

Constituents' Submissions – Specific Comments Table
Exposure Draft 02/12: APES 215 Forensic Accounting Services

Note: General comments relating to APES 215 are addressed in a separate table. This table excludes minor editorial changes. (NOTE Items 1-9 omitted)

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
1	2	EY	<p>Appendix 1 – Comments on proposed standard APES 215 Forensic Accounting Services, exposure draft 02/12</p> <p>Comments: Expert Witness Service means...</p> <p>Recommendations: Insert at the end of sentence....“to provide an independent or objective opinion, observation or conclusion to assist the trier of fact.”</p>
2	2	EY	<p>Comments: Proceedings means...</p> <p>Recommendations: Insert at the end of sentence....“or tribunal or internal disciplinary hearing.”</p>
3	2	EY	<p>New Insertion under Definitions - Evidence</p> <p>Recommendations: Evidence means oral testimony either given in legal proceedings or which an expert witness indicates he or she is prepared to give under oath or affirmation in legal proceedings and documentation of any description that can legally be admitted as evidence in a Court of law.</p>
4	2	EY	<p>New Insertion under Definitions – Working Papers</p> <p>Recommendations: Working Papers means.....“papers that document the evidence gathered by the Member to show the work they have done, the methods and procedures they have followed, and the conclusions they have developed in the type of engagement they are working on.”</p>
5	2	MGN	<p><i>Section 2 Definitions</i></p> <p>We welcome the addition of paragraph 5.9 of the ED in relation to the use of ‘Working Papers’. However we believe the standard would benefit from the addition of a definition of ‘Working Papers’ in Section 2.</p>
6	2	GO	<ul style="list-style-type: none"> • The Victorian Evidence Act 2008 does not define opinion evidence or expert evidence. The opinion rule is that evidence of a person's opinion is not admissible to prove the existence (or truth) of the fact about which the opinion was expressed (s.76). Expert opinion is one of the exceptions to this rule (s.79); there are others. I don't think the APES definition makes this clear. • Another exception to the opinion rule is summaries of voluminous or complex documents (s.50(3)). This is the kind of evidence we

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			<p>often use in prosecutions where the forensic accountants prepare reports which merely summarise (as oppose to analyse) financial material such as invoices, cheques, bank statements etc. Again, this type of evidence is not viewed by the legal profession as expert evidence (despite what example 7 in APES states).</p> <ul style="list-style-type: none"> • If there is some analysis which goes beyond the type of calculations referred to in the previous paragraph, then it is arguable that this is expert evidence in the legal sense. Again, the wording of the standard does not appear to be consistent with the legislative definition. This may be because the standard is proposed to be national, whereas the Evidence Act 2008 is a Victorian Act (although it is based on a Uniform Evidence Act which is currently used by the Commonwealth, NSW, Vic and from memory Tasmania). • There are concerns why the accounting profession felt the need to expand the definition of an expert to a position wider than that it is understood in the legal sense. Views have been expressed that it is not helpful for accountants to mandate a certain definition of expert evidence on a national basis when the law already provides a body of legislation and case law which establishes what an expert is, in law. • The more closely aligned the legal profession and accounting profession are on the issues surrounding the expert witnesses the better the system will work. Providing an alternative definition of what constitutes expert evidence opens the door to potential situations where the accounting professional body will consider particular evidence to be 'expert' in nature, whereas a Court would not consider that evidence to be 'expert' in nature. Some have suggested that it may be worth having some legal minds formally review the ED to see whether they have similar views on the above and whether there may be a mismatch of an accountant providing an expert witness report as a result of APES215 and the courts or the prosecutor/defence barrister calling the accountant as a lay witness. • There is a view that has been put forwarded by a few that the APESB should leave these matters of determining whether or not evidence is 'expert' in nature to the Courts, and it ought to be up to the member to make their own decision (based on legal advice if necessary) on whether or not the evidence is expert in nature.
7	2	ICAA	<p>Examples are given of roles which are within the definition of Consulting Expert, including arbitrator, mediator, and referee. These appear to have a decision-making function in common. We raise for the APESB's consideration whether such roles should be the concern of a standard dealing with forensic accounting services, which we would understand usually involve those who appear before decision-makers, rather than with the decision-makers themselves.</p> <p>We have not been able to identify how the public interest is being served by extending the standard to those in a decision-making role, particularly where the obligations imposed by the standard on Consulting Experts are no more than those imposed by APES 110. However we acknowledge that it would be appropriate to do so where it could be identified that this would result in the provision of quality and ethical forensic accounting services by members.</p>

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8	2	ICAA	<p>Distinction between opinion evidence and other (non-opinion) evidence</p> <p>We note that additional wording has been introduced to the standard to acknowledge that the evidence that could be provided by a member in the context of a forensic accounting service could comprise both opinion evidence and other (non-opinion) evidence.</p> <p>However, having established this distinction, there does not seem to be any difference in the <i>requirements</i> of the standard as between the two types of evidence. We therefore question whether the additional wording has added unnecessary complexity to the standard. We suggest that the APESB consider whether a generic term such as “evidence” could have been utilised throughout the standard, with the highlighting of the existence of both opinion and other evidence being dealt with in the definition section. In our view, this should improve the readability of the exposure draft.</p>
9	2	CPA	<p>We offer the following comments for the Board’s consideration.</p> <p>➤ <i>Definition of Consulting Expert Service</i></p> <p>APES 215 <i>Forensic Accounting Services</i> defines a Consulting Expert Service as ‘a Professional Service 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’.</p> <p>CPA Australia is of the opinion that there is a fundamental distinction between the provision of Forensic Accounting Services and the decision making roles of members of professional tribunals that are currently included in the definition of Consulting Expert Services. We also have doubts as to whether arbitrators and referees are providing a Consulting Expert Service as defined in this Standard. We see these roles as relying on advice or evidence provided by others and making judgements based on these and not as members that provide Consulting Expert Services. Therefore we ask the Board to consider removing them from the definition. We note that this suggestion is not based on an effort to lessen the requirements for members providing such professional services, as the Code and other existing standards impose them but rather to ensure that the scope of APES 215 does not extend to professional services that are not necessarily Forensic Accounting Services. Members have to comply with the Code regardless of the type of professional service they undertake so the view that such professional services need to be included in this Standard so that the requirements of the Code can be imposed on them can be questioned. Based on the determination of the Board, the examples provided in Appendix 3 would then need to be adapted.</p>
10	2	CPA	<p>➤ <i>Definition of Expert Witness</i></p> <p>CPA Australia is of the opinion that the definition of Expert Witness can be simplified and the necessity to refer to ‘opinion and other evidence’ in the standard removed.</p>

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			<p>The Expert Witness definition states that an Expert Witness 'may express opinions or provide other evidence to the Court based on the Member's specialised 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'. This definition goes on to say:</p> <p>'Generally all opinion evidence is expert evidence, however not all expert evidence is opinion evidence. An expert can provide non-opinion other evidence where the expert is using their specialised training, study or experience to collate, summarise, analyse or otherwise assist the Court to understand large or complex amounts of information or specialised terminology, typically of a financial or accounting nature. Even if no opinion is expressed the Member is still acting as an expert in providing such other evidence.'</p> <p>We suggest that this second part of the definition is unnecessarily complex. Our understanding is that expert evidence can be based on opinion or not based on opinion. The second part of the definition could be expressed as: Expert evidence may be based on opinion or on other evidence where experts are using their specialised training, study or experience to collate, summarise, analyse or otherwise assist the Court to understand large or complex amounts of information or specialised terminology, typically of a financial or accounting nature.</p> <p>Given that Members have to comply with the requirements of section 5 for all expert evidence whether they provide opinion evidence or non-opinion evidence we consider that the distinction can be clarified in this definition and the term expert evidence be used to replace references to 'opinion or other evidence' in the standard. We understand that the distinction between opinion and non opinion evidence may be important for the Court but it does not appear to alter the responsibilities of members in relation to this Standard.</p>
11	2	Deloitte	<p>Definitions</p> <p>We consider that it would be helpful if the definitions in respect of Assignment, Engagement and Professional Services had greater clarity as to how they link together so as to reflect the structure set out in the Decision Tree in Appendix 2.</p> <p>Our suggested amendments for each definition are as follows:</p> <ul style="list-style-type: none"> • Assignment – “...to a Member in Business relating to the provision of Professional Services by a” • Engagement – “...relating to the provision of Professional Services by a....” • Professional Services – “...means Engagements or Assignments requiring accountancy or related skills performed by a Member....”
12	2	VP	<p>1. The definition 'Expert Witness' includes the term 'other evidence'. It is not clear why the proposed standard includes, but does not</p>

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			define, this term. The use of the terms 'evidence' and 'other evidence' to distinguish between opinion and non-opinion evidence is confusing and ought to be deleted from the proposed standard. Opinion and non-opinion evidence are both 'evidence'. The same comments apply to the use of the term " <i>other evidence</i> " in Section 5.6 "The Report of an Expert Witness".
13	2	VP	2. In paragraph (a) of the definition "independence" the phrase " <i>provision of an opinion</i> " should be deleted and replaced with " <i>provision of an Expert Witness Service</i> "
14	3.5	Deloitte	<p>Clause 3.5 Public interest – Expert Witness</p> <p>As this clause makes reference to several types of services, we believe clarity would be enhanced by specifying the relevant Professional Service as being Expert Witness Service. Our suggested amendment is therefore "...the Member shall consider whether the Member is able to perform the Expert Witness Service in an objective manner."</p>
15	3.5	VP	<p>3. Section 3.5</p> <p>(i) The new Section 3.5 commences with the words '<i>In circumstances where a Member</i>'. These words ought to be deleted and replaced with the word '<i>When</i>'</p> <p>(ii) Section 3.5 ought to make reference to the Member's Firm. This would make paragraph 3.5 consistent with paragraph 3.9 'Professional Services' and Paragraph 5.1 Expert Witness Services.</p> <p>(iii) The order of paragraphs 3.14 and 3.15 should be changed because paragraph 3.15 rather than paragraph 3.14, appears to follow on from paragraph 3.13.</p>
16	3.11	Deloitte	<p>Clause 3.11 Disclosure of all matters to assist the Court to assess the degree of independence</p> <p>It is not clear why reference is now made to disclosure of "all" matters. Is the Exposure Draft looking for additional disclosures to be made by Members in respect of their independence, even if those matters are deemed to be de minimis? If so, what are those additional disclosures?</p> <p>For instance clause 3.10 states that there is no legal prohibition on a Member in Public Practice acting as expert Witness for a client to whom other professional services are provided. Is the fact that other professional services are provided now required to be disclosed and, if so, what level of detail is required? Furthermore, consideration needs to be given as to whether, in making such disclosures, the Member will be breaching its confidentiality obligations in respect of the other professional services.</p>
17	3.14	Deloitte	<p>Clause 3.14 Obligation of Members in respect of reliance on third parties</p> <p>As noted above we understand the intention of some of the proposed changes to the Exposure Draft is to achieve consistency between the</p>

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			obligations of Members in Public Practice and in Business. Consequently we believe that the continuing reference to "Member in Public Practice" in the opening sentence of this clause may be a drafting omission, especially as the remainder of the clause refers to "Member". We recommend that the words "in Public Practice" are deleted.
18	3.15	MGN	<p>McGrathNicol has considered the ED and we are pleased to set out below our comments and other points of clarification.</p> <p><i>Paragraph 3.15 of APES 215</i></p> <p>Para 3.15 of the existing Standard has been deleted in the ED. It appears that the requirements set out in the deleted paragraph are not replicated elsewhere in the Standard. We believe that a statement of assumption as to the reliance on the opinion of other experts is appropriate.</p>
19	3.17	Deloitte	<p>Clause 3.17 Section 140 Confidentiality of the Code</p> <p>Although we note that there has been no change to this clause as a result of the Exposure Draft, we would like to draw attention to the fact that this clause is inconsistent with the relevant clause in the Code.</p> <p>The requirement that a Member shall not use confidential information obtained in the course of professional work "for any purpose other than the proper performance of that professional work" is stricter than Clause 140.1 (b) of the Code which sets out the obligation of Members not to use such information "to their personal advantage or the advantage of third parties".</p> <p>In addition we note that there is inconsistency with other APES (which in turn appear to be inconsistent with the Code as well). For instance, clause 3.6 of APES 220 <i>Taxation Services</i> and clause 3.10 of APES 225 <i>Valuation Services</i> do not restrict use to only the specific Assignment or Engagement since the restriction is in respect of "the proper performance of professional work for that Client or Employer".</p>
20	3.18	VP	<p>4. Paragraph 3.18 relates to disclosure of confidential information to a third party. The inclusion of the term 'Employer' now requires how forensic accountants should disclose confidential information to third parties. Forensic accountants employed by government agencies disclose confidential information in accordance with legislative provisions, policies and procedures. The proposed standard should not, in our opinion appear to conflict with disclosure requirements imposed by statute. It is submitted that the following paragraph is inserted to overcome this anomaly:</p> <p><i>"Paragraph 3.18 does not apply to a Member in Business who is employed by a government agency, where that agency has a statutory function of regulation, investigation or law enforcement."</i></p>
21	5.1 5.2	CPA	<p>➤ <i>Expert Witness Services</i></p> <p>CPA Australia is of the opinion that the terminology used in paragraphs 5.1 and 5.2 could be better aligned with the terminology of the</p>

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			Code and other standards. Specifically, paragraphs 5.1 and 5.2 refer to a proposed Expert Witness Service that is to be undertaken 'as being inconsistent with the objectives of' the other Professional Service or other service. We are not sure what this inconsistency may refer to. We would encourage the Board to provide some clarity and refer to the principles of the Code that may be threatened so as to assist Members identify potential threats and possible available safeguards. We think the term 'inconsistent' could be replaced with a term that is aligned with the terminology used in the Code.
22	5.6 (d)	EY	<p>Comments: Internal paragraph referencing is incorrect</p> <p>Recommendations: Replace reference to 3.8 with 3.9</p>
23	5.6 (h)	MGN	<p><i>Subparagraph 5.6(h) of ED</i></p> <p>In line with all other subparagraphs in Paragraph 5.6 of the ED, we submit the words "other evidence" should be included in Subparagraph 5.6(h).</p>
24	5.9	Deloitte	<p>Clause 5.9 Working papers</p> <p>We consider that inclusion of this clause in the section <i>The Report of an Expert Witness</i> creates additional confusion since the purpose of working papers is already set out in clause 7.3 <i>Quality control</i>. In addition clause 5.9 goes further than clause 7.3 since it refers to work performed and the process by which an opinion or other evidence is arrived at that may "or may not be" used in a Report. We believe that working papers should only document the final position reached by an Expert Witness as set out in their Report and not every matter that was explored during the course of an engagement. In addition we note that clause 7.3 is consistent with clause 6.1 APES 225 <i>Valuation Services</i>, clause 11.1 APES 220 <i>Taxation Services</i>, and clause 9 APES 330 <i>insolvency Services</i>.</p> <p>Therefore we recommend that clause 5.9 is deleted and, should it still be considered necessary, that the second sentence in clause 5.9 be repositioned to be part of, or immediately after, clause 7.4.</p>
25	5.9	VP	1. The word 'normally' in Paragraph 5.9 is superfluous and should be deleted.
26	6	VP	2. Delete "and changes in opinion" from the heading of Section 6. The section would then relate to all evidence and not just "opinion evidence".
27	Appendices	GO	<p>The following are the issues that have been raised with me by forensic accountants and lawyers in regards to the APES215 Exposure Draft.</p> <ul style="list-style-type: none"> The examples and decision tree is seen as a welcome addition and provides significant guidance and assistance to members on the application of APES215.

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28	Appendices	ANZPAA	<p><i>Feedback</i></p> <p>The feedback received from this committee have been extremely positive with specific mention having been made to the additional appendices which are identified and appreciated as being clear and instructive.</p> <p>Members have universally nominated the decision tree specifically as being a significant contribution to the Standard.</p>
29	Appendix 1	Deloitte	<p>Appendix 1 Use of the terms “facts”, “assumptions” and “opinions”</p> <p>Notwithstanding the information included within the definition of an “Expert Witness”, it would be useful to providers of Expert Witness Services to have more guidance as to what is meant by “other evidence”. This additional guidance would be most appropriately included within Appendix 1 <i>Use of the terms “facts”, “assumptions” and “opinions”</i> given the interplay of “other evidence” with these three terms, and in particular the likelihood that “other evidence” will comprise statements of fact and/or instructed assumptions.</p>
30	Appendix 1	VP	<p>2. The words ‘i.e. because it is in the nature of a scientific fact’ in Appendix 1, paragraph 3 are unnecessary. Opinions are based on the interpretation of facts. We do not see the relevance of the term ‘scientific fact’ in the context of the proposed standard.</p>
31	Appendix 2	VP	<p>Appendix 2 is designed to assist Members to determine whether a particular service is a Forensic Accounting Service for the purpose of APES215. We find that the Decision Tree is confusing for several reasons.</p> <ol style="list-style-type: none"> (1) the proposed standard does not clearly articulate from the outset why it is important to distinguish between different types of forensic accounting services. (2) the decision tree schematic is not consistent with Appendix 3. A forensic accountant is someone who is capable of giving evidence and must be ready to give evidence if and when required. If a person is engaged to provide a Lay Witness service, Example 19 in Appendix 3 suggests that the person can have the capability to also provide an Expert Witness Service (see Appendix 3). This is not reflected in schematic. (3) the loop around the decision point “Is the service to provide evidence” is confusing because what causes this loop to arise has not been explained . (4) it is not clear why there are two separate decision points, viz (i) Is it expert evidence? and (ii) is the service in relation to an investigation? Usually forensic accountants conduct ‘investigations’ to gather admissible evidence and give that evidence when required by the Court. The evidence given can be a mixture of fact and opinion evidence. (5) there is nothing in the decision tree schematic to indicate what happens if expert evidence it is ruled inadmissible by the Court. Does the Expert Witness Service become a Lay Witness Service or something else?

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32	Appendix 2	EY	<p>Comments: The current decision tree does not explicitly state when APES 215 is applicable to each type of Forensic Accounting Services, i.e. if a Member provides investigation services whereby non-opinion expert evidence is to be provided, the decision tree does not take this into account and would APES 215 apply?</p> <p>Recommendations: To refine the decision tree</p>
33	Appendix 2	MGN	<p><i>Appendix 2 Decision Tree</i></p> <p>There is an inconsistency between the Appendix 2 Decision Tree and the definition of Investigation Service as set out in Section 2 of the ED.</p> <p>In the Definition section, "Investigation Service" is defined as "a Professional Service to perform, advise on, or assist with an investigation, whether or not in the context of Proceedings, in connection with allegations of or concerns regarding conduct that may be illegal, unethical or otherwise improper". However under the Decision Tree, "Proceedings" is cited as an "essential requirement" to come within the purview of APES 215. We believe that APESB should amend the Decision Tree so that it is consistent with the definition section.</p>
34	Appendix 3 – Example 1	ICAA	<p>Application to participants in disciplinary tribunals</p> <p>The Institute notes that Example 1 of Appendix 3 states that the standard would classify a member who participates in a disciplinary tribunal to be a Consulting Expert within the definition of that term in the standard. We consider that this is not a correct interpretation of the standard.</p> <p>A Consulting Expert is defined as a Member who has been engaged or assigned to provide a Consulting Expert Service, which is further defined as a Professional Service provided in the context of Proceedings. In our view it is not correct to state that an accountant is providing a "service" when that accountant participates as a member of a disciplinary committee. In our view the tribunal members are performing a function of the member body, not providing a service. The provision of a service would normally be characterised as the undertaking of an economic activity, i.e. undertaken for economic purposes. Disciplinary tribunal members are typically not remunerated, although even if they were, this in our view is not the purpose for the accountant undertaking this activity. Accordingly we don't agree with the conclusion in Example 1, and believe the example should be removed.</p> <p>We would also question the value of this standard defining any particular role as that of a Consulting Expert, because the standard does not place any specific requirements on a person whose role is so defined. Essentially the Consulting Expert is required to uphold the fundamental principles outlined in APES 110, but these obligations already exist absent the application of APES 215. The only paragraph of the standard that overtly references a Consulting Expert is 3.16, which encourages the member to obtain legal advice if they are unsure of their legal obligations.</p>

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35	Appendix 3	Deloitte	<p>Appendix 3 Guide to determining the type of Forensic Accounting Service provided by a Member</p> <p>Whilst we welcome the inclusion of this Appendix in achieving greater consistency in the application of the Exposure Draft, we believe that it would benefit from several further improvements, as follows:</p> <ul style="list-style-type: none"> There is only one example of a Lay Witness Service, which is in respect of a Member in Business. Given the definitions of Lay Witness and Lay Witness Services implicitly allow for a Member in Public Practice to provide a Lay Witness Service, it would be useful to provide an example of such a service. <p>For instance, a Member in Public Practice may be required to provide an affidavit in respect of processes they undertook as part of a forensic investigation, such as the collection and securing of computer forensic evidence. Or a Member in Public Practice may be required to give evidence in its role as book keeper to a client who is a party to litigation.</p> <p>In both of these examples the Member in Public Practice may be giving evidence on matters within their professional knowledge that are directly observed or perceived by them, but they are not necessarily using their specialised training, study or experience to collate, summarise, analyse or assist in the understanding of complex information or specialised terminology.</p>
36	Appendix 3	Deloitte	<ul style="list-style-type: none"> It would be beneficial to include an example providing guidance as to the circumstances that would cause a Forensic Accounting Service to be an Assurance Engagement under the <i>Framework for Assurance Engagements</i> issued by the Auditing and Assurance Standards Board, as envisaged by clause 3.7.
37	Appendix 3 – Example 8	Deloitte	<ul style="list-style-type: none"> It is not clear from the facts as set out in Example 8 that the analysis as an Expert Witness is correct. The title of the example is in respect of a Member “subpoenaed to provide a factual witness statement”. In addition the facts refer to “covering their involvement in and <i>observations</i> of specific transactions and activities”. The definition of a Lay Witness service is to give evidence “on matters within the Member’s professional knowledge that are directly <i>observed</i> or perceived by the Member”, which suggests it should be described as a Lay Witness service. <p>As Example 9 already provides a similar example for a Member in Business acting as an Expert Witness, we would recommend that Example 8 is amended to provide facts and analysis in respect of a Lay Witness so that a user is able to understand the differentiating features between the two examples.</p>
38	Appendix 3 – Example 16, 19	Deloitte	<ul style="list-style-type: none"> There are inconsistencies within the examples, for instance in Examples 16 and 19, whereby the facts describe a Member in Business but the analysis refers to a Member in Public Practice.
39	Appendix 3	Deloitte	<ul style="list-style-type: none"> In the summary table, in appendix 3, there is inconsistency within the Conclusion column as to whether reference is made to the complete analysis or not. For instance, Examples 10 and 11 simply conclude “Consulting Expert” although the analysis for those

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			<p>examples also makes reference to the possibility of the service becoming that of an Expert Witness. On the other hand the Conclusion for Example 17 does make reference to the possibility of the service becoming that of an Expert Witness. We recommend that a consistent approach is adopted.</p>												
40	Appendix 3	VP	<p>3. Appendix 3 contains nineteen (19) examples to assist Members to identify the type of Forensic Accounting Service that could be provided:</p> <table border="1" data-bbox="719 507 1680 751"> <thead> <tr> <th data-bbox="719 507 1151 568">Type of Forensic Accounting Service</th> <th data-bbox="1151 507 1680 568">Number of examples used to illustrate the type of Forensic Accounting Service</th> </tr> </thead> <tbody> <tr> <td data-bbox="719 568 1151 598">Consulting Expert</td> <td data-bbox="1151 568 1680 598">5</td> </tr> <tr> <td data-bbox="719 598 1151 659">Consulting Expert, unless Member provides evidence to the Court</td> <td data-bbox="1151 598 1680 659">5</td> </tr> <tr> <td data-bbox="719 659 1151 689">Expert Witness</td> <td data-bbox="1151 659 1680 689">7</td> </tr> <tr> <td data-bbox="719 689 1151 719">Investigation</td> <td data-bbox="1151 689 1680 719">1</td> </tr> <tr> <td data-bbox="719 719 1151 751">Lay Witness</td> <td data-bbox="1151 719 1680 751">1</td> </tr> </tbody> </table> <p>As discussed above, the proposed standard does not clearly articulate from the outset why it is important to distinguish between different types of forensic accounting services. In any event, we are of the view that developing a set of principles rather than a list of examples, would improve guidance to Members. As such, one example of each type of forensic accounting service ought to suffice provided that these examples articulate basic principles.</p> <p>All examples concerning Consulting Experts, Investigation and Lay Witness acknowledge that as a result of changing circumstances such persons can become an 'Expert Witness'. However, the examples assume that changing circumstances arise before the start of Court proceedings. This is not always the case.</p> <p>Firstly, the transformation from a 'Consulting Expert' or 'Lay Witness' or 'Investigator' to an 'Expert Witness' can occur in the witness box through cross-examination because this is an opportune time for the opposing party to examine the Member's specialised training, study or experience. During this time a Lay Witness may be deemed to be an Expert Witness if professional judgement was exercised or inferences were drawn during performance of the forensic accounting service. In such circumstances the Member in Public Practice will be unable to amend and reissue the Terms of Engagement before the service is provided because the Member is not permitted to communicate the matter with any person whilst giving evidence. In such circumstances, the Member may be in breach of the proposed standard.</p> <p>Secondly, if through cross-examination a Lay Witness is held to be an Expert Witness that Member is likely to be in breach of the proposed standard, given that the Member was never asked by the client to provide an Expert Witness Service in the first place. If Expert evidence is subsequently held inadmissible by the Court, it is questionable if an Expert Witness Service or indeed what forensic</p>	Type of Forensic Accounting Service	Number of examples used to illustrate the type of Forensic Accounting Service	Consulting Expert	5	Consulting Expert, unless Member provides evidence to the Court	5	Expert Witness	7	Investigation	1	Lay Witness	1
Type of Forensic Accounting Service	Number of examples used to illustrate the type of Forensic Accounting Service														
Consulting Expert	5														
Consulting Expert, unless Member provides evidence to the Court	5														
Expert Witness	7														
Investigation	1														
Lay Witness	1														

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			<p>accounting service, has been provided.</p> <p>Thirdly, cross-examination can transform an 'Expert Witness' into a 'Lay Witness' for instance, if the Court admits facts into evidence but not opinion evidence. In such circumstances the Member may be in breach of the proposed standard because of failure to provide an Expert Witness Service.</p> <p>The proposed standard ought to consider the impact of cross-examination on the type of Forensic Accounting Services and client relationships.</p>
41	Appendix 3 – Example 6-9	VP	4. The words ' <i>employed at</i> ', ' <i>employed in</i> ' and ' <i>employed by</i> ' are used interchangeably in Examples 6, 7, 8 and 9. It is recommended that the words ' <i>employed by</i> ' are be used throughout these examples.
42	Appendix 3 – Example 7	VP	5. The words ' <i>is to be given</i> ' in Example 7 ought to be changed to either ' <i>is to be produced</i> ' or ' <i>evidence to be given</i> ' depending upon the relevant context.
43	Appendix 3 – Example 6-7	VP	12. In Examples 6 and 7, the Chart or summary is prepared for the benefit of the Court, not the law enforcement body. Any reference to ' <i>law enforcement/regulatory body</i> ' ought to be deleted.
44	Appendix 3 – Example 3, 10-12, 14, 16-19	VP	13. The words ' <i>at any stage</i> ' and/or ' <i>which may result in the Member having to give evidence</i> ' in Examples 3, 10, 11, 12, 14, 16, 17, 18, 19, are superfluous and ought to be deleted.
45	Appendix 3 – Example 19	VP	14. The words " <i>the process</i> " in Example 19 ought to be replaced by " <i>this process</i> ". This is consistent with previous Examples.
46	Appendix 3 – Example 6-7	VP	15. The word " <i>preparing</i> " in the heading of Examples 6 and 7 should be changed to " <i>to Provide</i> " which is consistent with the other Examples.

Staff Instructions:

- Comments of a "general" nature should be dealt with first, followed by paragraph specific comments.
- Respondents' comments must be copied verbatim into this table.
- Comments should be dealt with in paragraph order, not respondent order.
- Use acronyms only for respondents. Update the attached table with details of additional respondents.

RESPONDENTS

1	EY	Ernst & Young
2	ANZPAA	Australia New Zealand Policing Advisory Agency
3	Deloitte	Deloitte Touche Tohmatsu Australia
4	MGN	McGrathNicol Advisory
5	VP	Victoria Police
6	ICAA	Institute of Chartered Accountants Australia
7	GO	Gregory O'Neil CPA
8	CPAA	CPA Australia