

A revised standard for forensic accountants

APES 215 Forensic Accounting Services (Revised December 2013)

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1 Introduction

APES 215 Forensic Accounting Services (Revised December 2013)

Lawyers and barristers working with forensic accountants, and in particular those acting as Expert Witnesses, should be aware that the existing standard, APES 215 Forensic Accounting Services ('APES 215' or 'the Standard') has been revised. The revisions are designed to ensure the provision of quality and ethical Forensic Accounting Services.

In this issue of Forensic Matters, Fionna Oliver-Taylor, a director in our Melbourne office, discusses the key revisions to APES 215, which include:

- Guidance on the types of services that constitute Forensic Accounting Services.
- Extending the definition of Expert Witness to include Members 'otherwise obligated'.
- Expert Witnesses may provide opinion or Other Evidence.

2 The revised Standard

The Australian Professional and Ethical Standards Board ('the APESB') revised APES 215 last month (December 2013) to replace the existing standard which was originally issued in December 2008.

The revised Standard is effective for Engagements¹ or Assignments² commencing on or after 1 April 2014, with earlier adoption permitted.

The revised Standard:

- provides assistance to determine whether a particular service is a Forensic Accounting Service and if so, what type
- requires the explicit identification of opinions in the Report of the Expert Witness which are not based wholly or substantially on the Member's specialised knowledge derived from training, study and experience
- clarifies that Expert Witnesses may provide opinion or Other Evidence to the court
- extends the definition of an Expert Witness to include Members 'otherwise obligated'
- explains that working papers are not considered wholly or part of a Report of an Expert Witness
- provides the meaning of and assistance to differentiate between facts, assumptions and opinion.

"...these revisions provide useful guidance and clarification for accountants who work as forensic accountants and particularly members of the accounting bodies working in business, regulatory agencies and government authorities to determine circumstances in which they come within the scope of the standard".¹⁸

3 Forensic Accounting Services

APES 215 must be followed by all Members³ when they provide Forensic Accounting Services.

Forensic Accounting Services are defined to mean:

- Expert Witness Services⁴
- Lay Witness Services⁵
- Consulting Expert Services⁶
- Investigation Services⁷.

More stringent requirements relate to Expert Witness Services⁸.

Given the importance of identifying whether a particular service is a Forensic Accounting Service and what type, the revised Standard introduces two (2) new appendices (Appendix 2 and 3) to assist determination. Appendix 2 contains a decision tree schematic and Appendix 3 contains examples of types of Forensic Accounting Services.

4 Opinion and Other Evidence

The definition of Expert Witness⁹ has also been extended to state that Members may express both opinions or Other Evidence to the Court:

“Generally all opinion evidence is expert evidence if it is wholly or substantially based on the specialised knowledge derived from the Member’s training, study or experience, however not all expert evidence is opinion evidence. Expert evidence may be opinion or Other Evidence.”¹⁰

The revised Standard states:

“Other Evidence means evidence which does not provide an opinion, but which requires the application of the Expert Witness’s specialised knowledge derived from the Expert Witness’s training, study or experience. An example might be where a Member provides a summary of the sales by month by product by geography based on the information contained within a series of invoices and a general ledger. Whilst it may be a matter of fact as to what sales were made, the extraction and summary of this information is facilitated by the Member’s specialised knowledge. Another example requiring specialised knowledge might be where a Member sets out the accounting standards that are relevant to particular types of transactions without actually expressing an opinion as to whether the actual treatment is in line with those standards.”¹¹

“...a member who is acting as an expert witness can provide opinions or other evidence to the court and it was important for APESB to clarify in APES 215 the breadth and scope of the work performed by an expert witness”¹⁹

The above clarification between opinion and Other Evidence reinforces the following exceptions to the opinion rule (s.76(1) of the Evidence Act 1975):

- summaries of voluminous or complex documents (s.50(3))
- expert opinion (s. 79).

5 Expert Witnesses include Members ‘otherwise obligated’

The revised APES 215 has extended the definition of the Expert Witness to include Members not just engaged or assigned to provide Expert Witness Services but those ‘otherwise obligated’. This is intended to capture Members compelled to appear as Expert Witnesses, for example under subpoena.

6 Training, study and experience

The revised APES 215 has changed the requirements of the Report of an Expert Witness as to the Member’s disclosure regarding training, study and experience.

Previously Members were required to communicate in any Report:

*“details of the Member’s training, study and experience that are relevant to the matters on which the Member is providing expert evidence”.*¹²

Now Members are required to state:

*“whether any of the opinions, findings or conclusions of the Member are not based wholly or substantially on the Member’s specialised knowledge derived from training, study and experience”.*¹³

Oddly, this revision removes the requirement for the Member to provide details of their training, study and experience by which the expert has acquired specialised knowledge (aka the Member’s CV). However, this requirement still exists in the various Court guidelines and codes.¹⁴

7 Workings papers not considered a Report

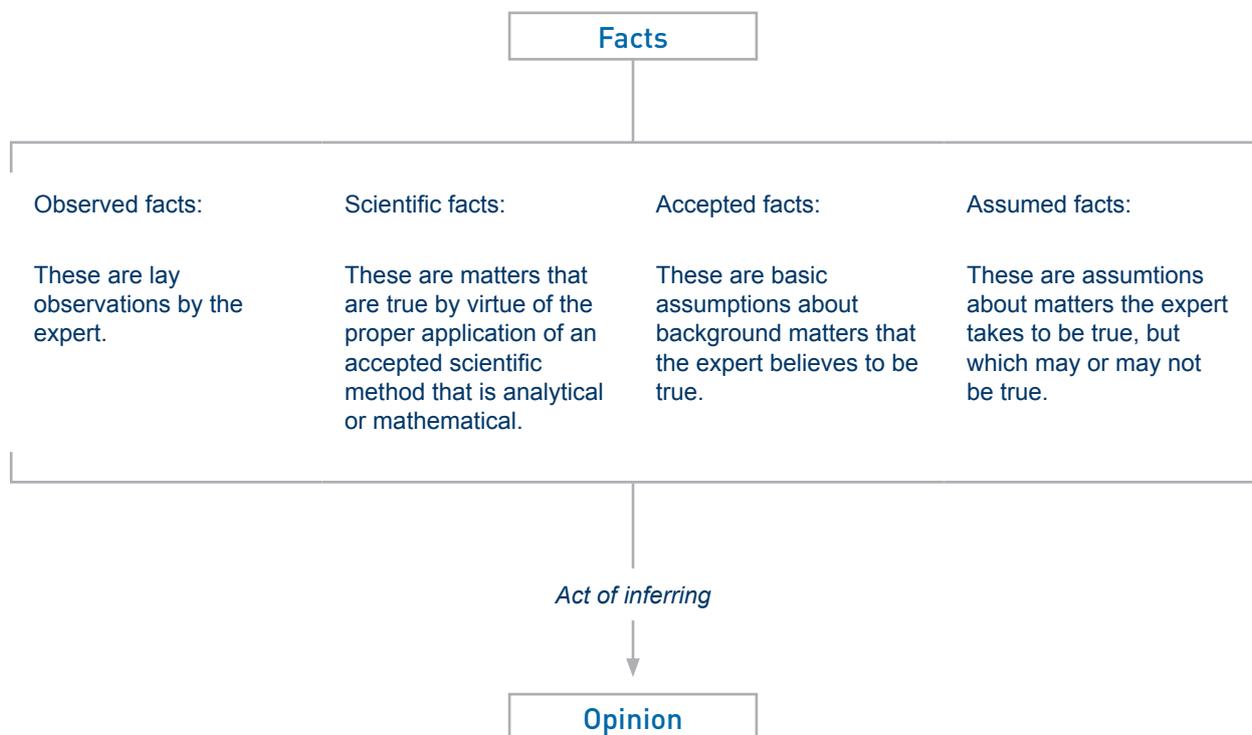
The revised Standard explains that working papers are not considered wholly or part of a Report of an Expert Witness unless specifically intended.¹⁵ This clarifies that the disclosure requirements pertaining to Reports¹⁶ do not apply to working papers. However, the revised Standard is unchanged in stating that working papers may be required to be furnished to other parties or the Court as evidence.

8 Facts, Assumptions and Opinions

The Report of an Expert Witness must clearly communicate the significant facts and assumptions upon which the opinions or Other Evidence are based. Furthermore, for each significant assumption the Member must identify which they were instructed to make and which they chose to make. These obligations mirror those contained in the various Court guidelines and codes.

The terms 'fact', 'assumption' and 'opinion' were not defined in the existing Standard. The revised APES 215 has updated existing Appendix 1 to provide better guidance and examples to assist a Member determine whether a matter is a fact, an assumption or an opinion. Furthermore it articulates the meaning of fact, assumption and opinion:

"An opinion is an inference drawn from facts. In the context of expert evidence, facts may be classified as observed, scientific, accepted, or assumed."¹⁷



Both accepted and assumed facts involve making an assumption and are therefore considered assumptions under revised APES 215. Whether any fact or assumption is significant will depend on the circumstances.

9 Conclusion

The changes included in the revised APES 215 assist to determine when services come within its scope, and clarifies and extends when a Member is deemed an Expert Witness (and the types of evidence they may provide). It also seeks to ensure that Members identify and disclose the significant facts and assumptions upon which their opinions or Other Evidence is based.

These changes seek to set a high standard for the forensic accounting profession by reinforcing and augmenting the legal requirements for forensic accountants, particularly Expert Witnesses, contained in the Evidence Act 1975 and Court rules and guidelines.

To obtain a copy of the revised APES 215 or the Technical Update visit: www.apesb.org.au.

The revised APES 215 will be effective from 1 April 2014 with early adoption permitted.

Endnotes

1. APES 215 (December 2013) paragraph 2: Engagement means an agreement, whether written or otherwise, between a Member in Public Practice and a Client relating to the provision of services by a Member in Public Practice. However, consultations with a prospective Client prior to such agreement are not part of an Engagement.
2. APES 215 (December 2013) paragraph 2: Assignment means an instruction, whether written or otherwise, by an Employer to a Member in Business relating to the provision of services by a Member in Business. However, consultations with the Employer prior to such instruction are not part of an Assignment.
3. APES 215 (December 2013) paragraph 2: Member means a member of a Professional Body that has adopted this Standard as applicable to their membership, as defined by that Professional Body. Professional Bodies means the Institute of Chartered Accountants Australia, CPA Australia and the Institute of Public Accountants.
4. APES 215 (December 2013) paragraph 2: Expert Witness Service means a Professional Activity provided in the context of Proceedings to give expert evidence in a Report or, in certain circumstances, orally.
5. APES 215 (December 2013) paragraph 2: Lay Witness Service means a Professional Activity provided in the context of Proceedings to provide evidence other than expert evidence, whether orally or in the form of a Report or both. This service involves the Member giving evidence on matters within the Member's professional knowledge that are directly observed or perceived by the Member.
6. APES 215 (December 2013) paragraph 2: Consulting Expert Service means a Professional Activity provided in the context of Proceedings, other than an Expert Witness Service, a Lay Witness Service or an Investigation Service. It includes acting as an adviser, an arbitrator, mediator, member of a professional tribunal, expert in an expert determination, referee or in a similar role.
7. APES 215 (December 2013) paragraph 2: Investigation Service means a Professional Activity to perform, advise on, or assist with an investigation, whether in the context of Proceedings, or in connection with allegations of, or concerns regarding conduct that may be illegal, unethical or otherwise improper in respect of which the Member has a reasonable expectation that the matter will be brought before a Court.
8. Paragraph 5 of APES 215 (December 2013).
9. APES 215 (December 2013) paragraph 2: Expert Witness means a Member who has been engaged, assigned or otherwise obligated to provide an Expert Witness Service. As an Expert Witness, the Member may express opinions or provide Other Evidence to the Court based on the Member's specialised knowledge derived from the Member's training, study or experience on matters such as whether technical or Professional Standards have been breached, the amount of damages, the amount of an account of profits, or the amount of a claim under an insurance policy. Generally all opinion evidence is expert evidence if it is wholly or substantially based on the specialised knowledge derived from the Member's training, study or experience, however not all expert evidence is opinion evidence. Expert evidence may be opinion or Other Evidence.
10. APES 215 (December 2013) paragraph 2.
11. APES 215 (December 2013) paragraph 2.
12. APES 215 (December 2008) paragraph 5.6(c).
13. APES 215 (December 2013) paragraph 5.6(c).
14. See Practice Note CM 7: Expert witnesses in proceedings in the Federal Court of Australia, dated 4 June 2013, <http://www.fedcourt.gov.au/law-and-practice/practice-documents/practice-notes/cm7> [accessed 17 December 2013].
15. APES 215 (December 2013) paragraph 5.9.
16. APES 215 (December 2013) paragraph 5.6.
17. APES 215 (December 2013) Appendix 1.
18. APESB Acting Chair Stuart Black, APESB Media Release, "APESB issues revised forensic accounting standard", dated 2 December 2013, http://www.apesb.org.au/attachments/1-MR_APESB_Revised_APES215_Dec_2013_FC.pdf accessed 17 December 2013.
19. *ibid.*



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