

AGENDA PAPER

Item Number: 8
Date of Meeting: 6 September 2021
Subject: Project update on 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
- obtain the Board's approval for Technical Staff's proposed way forward for the APES 215 project.

Background

APES 215 was originally issued in December 2008 and revised in December 2013, December 2015 and July 2019.

During exposure in 2012-2013, a key stakeholder raised various concerns, including about members in business providing forensic accounting services and legal precedents on expert evidence. These matters were considered at the [August 2013 Board meeting](#), and at the [request of the Board](#), Technical Staff subsequently communicated and addressed these issues with the key stakeholder.

The December 2013 revisions to APES 215 were substantive including, that expert witnesses may provide opinions or Other Evidence, amendments to various definitions and a new definition of Other Evidence. Appendix 1, dealing with facts, assumptions, and opinions, was revised. A new Appendix 2 was added with a schematic diagram to assist practitioners in determining the type of forensic accounting service. A new Appendix 3 was added with a range of examples of forensic accounting services.

The December 2015 revisions to APES 215 were less substantive including, a paragraph on the objective of the Standard, minor amendments to definitions and certain paragraphs to reflect changes in the Code and a new requirement to include a statement in the Expert Witness Services Report about the Member's training, study or experience relevant to the evidence provided.

[APES 215](#) was last revised in July 2019 predominantly to align with the restructured Code, highlight NOCLAR provisions, and consistency with other APESB pronouncements.

A project proposal to update APES 215 was presented at the [June 2021 Board meeting](#). The proposal stemmed from a request from ASIC to amend specific examples in APES 215 to incorporate scenarios where evidence is adduced to the court under section 50 of the *Evidence Act 1995* (Evidence Act) and to address other aspects of the Standard that may require further consideration and amendment.

The [Board approved](#) the commencement of a project to review APES 215 in line with Technical Staff's proposed way forward, including a working party meeting with a few APES 215 Taskforce members.

Matters for Consideration

APES 215 Working Party

An APES 215 working party meeting was held on 23 July 2021 with Brian Morris, APESB Board member, Owain Stone and Brendan Halligan (APES 215 Taskforce members), and APESB Technical Staff.

The working party discussed the matters raised by ASIC (June 2021 Board meeting [Agenda Item 7\(a\)](#)) relating to summaries adduced under section 50 of the Evidence Act and *Idyllic Solutions Pty Ltd & Ors – Australian Securities and Investments Commission v Hobbs [2012] NSWSC 568* (ASIC v Hobbs).

The working party noted that APES 215 (and definitions therein) does not emulate the law. Instead, it sets the standards for Members to ensure they provide quality and ethical forensic accounting services and that an Expert Witness Service per APES 215 (i.e., opinion or Other Evidence) does not necessarily mean the court will deem it as expert evidence.

The working party discussed the examples referred to by ASIC (an example from the definition of Other Evidence and Examples 6 and 7 in Appendix 3 of APES 215). The working party's view was that if undertaken by a Member as a Forensic Accounting Service, they would meet the definition of Other Evidence where the Member uses specialised knowledge derived from training, study or experience (even if adduced under section 50 of the Evidence Act).

Engagement with ASIC

Technical Staff engaged with ASIC Staff on 30 July 2021, noting the concerns raised during the working party meeting.

A subsequent meeting was held on 20 August 2021 with:

- John Wallace, ASIC Senior Executive Leader of Specialist Services;
- Kathleen Clough, ASIC Senior Manager of Forensic Accounting Services (FAS);
- Vicky Argitis, Head of the Criminal Division of ASIC's Chief Legal Office;
- Brian Morris;
- Owain Stone; and
- Technical Staff.

The meeting focussed on understanding ASIC's underlying concerns about Members it employs, providing evidence considered to be Other Evidence under APES 215. It was also discussed that where ASIC FAS officers provide details of their qualifications and experience in reports lodged with the court, it may imply some level of reliance is expected of their professional expertise.

ASIC provided additional background on the discrete services FAS officers undertake when adducing evidence under section 50 of the Evidence Act, including that bank officers produce the underlying documents to the court and the FAS officers highlight and summarise key information directly from the source documents. ASIC does not consider this to be expert evidence.

ASIC undertook to provide Technical Staff with additional examples derived from Examples 6 and 7 in Appendix 3 of APES 215, which delineate the specific types of services FAS officers provide when adducing evidence under section 50 of the Evidence Act. Technical Staff will assess these examples once received and determine the impact on APES 215.

ASIC noted that they are continuing to work with FAS officers and other accountants in ASIC Enforcement Teams to ensure ongoing compliance with APES 215. This may provide an opportunity in the future for Technical Staff, in conjunction with a APES 215 Taskforce member, to present to ASIC on APES 215's objectives and requirements. A suitable time would be after the Standard has been updated so that these changes could also be communicated.

Way Forward

Subject to the Board's approval Technical Staff propose to:

- consider the additional examples provided by ASIC and draft relevant amendments to APES 215 examples;
- convene an APES 215 Taskforce meeting to consider proposed amendments to APES 215;
- prepare a proposed Exposure Draft for APES 215 to be considered for approval at a future Board meeting; and
- engage with ASIC about APESB presenting to ASIC's accountants on APES 215 after updating the Standard.

Recommendations

The Board:

- note Technical Staff's project update on APES 215; and
- approve Technical Staff's proposed way forward for the APES 215 project.

Materials presented

Author Jon Reid
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