

## AGENDA PAPER

**Item Number:** 9.1  
**Date of Meeting:** 10 November 2008  
**Subject:** Proposed Standard: APES 215 *Forensic Accounting Services*

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### Purpose

Subject to review comments from the Board and the resolution of the outstanding issues noted in the discussion paper, to obtain Board approval to issue the proposed APES 215 *Forensic Accounting Services*.

### Background

APS 11 *Statement of Forensic Accounting Standards* and Guidance Note GN2 *Forensic Accounting* were jointly issued by CPA Australia and the Institute of Chartered Accountants in Australia in December 2002.

In August 2007 the APES Board approved the creation of a task force to oversee the revision of APS 11 *Statement of Forensic Accounting Standards* and Guidance Note GN2 *Forensic Accounting*. The APES 215 Taskforce has formally met 7 times over the last 12 months to develop this proposed standard, most recently on 16 October 2008.

The APES Board approved the issue of ED 04/08 at its May 2008 meeting. Comments on ED 04/08 closed on 29 August 2008 with a total of 18 submissions received from constituents.

### Consideration of Issues

The Forensic Accounting Taskforce has considered the respondents comments and redrafted the attached marked up version of the proposed APES 215. The redrafted version was shared with the significant respondents to the ED. Those who responded to the revised APES 215 stated that they believe that the revised version addresses most of their concerns except for the matters noted below.

## **Specific matters for the Board**

### **Procedural Fairness and compliance with Laws**

*[Refer specific comments – issues 72 to 75]*

The views of constituents and Task Force Members were divided about the retention of paragraphs 3.14 to 3.16 which addresses matters of procedural fairness and compliance with laws. Some were of the view that the guidance included in these paragraphs is of such importance that it should continue to remain in the main body of the proposed Standard while others felt that such material could be included in the Basis of Conclusion document or communicated by the professional bodies as part of Member education.

### **Scope and Application**

*[Refer specific comments – issues 5 and 24]*

Concerns have been raised by the Insolvency Practitioners Association of Australia and PwC regarding the scope of the proposed 215. The concerns are about the application of APES 215 to formal insolvency appointments as well as when tax and legal services are carried out in relation to proceedings.

The options to consider are either to scope it out (due to the application of other standards such as APES 220 Taxation Services or the proposed APES 330 Insolvency Services) or to refine the related definitions APES 215.

This matter is still under review.

### **The Report of an Expert Witness**

*[Refer specific comments – issues 104 to 118]*

A significant amount of comment was received on paragraph 5.5 of the Exposure Draft – now redrafted as paragraph 5.7 of the proposed Standard. The comments from Members in Public Practice were mainly in the nature of refinements as most of these requirements resided in GN 2 as guidance since 2002. As the proposed APES 215 will apply to Members in Business for the first time they have raised significant concerns in this respect.

APESB technical staff did some research in this regard which is provided in Appendix 1 to this agenda paper. Refer to Appendix 1 to a brief summary of what is expected of expert witnesses and expert witness reports in most Australian courts.

Paragraph 5.7 has been redrafted in response to respondents' comments and is presented for the Board's consideration.

## **Staff Recommendation**

Subject to the Board review comments and the resolution of the above issues the Board approve the issue of the proposed Standard APES 215 *Forensic Accounting Services*.

## **Material Presented**

- Constituents' Submissions on ED 04/08 – General Comments
- Constituents' Submissions on ED 04/08 – Specific Comments
- Proposed Standard: APES 215 *Forensic Accounting Services* (Marked up)
- Proposed Standard: APES 215 *Forensic Accounting Services* (Clean)
- Meetings with key respondents

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### Best Practice Guidance

As background material to consideration of the concerns raised on paragraph 5.5 (now Paragraph 5.7), staff have provided an extract from “**The Accountant as an Expert Witness: A basic guide to forensic accounting**” (CCH 2007, pp 47-48) which provides guidance on the contents of an expert’s report:

“The report will be read and used by those who are not accountants. Such people – instructing lawyers, counsel, and the court – require information which is clearly understandable and not largely reliant upon accountancy jargon and technical terms, which follows a logical sequence and format, reaching its conclusions in an unbiased and transparent manner. The assumptions made, the documents used and the methodology adopted should be clearly stated and, where necessary, cross-referenced.

Because it is offered as opinion evidence, and because it is likely to contain both facts and opinions, the expert’s report should confirm to the following guidelines:

- experts’ opinions must be wholly or substantially based on their specialised knowledge and expertise
- experts’ reports must distinguish between the opinions and the facts on which the opinions are based
- experts must set out their reasoning for every opinion expressed
- where it is pertinent to do so, the expert’s report must set out the reasoning by which certain information was considered and either rejected or discounted for the purposes of the report
- experts’ opinions may not be wholly or substantially based on facts which can be proved only by inadmissible evidence
- experts’ opinions and reasoning must be their own, and not simply the adoption of the work of someone else
- experts must be in a position to exclude from consideration everything except the matters identified as the facts upon which their opinions are based

**An expert's report should:**

- **be written in clear and concise language**
- **follow a simple and obvious logic, regardless of the subject-matter's complexity**
- **contain the minimum number of calculations within its body, with detailed computations in the appendices**
- **be fully cross-referenced with paragraph and page numbers**
- **identify all assumptions made, and explain the reasons for them**
- **explain every accounting term used (which is not self-explanatory)**
- **avoid emotional and judgemental adjectives and phrases**
- **refrain from passing an opinion on matters which will be determined by the court**
- **contain a disclaimer regarding use by other parties**
- **contain appropriate references to the court's code of conduct**

An expert's report uses the first person singular, thus making it clear that the approach made, the conclusions drawn and the opinions expressed are those of the expert. It is also usual to mention by name the various people (members of the expert's staff and others) who have played a relevant part in the preparation of the report."