



## **Annual Review of APES 215 *Forensic Accounting Services***

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## **1. Executive Summary**

### **1.1. Background**

The Accounting Professional and Ethical Standards Board (APESB) issued APES 215 *Forensic Accounting Services* in December 2008 with an effective date of 1 July 2009. APES 215 replaced APS 11 *Statement of Forensic Accounting Standards* and GN2 *Forensic Accounting*.

### **1.2. Reason for this report**

In accordance with the constitution of the APESB, an annual review needs to be performed on each professional standard. This report presents a review of the issues reported to the APESB and proposed recommendations to address the identified issues.

### **1.3. Issues identified**

#### *Issues previously identified*

- 1 The definition of “Court” requires editorial amendments to enhance its clarity;
- 2 Using the work of another expert in expressing the Member’s opinion should consistently refer to “validity” or “reasonableness” of that opinion. In paragraph 3.15 “expert” should also be changed to “other person” to cover lay witnesses;
- 3 The guidance on confidentiality should address all Members and should not be limited to Members in Public Practice;
- 4 Capitalisation of the defined term “Professional Standards”;
- 5 Minor editorials in the definition of “Independence”;
- 6 Proposed additional appendices to clarify various roles performed by a Members when providing Forensic Accounting Services.

#### *New issues identified*

No further issues have been identified by stakeholders in relation to APES 215.

## **1.4. Summary of Recommendations**

### Issues previously identified

The following recommendations were approved by the Board in 2010 in relation to APES 215:

1. The minor editorial in the definition of “Court” is to be incorporated in the next revision of APES 215.
2. The term “veracity” to be removed from paragraph 5.6k and replaced with the term “validity”. No changes to be made in respect of paragraph 3.15.
3. The guidance on confidentiality in paragraph 3.18 requires expansion to include Members in Business.
4. The defined term ‘Professional Standards’ requires capitalisation.
5. Minor editorials to be made to the definition of “Independence”.
6. A project to develop two new appendices for inclusion in APES 215 was undertaken during 2011 and continues. The first appendix will contain a decision tree for Members to determine when they are providing a forensic accounting service and identify the type of service. The second appendix will provide a number of scenarios and demonstrate the application of the principles of APES 215 to determine, based on the facts and circumstances presented, whether the Member is providing a Consulting Expert Service, Lay Witness or Investigation Service.

## 2. Review of Issues

### 2.1 Amend the definition of "Court"

#### **Issue**

A stakeholder noted that the definition of "Court" needs to be amended as follows to improve its clarity:

**Court** means any body described as such and all other tribunals exercising judicial or quasi-judicial functions and includes professional disciplinary tribunals, industrial and administrative [tribunals](#), statutory or parliamentary investigations and inquiries, royal commissions, arbitrations and mediations.

This definition of court was adopted from the NSW Law Societies Solicitors Rules. The inserted "tribunals" does not appear in that definition and changes the meaning by narrowing it. All tribunals are caught in the opening line of the definition and the later adjectival phrase "industrial and administrative, statutory or parliamentary" qualifies "investigations and inquiries, royal commissions, arbitrations and mediations". Accordingly, "tribunal" should not be inserted into the definition of Court.

The insertion of "s" at the end of "investigation" should be amended.

#### **Impacted Stakeholders**

Professional Accounting Bodies, Firms and Members.

#### **Recommendation**

Insert "s" at the end of "investigation" in the definition of "Court" in the next revision of APES 215. The word "*tribunal*" should not be inserted for the reasons noted above.

### 2.2 Using the work of another expert

#### **Issue**

Members acting as expert witnesses may express an opinion that is based on the work of another expert which is also an opinion. A stakeholder has commented that the wording contained within paragraphs 3.15 and 5.6(k) of APES 215 (i.e. valid or veracity) imply a higher standard than is realistic.

One option is to change "veracity" in paragraph 5.6 to "validity" so that both are consistent. An alternative option is to edit both these instances to "reasonable" for consistency.

One of the APES 215 Taskforce member's comments on the issue is noted below:

*I agree that 3.15 and 5.6 should be consistent but I think "valid" would be better than "reasonable".*

*"Valid" is defined in the Macquarie Concise Dictionary as:*

- 1. sound, just or well-founded*
- 2. having force, weight or cogency; authoritative*
- 3. legally sound, effective or binding; having legal force; sustainable in law.*

*"Reasonable" is defined as:*

- 1. endowed with reason*
- 2. agreeable to reason or sound judgement*
- 3. not exceeding the limit prescribed by reason; not excessive*
- 4. moderate, or moderate in price.*

*I think that when we are instructed to base our work partly on the opinions of another expert we are being asked to assume that the other expert's opinions are more than just reasonable (because opposing opinions can each be reasonable) we are asked to assume that they will be accepted by the court i.e. that they are valid.*

*Finally, there is another inconsistency that should be addressed: 3.15 refers to the "other expert's opinion" whereas 5.6 refers to "another person's Report". The wording of 5.6 captures expert and lay evidence (because of "person" and because Report is defined to cover expert and lay evidence) whereas 3.15 only captures expert opinion.*

*Paragraph 3.15 should be amended as follows to make it consistent with 5.6:*

*"If a Member acting as an Expert Witness expresses an opinion that is based on ~~the work of another expert~~ another person's Report then the Member shall state in the Member's Report that the Member's opinion is based, in part, on the assumption that ~~the other expert's opinion~~ another person's Report is valid."*

An alternative view was offered by another APES 215 taskforce member who preferred the use of the word "reasonable". Whilst this member appreciates the view on the use of the term "valid", it is the member's view that the concept of "valid" actually requires some deeper analysis of the other Member's work - which may not always be possible depending on access to working papers or the need to make fresh enquiries. In a legal sense the member believes that the term "reasonable" is better understood than "valid".

An alternative argument is that in both paragraph 3.15 and paragraph 5.6 (k) no further analysis of the other Expert's or person's report is usually required as the validity of that report is assumed.

### **Impacted Stakeholders**

Professional Accounting Bodies, Firms and Members.

### **Recommendation**

The terms “valid” and “veracity” have been in use since June 2009 and as the use of these terms have not raised significant stakeholder concerns it is recommended that the term “validity” be used in paragraph 5.6 (k) to make it consistent with paragraph 3.15.

## **2.3 Application of Confidentiality requirements to all Members**

### **Issue**

Members are bound by the confidentiality requirements of the Code, as stated in the mandatory paragraph 3.17 of APES 215. Guidance paragraph 3.18 that follows only makes reference to Members in Public Practice. A stakeholder has commented that the guidance should also apply to Members in Business.

### **Impacted Stakeholders**

Members in Business.

### **Recommendation**

Paragraph 3.18 should be expanded to include Members in Business in the following manner:

- 3.18 Where a Client or Employer gives a Member ~~in Public Practice~~ permission to disclose confidential information to a third party, it is preferable that this permission be in writing. Where oral permission is obtained, a contemporaneous note should be made and kept on file by the Member recording the relevant details of the Client's or Employer's permission.

## **2.4 Capitalisation of defined term “Professional Standards”**

### **Issue**

Stakeholders have reported that the defined term Professional Standards has not been capitalised in paragraph 1.7 and in the definition of Expert Witness.

### **Impacted Stakeholders**

Professional Accounting Bodies, Firms and Members.

### **Recommendation**

Capitalise the defined term Professional Standards in accordance with APESB drafting conventions.

## **2.5 *Minor editorials in the definition of “Independence”***

### **Issue**

Stakeholders have reported that the defined term “Independence” requires minor editorials as follows:

#### ***Independence means***

- (a) Independence of mind - the state of mind that permits the provision of an opinion without being affected by influences that compromise professional judgment, allowing an individual to act with integrity, and exercise objectivity and professional scepticism; and
- (b) Independence in appearance - the avoidance of facts and circumstances that are so significant a reasonable and informed third party, having knowledge of all relevant information, including any safeguards applied, would reasonably conclude a Firm's, or a **M**ember's, integrity, objectivity or professional scepticism ~~had~~ **has** been compromised.

### **Impacted Stakeholders**

Professional Accounting Bodies, Firms and Members.

### **Recommendation**

Adopt the proposed editorials for the following reasons:

- the first editorial is in accordance with APESB drafting conventions; and
- the second editorial is consistent with the revised IESBA *Code of Ethics for Professional Accountants* issued in July 2009.

## **2.6 *A stakeholder noted that the various roles performed by a Member when providing Forensic Accounting Services is not clear and has proposed that APESB consider providing additional appendices to provide further guidance.***

### **Issue**

A stakeholder proposed that a new appendix be added to APES 215 to provide further guidance to Members on the different roles played by Forensic Accountants and explain how their services are captured by the different service classifications of APES 215. The development of the proposed appendix will assist Members to understand the distinction between various services that comprise Forensic Accounting Services. The

appendix should be named “Appendix X: Guide to whether a Member is a Consultant Expert, an Expert Witness or a Lay Witness”.

Based on discussions with the stakeholder it was agreed that there is value in developing a decision tree that provides further guidance to the Member when the services provided by them fall within the ambit of APES 215 and thereafter clarify the four different forensic accounting services in APES 215.

### **Impacted Stakeholders**

Professional Accounting Bodies, Firms and Members, Lawyers, Courts

### **Recommendation**

Commence a project to develop two new appendices for inclusion in APES 215. The first appendix will contain a decision tree for Members to determine when they are providing a forensic accounting service and the type of service. The second appendix will provide a number of scenarios and demonstrate the application of the principles of APES 215 to determine, based on the facts and circumstances presented, whether the Member is providing a Consulting Expert Service, Lay Witness or Investigation Service.