, so we suggest deleting “Such that the information about it can” and replace with “Able to”.
- Para. A26 To remove implied objective regarding controls delete: “*deficiencies in the compliance framework*”.
- Para. A28 To remove implied objective regarding controls delete: “*deficiencies in the compliance framework*” and “*deficiencies or matters of*”.
- Para. A33: The term compliance requirements should be used consistently throughout ASAE 3100. However, in paragraph A33 the term “obligations” has been used several times in place of “requirements”. We suggest that it is replaced.
- Para. A35: Sub-paragraphs (a) and (b) would benefit from linking more directly to the compliance requirements, by using terms such as “controls over compliance”, “fraud with respect to compliance” or “ethical behaviour with respect to compliance”.
- Para. A38: We suggest deleting the last sentence: “*In the case of an attestation engagement, such procedures may include asking the responsible party to examine the matter identified by the assurance practitioner, and to make amendments to the description or Statement, if appropriate.*” We consider that this sentence is not relevant as a description is not normally prepared in a compliance engagement and the Statement does not normally include a level of detail about the compliance activities which would necessitate amendments.
- Para. A39: To remove implied objective regarding controls delete: “*deficiencies in the compliance framework*”.
- Para. A42(b) To remove implied objective regarding controls delete: “*material deficiency in the compliance framework*”.
- Sub-para. A59(b)(iii) We suggest deleting this sub-paragraph as it states that an adverse conclusion may be issued if there is a material and pervasive “*Systemic deficiency in the compliance framework*”. We do not consider that deficiencies in the compliance framework (controls) can directly impact the assurance practitioner’s conclusion. If there are deficiencies in the controls which the assurance practitioner intended to rely upon, then the assurance practitioner cannot rely on those controls and will need to instead conduct further substantive testing sufficient to conclude as to whether or not material non-compliance exists, regardless of the adequacy or inadequacy of controls.

Attachment 3: Comments on Specific Appendices

Appendix 1: We suggest that this diagram could reflect the information more accurately and clearly by:

- Replacing “Compliance activity to meet the Compliance Requirements” with simply “Compliance Activities”.
- Deleting the box for “Attestation Statement” and renaming the box “Compliance outcome” as “Statement” with the arrow to it labelled “attestation engagement”.
- Deleting the box for “Direct Conclusion”, as this is already represented by the box “Compliance Assurance Report”, and inserting a new arrow from the Criteria box to Compliance Assurance Report box labelled “direct engagement”.

We suggest that the phrase “using the criteria” as it is unnecessary.

Appendix 2: Delete “(a)” after “objective”.

We suggest deleting the row “Compliance requirements” as this is not a term used in ASAE 3000 there is no need to explain the equivalent term in ASAE 3100 and it is already defined in paragraph 17(f).

We suggest moving the terms “compliance outcome” and “compliance activity” from column 1 to column 3 to make it clear which terms relate to the definitions provided.

We suggest deleting the phrase “*using the criteria*” from the row subject matter information vs compliance outcome and column ASAE 3100, as it is unnecessary.

Appendix 4: We suggest deleting the rows 4 and 5 as we do not see the relevance of service organisation’s controls and controls over economy, efficiency or effectiveness to compliance engagements nor the need to explain that ASAE 3100 is not relevant.

Appendix 5: The assurance practitioner’s conclusion in an attestation engagement may be phrased not only in terms of the responsible party’s Statement, but alternatively it may be phrased in terms of the underlying subject matter and the applicable criteria. Therefore, we suggest that it would be helpful to provide the alternative wording in the engagement letter. For example, alternative wording could be added to the phrases:

- “ABC’s Statement is fairly stated” add alternative “/ABC complied with the [compliance requirements]”.
- “Misstatements in ABC’s Statement” add alternative “/non-compliance with the [compliance requirements]”.

Paragraph 2, page 45; paragraph 5, page 47 and paragraph 5, page 49 discuss inherent limitations of the engagement, however as this is not a controls engagement we consider that references to internal controls should be deleted including: “*together with the inherent limitations of any system of internal control*”, “*deficiencies in the compliance framework*” (already raised above) and “*Therefore no opinion will be expressed as to the effectiveness of the system of control as a whole*”. In addition, with respect to example 1, we note that in a limited assurance engagement the assurance practitioner is not required to evaluate controls as they are required to do in a reasonable assurance engagement.

Paragraph 4, page 45; paragraph 6, page 47 and paragraph 1, page 50 - We suggest deleting or truncating sub-paragraphs (c) and (d) as these are matters which the responsible party has to address in an attestation controls engagement in order to prepare a description of the system of controls, but we do not consider that these need to be detailed to such an extent in a compliance engagement.

Paragraph 2, page 46 & paragraph 4, page 48 - The bracketed section on period and date do not flow grammatically and could be amended to: “*[the specified period or will be as at a specified date]*”

Paragraph 3, page 46 - States that the assurance report will be attached to ABC's Statement but in sub-paragraph 4(a), page 45, it states the opposite, that the Statement will be attached to the assurance report. Likewise paragraph 5, page 48 is inconsistent with paragraph 6(a), page 47. We do not have a preference but it needs to be amended to be consistent.

Paragraphs 4 and 5, page 46; paragraphs 6 and 7, page 48 and paragraphs 4 and 5, page 50 - we suggest using the future tense as the report will be prepared in the future.

Example 1: Paragraph 4, page 44 - The description of the procedures which the assurance practitioner will perform in should align with the procedures described in the requirements, specifically paragraph 43L. Paragraph 43L lists discussion, observation and walk-through but does not include examination of documentation nor uses the term enquiries.

Paragraphs 1 & 2, Page 45 - To remove implied objective regarding controls delete: *"deficiencies in the compliance framework"*.

Paragraph 3, page 45 - We suggest deleting the phrase *"any material deficiencies in the compliance framework and relevant controls that exist may not be revealed by the engagement"* as this is not the objective of the engagement and replace with *"non-compliance may not be detected"* or *"misstatements in the Statement may not be detected"*.

Paragraph 3, page 45 - we query the need for the last sentence *"In expressing our conclusion, our report on ABC's Statement of compliance with the [compliance requirements] as evaluated by the [suitable criteria] will expressly disclaim any reasonable assurance conclusion on the compliance framework and relevant controls."* And suggest it could be deleted.

Paragraph 3, page 45 - To remove implied objective regarding controls delete: *"any material deficiencies in the compliance framework and relevant controls"* and replace with the objective of a compliance engagement being *"non-compliance with the compliance requirements"*.

Example 2: Paragraph 4, page 47 - We suggest deleting the words *"and controls implemented"* in as this is not the objective of a compliance engagement.

Paragraphs 4 & 5 page 47 - To remove implied objective regarding controls delete: *"deficiencies in the compliance framework"*.

Example 3: Paragraphs 4 & 5, page 49 - To remove implied objective regarding controls delete: *"deficiencies in the compliance framework"*.

Appendix 6: Paragraphs 1, page 53; paragraph 4, page 55 & paragraph 4, page 57 - As noted above for the engagement letters, we suggest deleting or truncating sub-paragraphs (c) and (d) as these are matters which the responsible party has to address in an attestation controls engagement in order to prepare a description of the system of controls, but we do not consider that these need to be detailed to such an extent in a compliance engagement, particularly for direct compliance engagements.

Paragraph 3, page 54; paragraph 4, page 56 and paragraph 4, page 58 - We suggest using the term compliance requirements rather than laws and regulations for consistency with the requirements.

Paragraph 4, page 54, paragraph 5, page 56 and paragraph 5, page 58 – These examples need to allow for engagements which cover a specified period not only a specified date by including the phrase *"throughout the period"*.

Example 1: Paragraph 4 and 6, page 53 - As noted above for example 1 of the engagement letters, the description of the procedures which the assurance practitioner performed should align with the procedures described in the requirements, specifically paragraph 43L.

Paragraph 43L lists discussion, observation and walk-through but does not include examination of documentation or inspection nor uses the term enquiries.

Appendix 7: The explanation prior to the examples states that they are based on Appendix 6 but they do not seem to be in the same order and so it is not clear how they relate. We suggest deleting this statement or aligning the examples.

Example 1: The title requires amendment as it is not possible for non-compliance to be identified with ABC's Statement. We suggest the title either state that material non-compliance by ABC with the compliance requirements was identified or ABC's Statement was materially misstated.

Under the basis for qualified opinion it states that "We are unable to satisfy ourselves by alternative procedures", which suggests that the assurance practitioner was unable to obtain sufficient appropriate evidence. However the title says it is an example of material non-compliance, in which case the "trustee bank account and cash book procedures" presumably required by the compliance requirements were not complied with. The basis for qualified opinion needs to be amended to reflect this conclusion.

Example 2: This title requires amendment as compliance requirements cannot be non-compliant. Instead ABC could be non-compliant.

We do not see that specifying "RSE" in this example is necessary, especially without defining this acronym, and so we suggest using ABC as in the other examples.

Example 4: The title suggest that this example seems to be seeking to illustrate when the assurance practitioner could not obtain sufficient appropriate evidence, however this is not clear from the basis for qualified conclusion paragraph. That paragraph states that material non-compliance was identified. The paragraph needs to be redrafted to address the intended reason for the qualification and needs to include the words "We were unable to obtain sufficient appropriate audit evidence about".