



## ***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, a review needs to be performed twelve months after a new standard is effective. This report presents a review of the issues reported by stakeholders to the APESB and the proposed recommendations to address stakeholder concerns.

### **1.3. Issues 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. Proposal change of the term ‘Lay Witness’ to ‘Non-Expert Witness’.
7. A stakeholder has proposed to add a new paragraph to specify the ‘The Report of a Non-Expert Witness’ or Lay Witness report
8. Proposal to introduce a new definition of “Consulting Services” to replace “Consulting Expert Services” and to move “Investigation Services” to form the second limb of the new “Consulting Services” definition
9. A stakeholder has 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.

## **1.4. Summary of Recommendations**

It is recommended that:

1. The minor editorial in the definition of “Court” to be incorporated in the next revision of APES 215.
2. Discussion in paragraph 3.15 and 5.6(k) of opinions based on the work of other experts should consistently make reference to validity. The issue of whether the term “expert” in paragraph 3.15 should be amended to “other person” to cover lay witnesses will be considered during the annual review of APES 215.
3. The guidance on confidentiality in paragraph 3.18 to be expanded to include Members in Business.
4. Capitalise the defined term “Professional Standards”.
5. Adopt the proposed editorials to the definition of “Independence”.
6. No changes are proposed to the term “Lay Witness” in APES 215.
7. No amendments are made to APES 215 to address Lay Witness Reports. This issue can be monitored and revisited in the future.
8. No changes are proposed to the definitions of Consulting Expert Services or Investigation Services in APES 215.
9. 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.

## Review of Issues

### 2.1 Amend the definition of "Court"

#### Issue

A stakeholder has noted that the definition of "Court" needs to be amended as per the marked up text 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 taken from the NSW Law Societies Solicitors Rules. The inserted "tribunals" does not appear in that definition and actually 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 to the definition of Court.

The insertion of "s" to investigation should be amended as it is a typographical error.

#### Impacted Stakeholders

Professional Accounting Bodies, Firms and Members.

#### Recommendation

Adopt the typographical error in the definition of "Court" in the next revision of APES 215 but do not insert *tribunal* 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) implies a higher standard than is realistic. One option is to change “veracity” in paragraph 5.6 to “validity” so that both are consistent whilst another option is to change both these instances to “reasonable”.

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.*

*I think 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.”*

A different view was offered by another APES 215 taskforce member who preferred the use of the word "reasonable". Whilst he can understand the view on the use of the term "valid", it is his 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 he believes that the term "reasonable" is better understood than "valid".

However, it can also be argued that in both paragraph 3.15 and paragraph 5.6 (k) no further analysis or work 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.

The issue of whether paragraph 3.15 should be amended from "Expert" to "another person" to cover reports given by lay witnesses will be considered by APESB during the annual review process.

## **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. The guidance paragraph (3.18) that follows the mandatory requirement 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 to 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 a few minor editorials as noted below:

### 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 Member’s, integrity, objectivity or professional scepticism ~~had~~ has been compromised.

### Impacted Stakeholders

Professional Accounting Bodies, Firms and Members.

### Recommendation

Adopt the proposed editorials as 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 *Proposal change of the term ‘Lay Witness’ to ‘Non-Expert Witness’***

### **Issue**

A stakeholder has proposed to change the term ‘Lay Witness’ to ‘Non-Expert Witness’ to differentiate from when a Member is acting as an expert.

The issue was discussed with the stakeholder whose main concern was to differentiate a Member who sometimes may act as an expert from instances where the Member is not acting as an expert. It was explained to the stakeholder that as case law and the courts refer to lay witnesses. Further, as the term Non-Expert Witness is relatively a new term that this may cause some confusion in practice. The stakeholder accepted this explanation and agreed that no changes are required to APES 215 in respect of this issue.

### **Impacted Stakeholders**

Professional Accounting Bodies, Firms and Members, Lawyers, Courts

### **Recommendation**

No changes are proposed to the term “Lay Witness” in APES 215.

## **2.7 *A stakeholder has proposed to add a new paragraph to specify the ‘The Report of a Non-Expert Witness’ or Lay Witness report***

### **Issue**

A stakeholder has proposed to add a new paragraph between current paragraph 5 *Expert Witness Service* and 6 *False or Misleading Information and Changes in Opinion* to provide guidance to Members providing Non-Expert Witness Services (or primarily for Lay Witnesses Services) in relation to the content of their Reports.

This issue was discussed further with the stakeholder to understand their concerns. Subsequently a discussion was held with representatives of the special interest groups of the professional bodies which included some of the former APES 215 Taskforce members. The consensus view of the subject matter experts were that it is difficult to mandate or provide guidance on what should be included in a Lay Witness report as the circumstances are quite varied and even on similar matters the practices of the different jurisdictions (i.e. states) may vary.

### **Impacted Stakeholders**

Professional Accounting Bodies, Firms and Members, Lawyers, Courts

### **Recommendation**

No amendments are made to APES 215 to address Lay Witness Reports. This issue can be monitored and revisited in the future.

### **2.8 *Proposal to introduce a new definition of “Consulting Services” to replace “Consulting Expert Services” and to move “Investigation Services” to form the second limb of the new “Consulting Services” definition***

#### **Issue**

A stakeholder has proposed to combine Investigation Services with Consulting Expert Services and to form a new definition called Consulting Services.

Consulting Expert Services deals with the provision of assistance in the context of proceedings and the Members involved are referred to as a Consulting Experts by the Court. An Investigation Service on the other hand could happen whether or not under the context of a proceeding. Thus the distinction between Investigation Service and Consulting Expert should still remain in order to distinguish between services provided under the two different scenarios.

This issue was discussed further with the stakeholder who subsequently agreed that no changes are required.

#### **Impacted Stakeholders**

Professional Accounting Bodies, Firms and Members, Lawyers, Courts

#### **Recommendation**

No changes are proposed to the definitions of Consulting Expert Services or Investigation Services in APES 215.

- 2.9 *A stakeholder has 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 has proposed to add a new appendix to provide further guidance to Members on the different roles played by Forensic Accountants and 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 will come within the ambit of APES 215 and thereafter 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.