

ACCOUNTING PROFESSIONAL & ETHICAL STANDARDS BOARD LIMITED
6th Meeting of the APES 215 Forensic Accounting Appendices Project Taskforce

10 December 2012 from 2.00 – 3.10 PM

APESB (Victoria)
Level 7, 600 Bourke Street, Melbourne, VIC, 3000

1. Present and apologies

Present:

Mr Channa Wijesinghe (Chairman), Mr Owain Stone, Mr Gregory O'Neil, Mr Brendan Halligan, Mr Geoff Crawford and Mr Keith Reilly

In Attendance

Mr Peter Day, Mr Rob Nickel and Ms Margareth Lioe

2. Minutes of previous meeting

The minutes of the 5th APES 215 Forensic Accounting Appendices Project Taskforce meeting held on 1 March 2012 were accepted without amendment.

3. Discussion on Specific Comments Tables and key issues

The taskforce briefly discussed ASIC Staff's views on ED 02/12. The taskforce was of the view that it would be prudent for some taskforce members to meet with ASIC representatives to further discuss and understand ASIC Staff's concerns in relation to the Exposure Draft. APESB Technical Staff will coordinate a meeting with ASIC and the taskforce in early 2013.

- Expert Witness

The taskforce discussed the validity and rationale of respondent's suggestion to remove reference to "Expert" in the definition of "Expert Witness" and "Expert Witness Service". The taskforce was of the view that while it is understood that it is the court which decides whether or not a witness is an Expert Witness, it is the intention of the standard to define the scope of work performed by a Member which functions to determine whether or not they are an Expert Witness. The quality of work performed and the Member's approach to the work are some factors that qualify Members to be accepted as an Expert for the purpose of APES 215.

The taskforce further agreed that the term "Expert" is widely used across other pronouncements, laws and existing standards.

- Evidence

The taskforce considered respondent's comment to define 'Evidence' and was of the view that a definition of "Evidence" is not necessary.

- Role of decision maker & Appendix 3 – Example 1

The taskforce discussed the decision making roles of Members when providing Forensic Accounting Services. The taskforce determined that there are forensic accountants who provide expert determinations in relation to accounting and accounting related matters. Members appointed to sit as

members of professional tribunals are still considered to be providing professional services as long as they are acting within their capacity. As such, respondents' basis of arguments for the inappropriateness of decision making function as captured by the definition of "Consulting Expert Service" was not supported.

- Opinion vs. non-opinion evidence

The taskforce agreed to clarify the distinction between opinion and non-opinion evidence in the definition of "Expert Witness". The taskforce agreed to refine the definition of "Expert Witness" to suggest that expert evidence may consist of both opinion and non-opinion evidence and develop an additional example of non-opinion evidence so as to provide Members with clear distinction between the two types of evidence.

- Non-expert report

The taskforce discussed the need for reporting of a non-expert witness and was of the view that non-expert witness report is not appropriate. The non-expert witness report may not contain Members' training, study and experience as this may lead to it being understood as an Expert Report. The taskforce agreed to bring this matter up for discussion at a future meeting with the respondent.

- Appendix 1

The term "significant degree" is used based on one of ASIC's most significant civil law cases. The taskforce agreed that "significant degree" will not create confusion among Members.

The taskforce discussed the example in differentiating between 'facts', 'assumptions' and 'opinions'. They were of the view that Appendix 1 may be revised to enhance clarity to Members on defining the respective terms.

A taskforce member suggested developing a flow diagram containing additional guidance and terms derived from Australian court cases in order to further enhance the clarity and objectives of Appendix 1.

The taskforce also discussed the difference between 'scientific fact' and 'scientific opinion' and clarified that opinions based on expert evidence constitute a 'scientific fact' where it requires a certain degree of knowledge and expertise to make the judgment.

- Appendix 2

The taskforce agreed to consider clarifying the decision tree to suggest the outcomes if expert evidence is ruled inadmissible by the Court. As the evidence has been initially prepared as being expert evidence in accordance with the Standard, due to changing circumstances, it is imperative that Members revisit the initial scope of work.

- Appendix 3 – Additional examples

The taskforce agreed to develop additional examples on "Lay Witness Service" and develop circumstances where a Forensic Accounting Service becomes an Assurance Engagement. In addition, it is established that it is necessary to provide guidance on the factors when a Forensic Accounting Service may become an Assurance Engagement. A taskforce member suggested seeking input from the professional bodies for such examples.

- Appendix 3 – Respondents' comments on example 6 & 7

The taskforce discussed the basis of the respondents' comments on the types of Forensic Accounting Service examples 6 and 7. The taskforce was of the view that since work and analysis has been done to prepare the final document, the Member is considered to be an Expert Witness as they are no longer giving evidence of what they have directly observed or perceived. As long as analysis has been done by Members with specific accounting skills and expertise, the Member is acting as an Expert Witness.

4. Way forward

The chairman will provide a project update to the taskforce and organise a meeting with ASIC representatives in early January 2013.

5. Close of Meeting

The meeting was closed at 3.10 pm.

DRAFT