

27 February 2023

Chief Executive Officer
Accounting Professional & Ethical Standards Board Limited
Level 11, 99 William Street
Melbourne Victoria 3000

Via email: sub@apesb.org.au

Dear Channa,

Exposure Draft 07/22 - Proposed Standard APES 215 Forensic Accounting Services

We appreciate the opportunity to comment on Exposure Draft 07/22 Proposed Standard APES 215 Forensic Accounting Services issued by the Accounting Professional & Ethical Standards Board (APESB) in December 2022 (the ED).

We are supportive overall of the amendments proposed by the APESB in this ED, however, we have the following comments for the Board's consideration:

Paragraph 1.8

The addition of proposed paragraph 1.8 is somewhat confusing given the extant provision in paragraph 1.4. We suggest instead that paragraph 1.4 be amended to provide clarity that a Member only needs to comply with Section 5 when they provide Expert Witness Services.

This could be achieved by including the wording "to the extent applicable" in paragraph 1.4.

Alternatively, paragraph 1.4 could be amended for clarity to state:

"Members in Australia shall follow the mandatory requirements of APES 215 when they provide a Forensic Accounting Service which is an Expert Witness Service. Members in Australia shall follow the mandatory requirements of APES 215, except for Section 5, when they provide a Forensic Accounting Service which is not an Expert Witness Service."

Failing that, we suggest the order of paragraphs 1.7 and 1.8 is reversed.

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Definitions of Expert Witness and Lay Witness

APES 215 provides, in summary, that an Expert Witness Service involves the use of specialised knowledge based on training, study or experience to provide an opinion or Other Evidence, and a Lay Witness Service does not require the use of specialised knowledge to give evidence. It further gives the example, in Appendix 3, that an individual who is subpoenaed to provide a factual witness statement, and is subsequently asked to apply expertise, is providing an Expert Witness Service under APES 215.

This definition and examples could be interpreted to suggest that if a Member, who is an individual within a Firm, is asked to appear as a fact witness to describe Professional Services provided to a Client, for example, previous audit services, then they may be performing an Expert Witness Service under APES 215 by providing factual evidence about work they performed, as well as the judgements they made based on specialised knowledge.

As APES 110 paragraph R607.9 prohibits the Firm or an individual within a Firm, to act as an expert witness for an Audit Client that is a Public Interest Entity, this could have the unintended consequence of prohibiting an individual from the Firm from providing factual evidence for an Audit Client that is a Public Interest Entity (PIE) about Professional Services that have been performed.

We ask that the Board consider clarifying in the standard or in guidance that this is not the intention and consider an approach consistent with APES 110 paragraph 607.7 A2 which provides that *“A threat to independence is not created when an individual, in relation to a matter that involves an audit client, acts as a witness of fact and in the course of doing so provides an opinion within the individual’s area of expertise in response to a question asked in the course of giving factual evidence.”*

Paragraph 3.14 - Reference to Specialised Knowledge, Training, Study or Experience

We are concerned the inclusion of paragraph 3.14 in its current form will lead to a broader range of Forensic Accounting Services being deemed to be Expert Witness Services than we believe may have been intended.

Proposed paragraph 3.14 provides that a Member must perform a service as an Expert Witness Service where there is an expectation that “a Member’s report will refer to the Member’s specialised knowledge and/or the Member’s training, study or experience”. We have concerns with this paragraph for the following reasons:

- If the paragraph is drafted as is intended, it appears to be based on the assumption that when a Member is performing a Forensic Accounting Service other than an Expert Witness Service, there is no circumstance where it would be appropriate or required for that Member to make reference in their Report to their specialised knowledge and/or training, study or experience - therefore, by extension, the only time a Member would include reference to their specialised knowledge and/or training, study or experience in a Report is when they are providing an Expert Witness Service. We are of the view that there are many circumstances in practice where a Member performing an Investigation or a Consulting Expert Service would identify their professional qualifications, and do not consider that merely including a professional qualification in a report should result in the Member having to treat the engagement as an Expert Witness Service.
- Paragraph 3.14 uses the words “...the Member’s specialised knowledge and/or the Member’s training, study or experience”. The use of the term “or” casts a wider net than the definition of Expert Witness that primarily involves the use of specialised knowledge. It also means a reference to any of the Member’s training, study, or experience will be treated as an Expert Witness service, which, in our view, is too broad.
- As noted above, due to the prohibition in APES 110 on acting as an expert witness for an Audit Client that is a PIE, the proposed paragraph may have the unintended consequence of prohibiting a Member from providing a permissible Forensic Accounting Service to a PIE Audit Client, purely because the report mentions their specialised knowledge, training, study or experience, and it is therefore deemed an Expert Witness Service.
- In addition, Appendix 1 refers to observed facts and scientific facts and provides the observation by a land valuer of the presentation of a property as an example of observed facts. In this example, if the land valuer prepared a report as the presentation of the property and included their qualification after their name, this would be considered an Expert Witness Service under the current construct of paragraph 3.14.

Assuming the intention is to capture those circumstances where a Member is engaged to perform a witness engagement and will prepare a report utilising their specialised knowledge and/or the Member's training, study or experience, but nonetheless considers it to be a Lay Witness engagement (and hence not required to comply with Section 5), we suggest the proposed paragraph 3.14 is amended as follows:

3.14. Where a Member is engaged to give evidence in a Proceeding which is not limited solely to lay observations and there is an expectation that the Member will prepare a Report utilising their specialised knowledge and/or the Member's training, study or experience and that the Report will refer to the Member's specialised knowledge and/or the Member's training, study or experience with the intention that, the Member shall perform the service that is the subject of the Report as an Expert Witness Service for the purposes of this Standard.

Alternatively, we request proposed paragraph 3.14 be deleted.

Appendix 3

The definition of Expert Witness and paragraph 3.14 refer to a Member's *specialised knowledge and/or the Member's training, study or experience*, whereas Appendix 3 Table Item 7 and Example 7 refers to "*specialised knowledge and/or the Member's training, study or experience in accounting*". This may lead to confusion among Members on whether to treat a service as an Expert Witness Service, based on the disclosure of accounting credentials, or whether the disclosure in a report of other non-accounting credentials would also require a service to be treated as an Expert Witness Service.

We would be pleased to discuss our comments with you. If you wish to do so, please feel free to contact me at (02) 9322 5258.

Yours sincerely



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