

ACCOUNTING PROFESSIONAL & ETHICAL STANDARDS BOARD LIMITED

**APES 215 *Forensic Accounting Services*
3rd Taskforce Meeting**

MINUTES

**12 April 2023, Wednesday
3.00 p.m. – 4.06 p.m.**

Videoconference

1. Present and Apologies

Present:

Mr Channa Wijesinghe (Chairman), Mr Owain Stone (until 3.52 pm), Mr Paul Vincent (until 3.26 pm), Mr Gregory O'Neil (joined at 3.05 pm), Mr Brendan Halligan, Mr Keith Reilly, Mr Campbell Jackson (until 3.12 pm then rejoined at 3.31 pm) and Mr Matthew Ashby.

In Attendance:

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

2. Minutes of Previous Taskforce Meetings

The Chairman welcomed Taskforce members and thanked them for their attendance to consider the submissions received on the Exposure Draft ED 07/22 Proposed Standard: APES 215 *Forensic Accounting Services* (APES 215) and Technical Staff's preliminary analysis of comments received.

The Taskforce noted the draft minutes from the second Taskforce meeting held on 2 November 2022 and approved the minutes with a minor editorial amendment to the last paragraph on page 1.

3. Summary of submissions received on ED 07/22

The Chairman provided an update on the stakeholders' comments received on ED 07/22.

4. Technical Staff's initial proposals to address matters raised:

(a) Amendments to paragraph 1.4 and deletion of proposed paragraph 1.8

The Taskforce agreed with Technical Staff's proposed amendments to paragraph 1.4 and the deletion of proposed paragraph 1.8. However, the Taskforce recommended amending the second line of paragraph 1.4 from 'Forensic Accounting Services' to 'a Forensic Accounting Service' and replacing 'which' with 'that' in both sentences of the paragraph.

b) Development of definitions for 'expert evidence' and 'evidence'

The Taskforce discussed the historical reasons why 'expert evidence' or 'evidence' were not defined in APES 215 because it would be too complex and challenging as the meanings are based on court rules and laws that vary by jurisdiction. Accordingly, the Taskforce believed it was unnecessary to include definitions for 'expert evidence' or 'evidence' in APES 215.

c) Interaction between APES 215 and paragraph R607.9 of APES 110

The Taskforce discussed circumstances where a Lay Witness Service becomes an Expert Witness Service for the purposes of APES 215 when a Member provides factual evidence, but is asked to provide an opinion to aid the court, and how this interacts with paragraph R607.9 of APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* (APES 110), which prohibits acting as an expert witness for a Public Interest Entity (PIE) audit client.

The Taskforce noted that paragraph 607.9 should be read in conjunction with paragraphs 607.7 A1 to A3 of APES 110 and paragraph 607.7 A2 of APES 110 addresses these circumstances (as an exception to paragraph R607.9) by stating that a threat to independence is not created when an individual act as a witness of fact but provides an opinion in response to a question asked while giving factual evidence.

The Taskforce discussed the new Non-Assurance Services (NAS) provisions in APES 110, which become effective 1 July 2023 in Australia, and prohibit an auditor from providing services to a PIE audit client if it might create a self-review threat, including paragraph R603.5 which would prohibit most valuation services.

The Taskforce believe no changes to APES 215 are required in relation to the interaction between APES 215 and the new NAS provisions in APES 110. However, a Taskforce member undertook to consider this further and provide a written response.

d) Paragraph 3.14

The Taskforce discussed stakeholder comments on paragraph 3.14 of APES 215. The Taskforce noted that paragraph 3.14 refers to the 'Member's Report', and the definition of Report refers to communicating expert evidence or lay evidence to the court. Accordingly, a report prepared for another purpose is not a 'Member's Report'. Therefore, the Taskforce recommended removing Technical Staff's proposed additional wording '*in connection with a Proceeding*' from paragraph 3.14 to avoid confusion as an Investigation Service or Consulting Expert Service can be in the context of a Proceeding but not in relation to communicating expert evidence or lay evidence in the court.

The Taskforce also discussed specialised knowledge in the definition of Expert Witness, paragraph 79 of the *Evidence Act* and the wording "*specialised knowledge and/or training, study or experience*" in proposed paragraph 3.14 in APES 215. The Taskforce believe that whilst slightly different terminology is adopted in paragraph 3.14, this is required to address situations where a member may not specifically refer to their specialised knowledge.

e) Paragraph 7.1 and examples of Forensic Accounting Services that are assurance Engagements

The Taskforce believe providing more guidance or examples within APES 215 on when a Forensic Accounting Service may be considered an assurance service is unnecessary as it is a matter of professional judgement.

f) Appendix 1 and use of 'expertise'

The Taskforce discussed a stakeholder's suggestion to replace the term 'expertise' in Appendix 1 with "specialised knowledge derived from training, study or experience". The Taskforce noted that whilst the terms are synonymous, Appendix 1 was based on the *ASIC v Rich* case and, accordingly, believe the wording should not be changed.

g) Appendix 3 and use of 'in accounting'

The Taskforce discussed the use of 'in accounting' after "specialised knowledge derived from training, study or experience" in Appendix 3, which is not used in the requirements and application material of the standard. However, the Taskforce believe this should not cause confusion as every Forensic Accounting Service involves Professional Activities, which is defined as an activity requiring accountancy or related skills. Accordingly, the Taskforce believe no change to APES 215 is required.

5. Responses to Requests for Specific Comments on Technology

The Taskforce noted that forensic accountants have used various digital technologies for a long time, such as Betas from Bloomberg or running a Monte Carlo simulation through a software program. Whilst the outputs of AI and digital technologies have advanced, it does not impact the forensic accountant's requirement to exercise professional competence and due care when applying such technology. A Forensic Accounting Service is a bespoke service that is difficult for AI to learn and replace human expertise.

The Taskforce believe no amendments to APES 215 are required as subparagraphs 5.6(m) and (n) provide sufficient coverage for technology and support the development of a Basis for Conclusions accompanying the revised APES 215, including commentary on AI and digital technologies.

The Taskforce discussed the recent Technology-related Revisions to the *International Code of Ethics for Professional Accountants (including International Independence Standards)* and the flow on effect to APES 110 in due course. Accordingly, the Taskforce agreed with Technical Staff's proposed changes to paragraph 4.2 and proposed new paragraph 4.3 of APES 215 but recommended deleting 'Professional' from the heading to Section 4.

6. Any other matters and the way forward

Technical Staff will await the written response to item 4(c) above. After that, updated APES 215 documents will be circulated to the Taskforce members for a final review, and seek approval to issue the revised APES 215 at the APESB meeting on 31 May 2023. The Taskforce agreed with the proposed way forward, and no other matters were noted.

7. Close of meeting

The meeting closed at 4.06 pm.