

June 2023



Basis for Conclusions: APES 215 Forensic Accounting Services

Prepared by the Technical Staff of the Accounting Professional & Ethical Standards Board

BASIS FOR CONCLUSIONS:

Revised APES 215 Forensic Accounting Services

This basis for conclusions has been prepared by Technical Staff of Accounting Professional & Ethical Standards Board Limited ("APESB"). It has been reviewed and approved by the Board of Directors of APESB and is provided for the benefit of stakeholders to gain an understanding of the background to the revised APES 215 *Forensic Accounting Services* (APES 215).

The basis for conclusions **does not** form part of APES 215 and is not a substitute for reading the standard.

Background

The APESB originally issued APES 215 in December 2008 and revised it in December 2013, December 2015 and July 2019. The proposed changes to APES 215 are due to the following matters:

Stakeholder concerns

The APESB initiated a project in June 2021 to address a submission from representatives of the Australian Securities and Investments Commission (ASIC) recommending APESB consider amending specific definitions and examples in Appendix 3 of APES 215.

ASIC representatives contend that evidence presented to the Court under section 50 of the *Evidence Act 1995*¹ (Evidence Act) is not expert evidence but lay observations. ASIC representatives also assert that bank officers present the underlying documents to the Court, including bank statements, bank vouchers and trace reports, and ASIC's Forensic Accounting Services officers identify and summarise key information directly from those source documents.

Quality Management-related Conforming Amendments

In December 2020, the International Auditing and Assurance Standards Board (IAASB) issued new quality management standards, which superseded the IAASB's quality control standards from 15 December 2022. As a result, the Auditing and Assurance Standards Board (AUASB) issued Australian equivalents of the IAASB's quality management standards in March 2021, applicable to Australian assurance practices from 15 December 2022, including ASQM 1 *Quality Management for Firms that Perform Audits or Reviews of Financial Reports and Other Financial Information, or Other Assurance or Related Services Engagements* (ASQM 1).

APESB reissued APES 320 *Quality Control for Firms* as APES 320 *Quality Management for Firms that provide Non-Assurance Services* in February 2022, which became effective from 1 January 2023. Accordingly, APESB amended APES 215 for quality management-related conforming amendments, to ensure it remains consistent with the reissued APES 320 and ASQM 1 where applicable.

¹ This section 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. The opinion rule does not apply to evidence presented under this section.

APESB's Technology Project

APESB is undertaking a Technology project to assess professional accountants' use of artificial intelligence (AI) and digital technologies and the applicability of APESB's pronouncements to such technologies to determine whether additional professional and ethical obligations or guidance are required. The initial focus of APESB's Technology project is on the impact of recent and emerging technologies² on APES 215 and APES 225 *Valuation Services*.

The International Ethics Standards Board for Accountants (IESBA) issued technology-related revisions to the *International Code of Ethics for Professional Accountants (including International Independence Standards)* on 11 April 2023, which become effective globally from 15 December 2024 (IESBA Technology standard). APESB anticipates adopting these revisions in APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* (APES 110) subject to APESB's due process and with an effective date of 1 January 2025.

APES 215 Exposure Draft

APESB issued an [Exposure Draft ED 07/22](#) of a proposed revised APES 215 in December 2022 with a comment deadline of 20 February 2023. ED 07/22 included proposed changes to address the submission from ASIC representatives, quality management-related conforming amendments, and two Requests for Specific Comments relating to the potential impacts of AI and digital technologies on APES 215.

APESB received five submissions in response to ED 07/22 from the professional accounting bodies and large accounting firms, which generally supported the proposed revisions to APES 215. The key issues raised by respondents and how APESB addressed them are set out below.

Amendments to APES 215

The significant amendments in the revised APES 215 (2023) include:

- amendments to paragraph 1.4 (and Appendix 2) to clarify that a Member must follow all the requirements in APES 215 when providing an Expert Witness Service and must comply with the requirements in APES 215 except Section 5 when providing a Forensic Accounting Service that is not an Expert Witness Service;
- addition of 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;
- amendments to the definition of Lay Witness Service to note that such services do not require the Member's specialised knowledge derived from training, study or experience;
- quality management-related conforming amendments to paragraphs 1.1, 7.1 and 7.2;
- new paragraph 3.14 to provide that if a Member's Report to communicate evidence refers to their specialised knowledge and/or training, study or experience, then they must perform the service as an Expert Witness Service;

² This includes data analytics, artificial intelligence (supervised or unsupervised machine learning), autonomous and intelligent systems, cloud services, robotic process automation, cybersecurity, blockchain and the internet of things.

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- amendments to paragraph 4.2 to require a Member in Public Practice undertaking a Forensic Accounting Service to also comply with Section 300 *Applying the Conceptual Framework – Members in Public Practice* of APES 110;
- new paragraph 4.3 to require a Member in Business undertaking a Forensic Accounting Service to comply with Sections 200 *Applying the Conceptual Framework – Members in Business* and 220 *Preparation and Presentation of Information* of APES 110;
- amendments to Appendix 1 to better differentiate between observed and scientific facts;
- amendments to the definition of Other Evidence and Examples 6 and 10 in Appendix 3 to remove references to ‘summary’ to prevent any confusion with a summary presented under Section 50 of the Evidence Act;
- amendments to Example 7 in Appendix 3 to demonstrate where evidence presented under Section 50 of the Evidence Act may or may not be a Lay Witness Service and if the Member’s Report refers to specialised knowledge and/or training, study or experience, it is an Expert Witness Service; and
- amendments to Example 21 in Appendix 3 so that the example relates to a lay witness and not a Lay Witness Service as defined in APES 215.

The revised APES 215 will be effective for engagements or assignments commencing on or after 1 October 2023, and early adoption is permitted.

Amendments to Paragraph 1.4

ED 07/22 included proposed paragraph 1.8 to highlight the distinction between an Expert Witness Service and a Forensic Accounting Service that is not an Expert Witness Service and the application of Section 5 of APES 215 to Expert Witness Services. A respondent believes this paragraph created confusion and recommended amendments to paragraph 1.4 in APES 215 instead. APESB agreed with this recommendation and amended paragraph 1.4 to incorporate the respondent’s suggestion with editorial revisions, and deleted proposed paragraph 1.8, which became obsolete due to the amendments to paragraph 1.4.

Definitions in the Standard

Two respondents believe APES 215 should define ‘expert evidence’, and one of those respondents believes APES 215 should define ‘evidence’ and clarify the distinction between ‘lay evidence’ and ‘Other Evidence’ and the meaning of ‘Consulting Expert Service’ and its alignment with Appendix 2.

Defining ‘expert evidence’ was considered during APES 215’s development. However, it was deemed unnecessary, given the definitions of the types of Forensic Accounting Services and incorporating the phrase “based on the Member’s specialised knowledge derived from the Member’s training, study or experience” into the standard. Further, defining ‘evidence’ would be complicated as it is based on court rules and legal precedents, which vary in different jurisdictions. As such, APESB did not include definitions of ‘expert evidence’ or ‘evidence’ in the revised APES 215 (2023).

Other Evidence does not provide an opinion but requires the use of specialised knowledge derived from training, study or experience. In contrast, lay evidence provided in a Lay Witness Service does not require the use of specialised knowledge but relates to the Member’s role (i.e., Professional Activity). Hence, APESB believes there is a clear distinction between Lay Witness Service and Other Evidence and made clarifying editorials to these definitions.

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A Consulting Expert Service is defined as a Professional Activity provided in the context of Proceedings, other than an Expert Witness Service, a Lay Witness Service or an Investigation Service. This definition is consistent with the decision tree in Appendix 2, which demonstrates that if the Forensic Accounting Service is not to provide evidence or in relation to an investigation, it is a Consulting Expert Service. Accordingly, APESB did not make any amendments.

Interaction between APES 215 and APES 110

Two respondents believe there may be unintended consequences resulting from the interaction between APES 215 and APES 110, particularly paragraph R607.9 of APES 110, which prohibits a firm/individual from acting as an expert witness for a Public Interest Entity (PIE) audit client.

One concern raised was that the definitions and Example 9 in Appendix 3 of APES 215 could be interpreted to result in a prohibited service under paragraph R607.9 of APES 110, where a Member is asked to appear as a witness of fact to describe services provided and judgements made.

The new Non-Assurance Services (NAS) provisions in APES 110 were issued in December 2022 and become effective 1 July 2023 in Australia (globally, they became effective from 15 December 2022). These provisions include paragraph R607.9, which should be read in conjunction with paragraphs 607.7 A1-A3 on Litigation Support Services. In particular, paragraph 607.7 A2 states that no threats to independence are created when an individual acts as a witness of fact and provides an opinion in response to a question when giving factual evidence. This provision effectively provides an exception to the prohibition in paragraph R607.9.

APESB believes that if a Forensic Accounting Service becomes an Expert Witness Service, as per Example 9 in Appendix 3, this does not impact the application of paragraphs 607.7 A2 and R607.9 of APES 110, because the provisions of the two standards should be assessed separately. APES 215 assists Members to determine the type of Forensic Accounting Service provided and, accordingly, which provisions of the standard apply. Whereas the NAS provisions in APES 110 determine the impact of providing other services to an audit client on the auditor's independence.

The other concern raised was that paragraph 3.14 in ED 07/22 could prohibit a permissible service to a PIE audit client where a Report mentions specialised knowledge and/or training, study or experience. For example, where a firm provides an allowable valuation service to a PIE audit client and subsequently provides details of their qualifications/experience to support a legal proceeding without performing additional work.

If a Member's valuation report is subsequently tendered in a Proceeding and the Member's statement accompanying the valuation report (i.e., Member's Report) details their qualifications/experience, then paragraph 3.14 applies, making it an Expert Witness Service for the purposes of APES 215.

Where the valuation report is tendered merely to establish that the valuation service was performed, it would likely be a witness of fact (Lay Witness Service and not prohibited by R607.9). Whereas if the valuation report is being considered in the Proceeding, it would likely be opinion evidence (Expert Witness Service and prohibited by R607.9). Additionally, from 1 July 2023, the new NAS provisions in APES 110 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.

New Paragraph 3.14

Three respondents believe that the proposed paragraph 3.14 in ED 07/22:

- should reflect that not all reports prepared by a forensic accountant would result in an Expert Witness Service;
- should make it clear it is a report provided by a Member; and
- includes the wording “*Member’s specialised knowledge and/or the Member’s training, study or experience*” which will deem more Forensic Accounting Services as Expert Witness Services than intended.

New paragraph 3.14 refers to a ‘Member’s Report’, which is defined as a report to communicate expert evidence or lay evidence in Court. APESB pronouncements include defined terms in title case, blue and pop-up definitions to make it clear that they are defined terms. The use of the defined term ‘Report’ demonstrates there is no expectation the paragraph applies to all reports prepared by a forensic accountant, just those to communicate evidence in Court.

This paragraph aims to prevent situations where a Member includes lists of qualifications, training or experience in a Report to potentially hold themselves out as an expert, but otherwise not treat the service as an Expert Witness Service or applying Section 5 of the standard. While slightly different terminology is adopted in this paragraph than the definition of Expert Witness and paragraph 79 of the *Evidence Act*, using ‘or’ is required to address situations where a Member may not specifically refer to specialised knowledge but instead to training, study or experience. Accordingly, APESB did not amend new paragraph 3.14 from ED 07/22.

Respondents’ other concerns

A respondent recommended that APES 215 include guidance or examples of when a Forensic Accounting Service may be considered an assurance engagement or related service in respect of paragraph 7.1. Whether a Forensic Accounting Service is an assurance Engagement requires the Member to apply professional judgement based on the circumstances of the Engagement and the application of the *Framework for Assurance Engagements* issued by the AUASB (paragraph 3.7 of APES 215). As such, APESB did not include further guidance or examples in APES 215.

A respondent believes the use of ‘in accounting’ in Appendix 3 after ‘specialised knowledge derived from training, study or experience’, which is not included in the requirements and application material in APES 215, may create confusion. APES 215 includes ‘Accounting’ in its title, the standard is applicable to Members of the three accounting bodies. When the general term ‘accounting’ is used in APESB pronouncements, it refers to the term in the broadest sense of the word. Further, every Forensic Accounting Service involves Professional Activities which require accountancy or related skills. Accordingly, APESB determined not to amend APES 215.

AI and Digital Technologies

Two respondents commented on the Requests for Specific Comments on technology in ED 07/22.

One respondent suggested APES 215 should refer to the IESBA Technology standard revisions once the provisions become operable in APES 110. APESB agreed with this suggestion but determined to make relevant amendments in the revised APES 215 (2023). Paragraphs 3.12, 3.18, 3.1 and 4.2 of extant APES 215 already referred to, and will automatically accommodate, substantive changes resulting from the IESBA's Technology standard to Subsections 113 *Professional Competence and Due Care* and 114 *Confidentiality* and Sections 120 *The Conceptual Framework* and 320 *Professional Appointments*.

To ensure APES 215 accommodates other substantive changes in the IESBA's Technology standard, APESB added "Section 300 *Applying the Conceptual Framework – Members in Public Practice*" to paragraph 4.2 and a new paragraph 4.3 of APES 215 to require a Member in Business undertaking a Forensic Accounting Service to comply with Sections 200 *Applying the Conceptual Framework – Members in Business* and 220 *Preparation and Presentation of Information* of APES 110. In addition, APESB added "and other" to the heading of Section 4 of APES 215 to accommodate Members in Business.

The other respondent suggested that APESB include in APES 215 explanatory material on the application of the communication requirements in subparagraphs 5.6(c)-(n) and disclosure requirement in paragraph 7.3 and further examples in Appendices 1 and 3 in relation to technology.

APESB notes that forensic accountants have used a variety of digital technologies for some time and must comply with the fundamental principle of professional competence and due care in APES 110. Further, APESB believes extant subparagraphs 5.6(m) and (n) of APES 215 sufficiently cover technology as they respectively require communication in the Report of an Expert Witness of:

- *the reasoning by which the Member formed the opinions or arrived at the Other Evidence, including an explanation of any method employed and the reasons why that method was chosen; and*
- *a list of all documents and sources of information relied upon.*