

ACCOUNTING PROFESSIONAL & ETHICAL STANDARDS BOARD LIMITED

**APES 215 *Forensic Accounting Services*
1st Taskforce Meeting**

MINUTES

**15 August 2022, Monday
11.00 a.m. – 12.53 p.m.**

Videoconference

1. Present and Apologies

Present:

Mr Channa Wijesinghe (Chairman), Mr Owain Stone, Mr Brendan Halligan, Mr Gregory O'Neil, Mr Keith Reilly (11.00 am to 11.50 am), Mr Campbell Jackson and Mr Matthew Ashby.

In Attendance:

Mr Brian Morris (Board Member), Mr Jon Reid and Ms Rachael Tiong.

Apologies

Mr Paul Vincent.

2. Welcome and Introduction to New Taskforce Members

The Chairman welcomed the Taskforce members and thanked them for their attendance to consider proposed revisions to APES 215 *Forensic Accounting Services* (APES 215). The Chairman welcomed and introduced the new Taskforce members present, Mr Campbell Jackson and Mr Matthew Ashby, and Mr Paul Vincent, who was an apology for the meeting.

3. Background to the proposed revisions to APES 215

The Chairman provided background to the development of APES 215, matters raised by the Australian Securities and Investments Commission (ASIC) in 2012/2013 about the evidence ASIC Forensic Accounting Services officers adduce to court, and ASIC's recent recommendations, which were provided to Taskforce members before this meeting.

The Taskforce discussed ASIC's recommendations to amend some definitions and examples in APES 215 to address ASIC's belief that evidence adduced by ASIC to the court under Section 50 of the *Evidence Act 1995* not being expert evidence but lay observations based on the findings in *Idyllic Solutions Pty Ltd & Ors – Australian Securities and Investments Commission v Hobbs* [2012] NSWSC 568 (ASIC v Hobbs).

4. Proposed revisions to APES 215

(a) Definitions of Lay Witness Service and Other Evidence

The Taskforce discussed Options 1 and 2 to amend the definition of Lay Witness Service and proposed changes to the definition of Other Evidence included in the draft APES 215 Exposure Draft (Draft ED) provided to Taskforce members before this meeting.

The Taskforce recommended replacing 'utilised' in the definition of Lay Witness Service with 'used' or 'apply' and to ensure this is consistent throughout the Standard.

The Taskforce discussed whether using 'Professional Activity' and 'does not require the Member to use the Member's specialised knowledge' in proposed Option 1 of the definition of Lay Witness Service creates any conflict. The Taskforce concluded that not all services provided by an accountant requires 'specialised knowledge' but recognised that this activity would still occur as part of providing a service or employment (i.e., engagement or assignment).

The Taskforce supported Option 1 for the amended definition for Lay Witness Service and the proposed amendments to the definition of Other Evidence.

The Taskforce discussed highlighting within the Scope and Application section of APES 215 that Expert Witness Services must comply with all the requirements in APES 215, including Section 5. Whereas Forensic Accounting Services other than Expert Witness Services must comply with the requirements of the Standard other than Section 5.

Technical Staff will review the Scope and Application for inclusion of such a statement.

(b) Quality management related amended (paras 7.1 and 7.2)

The Taskforce supported the proposed amendments to paragraphs 7.1 and 7.2 in the Draft ED for quality management conforming amendments, to ensure APES 215 remains consistent with the reissued APES 320 *Quality Management for Firms that provide Non-Assurance Services* and the Auditing and Assurance Standards Board new quality management standard ASQM 1.

(c) Amendments to Appendix 1

Differentiating expert/lay evidence, observed/scientific facts and Scientific facts and Other Evidence.

The Taskforce did not agree with the proposed amendments to Appendix 1 in the Draft ED, including the addition of 'Expert Evidence' to the heading. Instead, the Taskforce recommended removing 'expert' in the Facts diagram under 'Observed facts', confirm consistency of Appendix 1 to *ASIC vs Rich* and for the Appendix to apply more broadly to Lay Witness Services and Expert Witness Services.

The Taskforce agreed that references to Appendix 1 should be included in the definitions of Expert Witness Service, Lay Witness Service and Other Evidence.

(d) Amendments to Appendix 2

The Taskforce supported the proposed amendments to Appendix 2 in the Draft ED.

e) Amendments to Appendix 3

- *Example 6 of Appendix 3*

The Taskforce supported the proposed amendments to Example 6 in the Draft ED to remove references to 'summary'.

- *Example 7 of Appendix 3*

The Taskforce believe that a summary of a 'flow of funds' is not a Lay Witness Service as it requires expertise, knowledge and experience. The Example should instead refer to a summary of transactions.

The Taskforce recommended adding 'for the purpose of this standard' after Expert Witness Service in the last two paragraphs of the Example in the Draft ED to clarify it is from the perspective of the Standard and not necessarily the court.

The Taskforce agreed that where a Member's submissions or evidence highlights their qualifications, including training, study or experience in accounting, the Member is purporting to be an expert and the service should be an Expert Witness Service. The Taskforce recommended including this principle within the body of the Standard.

The Taskforce recommended that the Table at the start of Appendix 3 for Example 7 should refer to both Lay Witness Service and Expert Witness Service.

- *Example 10 of Appendix 3*

The Taskforce supported the proposed amendments to Example 10 in the Draft ED.

- *Example 21 of Appendix 3*

The Taskforce agreed that the Analysis for Example 21 should not result in the defined term Lay Witness and instead should use 'lay witness' as it does not relate to a Professional Activity and would be outside the scope of APES 215.

The Taskforce discussed and agreed that the Analysis section of each Example in Appendix 3, and the conclusions in the Table summarising the Examples, should include Service after Consulting Expert, Expert Witness and Lay Witness.

5. Impact on Technology on APES 215

The Taskforce supported APESB obtaining feedback on the Technology survey at the upcoming Forensic Accounting and Business Valuation conferences. The Taskforce recommended making the survey clearer that the focus is on recent Technological developments as members have varying degrees of understanding on Technology. Taskforce members agreed to provide any further suggestions or comments to Technical Staff via email.

6. Any other matters and way forward

The Taskforce discussed the inconsistency between the definition of Expert Witness Service and Lay Witness Service in reference to written and oral evidence and recommended that the two definitions be made consistent.

The Taskforce agreed with the proposed way forward for Technical Staff to update the Draft ED for the matters discussed above and to circulate this to Taskforce members for any further comments and editorials and that Technical Staff will provide an update on APES 215 at the September 2022 Board Meeting.

7. Close of Meeting

The meeting closed at 12.53 pm.

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