



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

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## Background

Accounting Professional & Ethical Standards Board (APESB) originally issued APES 215 *Forensic Accounting Services* (APES 215) in December 2008 to replace APS 11 *Statement of Forensic Accounting Standards* and GN 2 *Forensic Accounting*.

Subsequently due to stakeholders' requests for additional guidance in respect of APES 215, APESB developed additional appendices and issued a revised APES 215 in December 2013 with an effective date of 1 April 2014.

## Reason for this report

In accordance with APESB's constitution, a review should be performed on an annual basis after a new standard is effective in order to identify any issues reported by stakeholders. This report presents a review of the issues either reported to APESB or identified by an internal technical review and the proposed recommendations to address those issues.

## Review of Issues

### 1. Clarification of expertise in the Expert Witness Report

#### Issue

A stakeholder requested clarification in respect of the requirements in paragraph 5.6 (c).

The stakeholder was not certain whether paragraph 5.6 (c) means that:

- If he concludes that none of his opinions, findings or conclusions were not wholly or substantially based on his specialised knowledge derived from training, study or experience, that he was required to make a positive statement; or
- If it is only where he concludes that at least one of his opinions, findings or conclusions is not based wholly or substantially on his specialised knowledge, then he was required to make a specific statement.

The stakeholder also identified that the use of the term 'training, study and experience' in paragraph 5.6 (c) is inconsistent with case law which uses the term 'training, study or experience' which is used throughout APES 215 and recommended that a review be performed to ensure consistency.

Another stakeholder has queried why there is no longer a mandatory requirement in paragraph 5.6 to state the Member's training, study and experience, and whether it was an omission with the revised APES 215 in December 2013. This stakeholder noted that this requirement was in the 2008 version of APES 215, but not in the revised 2013 version. The stakeholder states that Courts will generally require this, in order to admit evidence and to give weight to an expert's evidence.

### **Analysis of Issue**

The requirement in paragraph 3.15 for a Member in Public Practice to obtain professional expertise when a matter is not within their expertise is linked with the requirements in paragraph 5.6 (c). Paragraph 3.15 mandates that where the Member in Public Practice requires consideration of matters that are outside that Member's professional expertise, the Member should seek expert assistance or advice from a suitably qualified third party or decline the Engagement.

Thus, paragraph 5.6 (c) in APES 215 (2013) specifies that the Member is required to make a specific statement, if any of the Member's opinions, findings or conclusions are not based wholly or substantially on the Member's specialised knowledge derived from training, study or experience.

During the development phase of APES 215, the taskforce believed that it is important to emphasise the limitations of a Member's expertise and to clearly disclose in the Member's report when a matter is not within a Member's expertise. It should also be noted that Court guidelines will mandate the need for an Expert Witness to state their qualifications and experience.

Accordingly, the original paragraph 5.6 (c) which required a Member to state relevant qualifications and experience was amended to the existing paragraph to require a Member to disclose when a matter addressed in the Member's report was not within the Member's expertise.

### **Impacted Stakeholders**

Members, Firms and Professional Bodies.

### **Recommendation**

It is recommended that paragraph 5.6 (c) in the APES 215 (2008) be re-instated and that the existing paragraph in 5.6 (c) in APES 215 (2013) be renamed as paragraph 5.6 (d) in the following manner:

**5.6     *Subject to any legal requirements or restrictions, a Member providing an Expert Witness Service shall clearly communicate in any Report:***

....

**(c)     *details of the Member's training, study and experience that are relevant to the matters on which the Member is providing expert evidence;***

**(d)     *whether any of the opinions, findings or conclusions of the Member are not based wholly or substantially on the Member's specialised knowledge derived from training, study ~~and~~ or experience;***

....

## **2. Lack of awareness of APES 215**

### **Issue**

A stakeholder has suggested that APES 215 should specify the consequences of a member not acknowledging or being aware of APES 215 when performing a Forensic Accounting Service. The stakeholder has noted that there are countless examples of where Members are unaware that APES 215 exists, and accordingly fail to comply with it (e.g. not identifying the information they have relied upon), and that lawyers and Courts will hold professional accountants accountable if they are not complying with APES 215.

### **Analysis of Issue**

Section 5 specifies the requirements when providing an Expert Witness Service. Accordingly, where applicable, a Member has a professional obligation to comply with the relevant mandatory requirements when acting as an Expert Witness.

The Member's lack of awareness of accounting and professional standards may be attributed to the major proportion of APESB standards being developed in the last 6 to 7 years. Thus, some Members may not be aware of these standards if they are not engaged with the Professional Bodies' communication mediums.

There are various circumstances in which an Expert Witness Service may be performed by a Member and the Professional Bodies are better equipped to raise awareness of APES 215 with Member education and continuing professional development. The quality review and disciplinary function of Professional Bodies are also responsible for regulating any Member's non-compliance with professional ethical standards.

### **Impacted Stakeholders**

Members, Firms and Professional Bodies.

### **Recommendation**

As this matter is not within APESB mandate and does not impact on the contents of APES 215, no further action is proposed.

## **3. Review of the definitions 'Expert Witness' and 'Other Evidence'**

### **Issue**

A stakeholder suggested that a general review of all of the definitions in APES 215 would be helpful, in particular a review of the definitions of 'Expert Witness' and 'Other Evidence' together with the mandatory requirements of paragraph 5.6. It was suggested this review could be undertaken by a highly experienced barrister or retired judge, to give credibility to the definitions from a legal perspective.

### **Impacted Stakeholders**

Members, Firms and Professional Bodies.

## **Recommendation**

The Board note the suggestions made by the stakeholder and consider performing a legal review at the next revision of APES 215.

## **4. Defined terms**

### **Issue**

The Technical Staff review identified that the Definitions section of APES 215 needs to be revised to be consistent with the Code.

### **Analysis of Issue**

The Definitions section in APES 215 requires revision due to amendments made to the IESBA's Code and subsequent changes made by APESB to APES 110 *Code of Ethics for Professional Accountants*.

### **Definition to be revised**

**Contingent Fee** means a fee calculated on a predetermined basis relating to the outcome or result of a transaction or the result of the services work performed by the Firm. A fee that is established by a court or other public authority is not a Contingent Fee.

**Engagement** means an agreement, whether written or otherwise, between a Member in Public Practice and a Client relating to the provision of Professional Services by a Member in Public Practice. However, consultations with a prospective Client prior to such agreement are not part of an Engagement.

**Independence means is:**

- (a) Independence of mind - the state of mind that permits the expression provision of a conclusion an opinion without being affected by influences that compromise professional judgement, thereby allowing an individual to act with integrity, and exercise objectivity and professional scepticism.
- (b) Independence in appearance - the avoidance of facts and circumstances that are so significant that a reasonable and informed third party, having knowledge of all relevant information, including any safeguards applied, would be likely to reasonably conclude, weighing all the specific facts and circumstances, that a Firm's, or a Member of the Engagement team's, integrity, objectivity or professional scepticism has been compromised.

***Member in Public Practice*** means a Member, irrespective of functional classification (e.g. audit, tax or consulting) in a Firm that provides Professional Services. This ~~The~~ term is also used to refer to a Firm of Members in Public Practice and means a practice entity and a participant in that practice entity as defined by the applicable Professional Body.

***Professional Standards*** means all ~~S~~standards issued by Accounting Professional & Ethical Standards Board Limited and all professional and ethical requirements of the applicable Professional Body.

### **Impacted Stakeholders**

Members, Firms and Professional Bodies.

### **Recommendation**

The defined terms in APES 215 should be revised in a manner consistent with the Code and other APESB standards. It is recommended that these changes and any other consequential amendments be processed at the next revision of APES 215.