

AGENDA PAPER

Item Number: 4
Date of Meeting: 7 December 2022
Subject: Proposed revisions to APES 215 *Forensic Accounting Services*

Action required For discussion For noting For information

Purpose

To:

- provide the Board with a project update on APES 215 *Forensic Accounting Services* (APES 215); and
- seek the Board's approval, subject to the Board's review comments and editorials, to issue an Exposure Draft of proposed revisions to APES 215.

Background

At the June 2021 Board meeting, Technical Staff provided a brief history of the development of APES 215 and a project proposal to update the standard, which was approved by the Board ([Agenda Item 7](#)). The project proposal stemmed from ASIC's request to amend specific examples in APES 215 relating to evidence presented to the court under section 50 of the *Evidence Act 1995* (Evidence Act) (Proof of voluminous or complex documents) and to consider other aspects of the Standard.

ASIC contends that evidence presented to the court under section 50 of the Evidence Act is not expert evidence but lay observations.¹ ASIC note that bank officers produce the underlying documents to the court, including bank statements, bank vouchers and trace reports, and ASIC Forensic Accounting Services (FAS) officers highlight and summarise key information directly from those source documents.

An update was provided at the September 2021 Board meeting ([Agenda Item 8](#)) on an APES 215 working party meeting on 23 July 2021 and a meeting on 20 August 2021 between APES 215 working party members and ASIC representatives.

¹ Section 50 of the Evidence Act enables evidence to be presented of the contents of 2 or more documents as a summary if the court is satisfied it would not be possible to conveniently examine otherwise due to the volume or complexity of the documents.

A further update was provided at the June 2022 Board meeting ([Agenda Item 8](#)) on additional information and recommendations received from ASIC, an APES 215 working party meeting on 20 May 2022 and Technical Staff's initial responses to ASIC's recommendations.

An APES 215 Taskforce meeting was held on 15 August 2022, and a project update was provided at the September 2022 Board meeting ([Agenda Item 16](#)), including a preliminary draft Exposure Draft for APES 215. In addition, technical Staff provided a verbal update of a meeting with ASIC on 20 September 2022 at that Board meeting.

Matters for Consideration

Meeting with ASIC

APESB Board member, Brian Morris, APES 215 Taskforce members, Owain Stone and Brendan Halligan and Technical Staff met with ASIC personnel on 20 September 2022. The meeting was productive, and ASIC supported most of the proposals presented in a preliminary draft Exposure Draft for APES 215, including:

- the addition of paragraph 3.14 to specify that if a Member includes details of their specialised knowledge, training, study or experience in a Report, the Member must treat the service as an Expert Witness Service. It was noted that even reference to professional qualifications implies specialist knowledge, which means that the service is likely to be an Expert Witness Service; and
- proposed changes to Example 7 in Appendix 3 to include an example where Section 50 of the Evidence Act may and may not apply.

Most of the discussion focused on Example 6 in Appendix 3 and whether the line between Lay Witness Service and Expert Witness Service could be explored similarly to the proposed changes to Example 7. ASIC Staff was offered the opportunity to provide additional information for APESB Staff to assess whether a new example or modifications to example 6 were required. However, to date, no further feedback has been received.

Technical Staff believe Example 6 should not be split in such a way as it relates to complex transactions and accounting ledgers and journals which require specialised knowledge. The APES 215 Taskforce supported this view.

Draft highlights from the ASIC meeting are at Agenda Item 4(a) for the Board's information.

APES 215 Second Taskforce Meeting

An APES 215 Second Taskforce meeting was convened on 2 November 2022 to discuss the ASIC meeting detailed above and to consider proposed changes to APES 215 further. The Taskforce supported the preliminary draft Exposure Draft of APES 215 but suggested amendments to paragraph 3.14 and consequential amendments to Example 7 in Appendix 3.

The Taskforce discussed APESB's Technology project and that forensic accountants have embraced technology tools to enhance efficiency and productivity. The Taskforce believe the principles in APES 215 stand up well in respect of technology but recognised the importance of being able to explain the outputs of technology and appropriate recognition and disclosure of reliance on expertise.

The Taskforce supported the inclusion of requests for specific comments on technology in the APES 215 Exposure Draft. Refer to Agenda Item 9 of this Board meeting for an update on Technology.

Draft minutes from the APES 215 Second Taskforce meeting are at Agenda Item 4(b).

Proposed Amendments to APES 215

Following ASIC's recommendations, meetings with ASIC and Taskforce meetings, Technical Staff recommend the following key amendments are included in an APES 215 Exposure Draft:

- the addition of paragraph 1.8 to clarify that Forensic Accounting Services other than Expert Witness Services must comply with APES 215 except Section 5;
- adding references to Appendix 1 in the definitions of Expert Witness Service, Lay Witness Service and Other Evidence and references to Appendices 2 and 3 in the definition of Forensic Accounting Services;
- amending the definition of Lay Witness Service to note that such services do not require the Member to use the Member's specialised knowledge derived from the Member's training, study or experience;
- Quality Management conforming amendments to paragraphs 1.1, 7.1 and 7.2;
- the addition of paragraph 3.14 to provide that if a Member's Report refers to the Member's specialised knowledge and/or training, study or experience, then the service is an Expert Witness Service;
- amending Appendix 1 to differentiate better observed facts and scientific facts which are based on specialised knowledge derived from training, study or experience;
- amending Appendix 2 to highlight that Expert Witness Services must comply with all of APES 215, whereas Forensic Accounting Services other than Expert Witness Services must comply with the Standard other than Section 5;
- amending the definition of Other Evidence and Examples 6 and 10 of Appendix 3 to remove references to 'summary' so as not to inadvertently confuse this with a summary presented under section 50 of the Evidence Act;
- amending Example 7 of Appendix 3 to differentiate where section 50 of the Evidence Act may and may not apply and that where the Member's Report refers to specialised knowledge and/or training, study or experience it is an Expert Witness Service; and
- amending Example 21 of Appendix 3 so it relates to a lay witness and not a Lay Witness Service as defined in APES 215.

A proposed Exposure Draft for APES 215 is attached at Agenda Items 4(c) (marked-up) and 4(d) (clean). Technical Staff recommend the Exposure Draft is released for a public comment period of 60 days.

Small and Medium Practices (SMPs)

Technical Staff believe the revisions in the proposed APES 215 Exposure Draft more directly relate to law enforcement/regulatory bodies and would have minimal impact on SMPs.

Recommendations

The Board:

- note the project update on APES 215; and
- approve, subject to the Board's review comments and editorials, the issue of an Exposure Draft on proposed revisions to APES 215.

Materials presented

Agenda Item 4(a)	Draft Highlights of ASIC Meeting on 20 September 2022
Agenda Item 4(b)	Draft Minutes of APES 215 Taskforce Meeting 2 November 2022
Agenda Item 4(c)	Proposed Exposure Draft for APES 215 (marked-up)
Agenda Item 4(d)	Proposed Exposure Draft for APES 215 (clean)

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