

# APES 215

## Forensic Accounting Services

(Issued XXXX 2008)

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## 1. Scope and application

1.1 Accounting Professional & Ethical Standards Board Limited (APESB) issues professional standard APES 215 *Forensic Accounting Services (the Standard)*, which is effective for Engagements or Assignments commencing on or after<sup>2</sup> 01 July 2009. Early adoption of this Standard is permitted.

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1.2 APES 215 sets the standards for Members in the provision of quality and ethical Forensic Accounting Services. The mandatory requirements of this Standard are in bold-type (black lettering), preceded or followed by discussion or explanations in normal type (grey lettering)<sup>3</sup>. APES 215 should be read in conjunction with other professional duties of Members, and any legal obligations that may apply.

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1.3 **Members in Australia shall follow the mandatory requirements of APES 215 when they provide Forensic Accounting Services.**

1.4 **Members outside of Australia shall follow the mandatory requirements of APES 215 to the extent to which they are not prevented from so doing by specific requirements of local laws and/or regulations.**

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1.5 Where an Engagement or Assignment, which was not initially a Forensic Accounting Service, becomes such a service at some later point, this Standard shall be applied from that point onwards to the extent practicable.<sup>138</sup>

1.6 Where a Member is undertaking a Forensic Accounting Service other than an Expert Witness Service, which at some later point becomes an Expert Witness Service, then the Member shall comply with the requirements of section 5 of this Standard from that point onwards.<sup>130</sup>

1.7 Members shall be familiar with relevant professional standards and guidance notes when providing Professional Services. All Members shall comply with the fundamental principles outlined in the Code.

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1.8 The Standard is not intended to detract from any responsibilities which may be imposed by law or regulation.

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1.9 All references to professional standards, guidance notes and legislation are references to those provisions as amended from time to time.

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1.10 In applying the requirements outlined in APES 215, Members should be guided not merely by the words but also by the spirit of the Standard and the Code.

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## 2. Definitions

For the purpose of this Standard:

**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.

**Client** means an individual, firm, entity or organisation to whom or to which a Forensic Accounting Service is provided by a Member in Public Practice in respect of Engagements of either a recurring or demand nature.

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means some thing or some event which is taken for granted to be a fact without having been proved to be a fact. ¶

**Code** means APES 110 *Code of Ethics for Professional Accountants*.

**Consulting Expert** means a Member who has been engaged or assigned to provide a Consulting Expert Service.

**Consulting Expert Service** means a 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 arbitrator, mediator, member of professional tribunal,<sup>76</sup> referee or providing advice to a representative<sup>23</sup> of a Client or Employer.

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**Contingent Fee** means a fee calculated on a predetermined basis relating to the outcome or result of a transaction or the result of the work performed. A fee that is established by a Court or other public authority is not a contingent fee.

**Court** means any body described as such and all other tribunals exercising judicial or quasi-judicial functions and includes professional disciplinary tribunals, industrial and administrative, statutory or parliamentary investigation and inquiries, royal commissions, arbitrations and mediations.

**Employer** means an entity or person that employs, engages or contracts a Member in Business.

**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.

**Engagement Document** means the document (i.e. letter, agreement or any other appropriate means) in which the terms of Engagement are specified in a written form.

**Expert Witness** means a Member who has been engaged or assigned to provide an Expert Witness Service. As an Expert Witness, the Member may<sup>32</sup> express opinions to the Court based on the Member's specialised training.

study or experience<sup>29</sup> on matters such as, for example, whether technical or professional standards have been breached, the quantum of damages, the quantum of an account of profits, or the quantum of a claim under an insurance policy.

**Expert Witness Service** means a service provided in the context of Proceedings to give expert evidence, whether orally or in a written Report or both.<sup>28</sup>

**Firm** means

- (a) A sole practitioner, partnership, corporation or other entity of professional accountants;
- (b) An entity that controls such parties;
- (c) An entity controlled by such parties; or
- (d) An Auditor-General's office or department.

**Forensic Accounting Services** consist of Expert Witness Services, Lay Witness Services, Consulting Expert Services and Investigation Services.

**Independence** means

- (a) Independence of mind - the state of mind that permits the provision of an opinion without being affected by influences that compromise professional judgment, allowing an individual to act with integrity, and exercise objectivity and professional scepticism; and
- (b) Independence in appearance - the avoidance of facts and circumstances that are so significant a reasonable and informed third party, having knowledge of all relevant information, including any safeguards applied, would reasonably conclude a Firm's, or a member's, integrity, objectivity or professional scepticism had been compromised.

**Investigation Service** means a 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.

**Lay Witness** means a Member who has been engaged or assigned to provide a Lay Witness Service.

**Lay Witness Service** means a service provided in the context of Proceedings to provide evidence other than expert evidence, whether orally or in the form of a written 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.

**Member** means a member of a professional body that has adopted this Standard as applicable to their membership, as defined by that professional body.

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**Deleted:** The Member, as an Expert Witness, will usually express Opinions to the Court based on the Member's specialised knowledge in respect of issues concerning liability, damages, account of profits or assessing a claim under an insurance policy.

**Deleted:** **Fact** means some thing that existed or exists or some event that has happened or is happening.¶

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**Member in Business** means a Member employed or engaged in an executive or non-executive capacity in such areas as commerce, industry, service, the public sector, education, the not for profit sector, regulatory bodies or professional bodies, or a Member contracted by such entities.

**Member in Public Practice** means a Member, irrespective of functional classification (e.g. audit, tax or consulting) in a Firm that provides Professional Services. The term is also used to refer to a Firm of Members in Public Practice and means a practice entity as defined by the applicable professional body.

[51-52](#)

**Proceedings** means actual or potential [matters](#) before a Court.<sup>53</sup>

**Professional Standards** mean all Standards issued by Accounting Professional & Ethical Standards Board Limited and all professional and ethical requirements of the applicable professional body.

**Professional Services** means services requiring accountancy or related skills performed by a professional accountant including accounting, auditing, taxation, management consulting and financial management services.

**Report** means a written report, affidavit or statement [that is for the purpose of communicating expert evidence or lay evidence in Court.](#)<sup>57</sup>

**Terms of Engagement** means the terms and conditions that are agreed between the Client and the Member in Public Practice for the Engagement.

### 3. Fundamental responsibilities of Members

3.1 A Member providing a Forensic Accounting Service shall comply with Section 100 *Introduction and Fundamental Principles* of the Code and with relevant law.

3.2 When engaged to perform a Forensic Accounting Service a Member shall be and be seen to be free of any interest which may be regarded as being incompatible with the fundamental principles of integrity and objectivity in Section 100 of the Code.

3.3 Members in Public Practice shall comply with Section 220 *Conflict of Interest* and Section 280 *Objectivity – All Services in the Code*

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## Public interest

- 3.4 In accordance with Section 100.1 of the Code, a Member shall observe and comply with the Member's public interest obligations when the Member provides a Forensic Accounting Service.

## Professional Independence

- 3.5 When a Member in Public Practice is engaged to perform a Forensic Accounting Service which requires Independence or where a Member in Public Practice purports to be performing a Forensic Accounting Service with Independence, the Member in Public Practice shall act with Independence.

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- 3.6 A Member in Public Practice shall consider whether the circumstances of the Forensic Accounting Service make the Engagement an Assurance Engagement under the *Framework for Assurance Engagements* issued by the Auditing and Assurance Standards Board (AUASB).

- 3.7 Where a Forensic Accounting Service is an Assurance Engagement, the Member in Public Practice shall comply with Section 290 *Independence – Assurance Engagements* of the Code.

- 3.8 If a Member in Public Practice is asked to provide a Professional Service to a Client where:

- (a) the Member or the Member's Firm is providing or has provided an Expert Witness Service to the Client; or
- (b) the Member or the Member's Firm is providing or has provided an Expert Witness Service to a different Client,

which is related to the proposed Professional Service, then the Member shall consider whether a reasonable and informed third party having knowledge of all the relevant information, including safeguards applied, would regard the objectives of the proposed Professional Service to be undertaken as being inconsistent with the objectives of the Expert Witness Service.

- 3.9 An Expert Witness has an obligation to act with integrity and objectivity. However, there is no requirement, at law, that an Expert Witness be free of any relationship with parties to Proceedings. For example, there is no legal prohibition on a Member in Public Practice acting as an Expert Witness for an existing Client for whom the Member provides other Professional Services.<sup>66-67</sup>

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Deleted: However, the Court will take into account the actual and apparent degree of Independence of the Expert Witness when deciding what weight to give to the expert's evidence. Therefore, it is important for the Member to disclose any matters that would assist the Court to assess the degree of the Member's Independence.

- 3.10 A Member who is providing an Expert Witness Service shall disclose matters in the Member's Report that will assist the Court to assess the degree of the Member's Independence.<sup>66</sup>

## Professional competence and due care

**3.11** A Member providing a Forensic Accounting Service shall maintain professional competence and take due care in the performance of the Member's work in accordance with Section 130 *Professional Competence and Due Care* of the Code.

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**3.12** Forensic Accounting Services generally require a Member to have specialised training, study or experience. Before accepting an Engagement or Assignment to provide a Forensic Accounting Service a Member should exercise professional judgement to determine if the Member is competent to provide the requested Forensic Accounting Service having regard to the Member's training, study and experience.

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**3.13** Where a Forensic Accounting Service or part thereof requires the consideration of matters that are outside a Member's professional expertise, a Member in Public Practice shall seek expert assistance or advice from a suitably qualified third party on those matters outside of the Member's professional expertise or decline all, or that part of, the Forensic Accounting Service. The Member shall disclose in any Report the extent of the reliance upon the advice of such a third party.

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**3.14** In accordance with Section 330 *Acting with Sufficient Expertise* of the Code, a Member in Business should only undertake Assignments where the Member can act with sufficient expertise.<sup>12</sup>

**3.15** If a Member acting as an Expert Witness expresses an opinion that is based on the work of another expert then the Member shall state in the Member's Report that the Member's opinion is based in part, on the assumption that the other expert's opinion is valid.

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## Procedural fairness and compliance with laws

**3.16** Where a Member performs a Forensic Accounting Service that involves acting as an investigator or as a decision-maker (as might be the case for certain Investigation or Consulting Expert Services, such as acting as an arbitrator, mediator or referee), the Member may be required to observe some or all of the rules of procedural fairness (which collectively are referred to as "natural justice"). If a Member is not certain of the Member's legal obligations then the Member should consider taking legal advice.

**3.17** When gathering evidence a Member should be aware of the laws and regulations that govern, and in some instances prohibit, activities such as filming and recording individuals without their permission.<sup>77</sup>

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**3.18** A Member should consider whether the Member requires the perquisite investigators<sup>78-79</sup> licence in certain jurisdictions over and above the Member's accounting qualification, particularly for an Investigation Service.

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### Confidentiality

**3.19** In accordance with Section 140 *Confidentiality* of the Code, a Member who acquires confidential information in the course of professional work for a Client or Employer shall not use that information for any purpose other than the proper performance of professional work.

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**3.20** Where a Client has given a Member in Public Practice permission to disclose confidential information to a third party, it is preferable that this permission is in writing. Where oral permission is obtained, a contemporaneous note should be made and kept on file by the Member recording the relevant details of the Client's permission.

Deleted: 3.18 . Unless the Member has a legal obligation of disclosure, a Member shall not convey any information relating to a Client's or Employer's affairs to a third party without the Client's or Employer's permission.¶

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### **4. Professional Engagement matters**

**4.1** A Member in Public Practice shall document and communicate the Terms of Engagement in accordance with APES 305 *Terms of Engagement*.

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**4.2** A Member in Public Practice who is approached by a potential Client to undertake a Forensic Accounting Service shall comply with Section 210<sup>92</sup> *Professional Appointment* of the Code.

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### **5. Expert Witness Services**

**5.1** If a Member in Public Practice is asked to provide an Expert Witness Service to a Client where:

- (a) the Member or the Member's Firm is providing or has provided another Professional Service to the Client; or
- (b) the Member or the Member's Firm is providing or has provided another Professional Service to a different Client;

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which is related to the proposed Expert Witness Service then the Member shall determine whether a reasonable and informed third party having knowledge of all the relevant information, including safeguards applied, would regard the objectives of the proposed Expert Witness Service to be undertaken as being inconsistent with the objectives of the other Professional Service.

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5.2 Subject to paragraph 5.3, if a Member in Business is asked to provide an Expert Witness Service to the Member's Employer, where:

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(a) the Member or another employee of the Member's Employer has provided, or is providing, another service to the Employer which is related to the proposed Expert Witness Service; or

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(b) the Member's Employer has an interest in the outcome of the Proceedings (whether as a party or otherwise);

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then the Member shall determine whether it is probable that a reasonable and informed third party having knowledge of all the relevant information including safeguards applied would regard the objectives of the proposed Expert Witness Service to be undertaken, as being inconsistent with the objectives of the other service.

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5.3 Paragraph 5.2 does not apply to a Member in Business who is employed by a government agency or by a body established by a government agency, where that agency or body has a statutory function of regulation, investigation or law enforcement.<sup>36&93</sup>

5.4 If a Member is asked to provide an Expert Witness Service but the Member believes that the Member's objectivity would be impaired or that a reasonable and informed third party having knowledge of all the relevant information, including safeguards applied, would perceive that the Member's objectivity would be impaired (whether for reasons referred to in paragraphs 3.8, 5.1, or 5.2 above or otherwise), then the Member shall decline the Engagement or Assignment or the relevant part thereof.

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5.5 A Member in the course of<sup>101</sup> acting as an Expert Witness shall comply with the following:

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5.5 . . . Where an Expert Consulting Service or an Investigation Service subsequently leads to an Expert Witness Service, then the Member shall comply with the requirements of section 5.¶

(a) the<sup>98</sup> paramount duty to the Court which overrides any duty to the Client or Employer;

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(b) a duty to assist the Court on matters relevant to the Member's area of expertise in an objective and unbiased manner;

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(c) a duty not to be an advocate for a party;

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(d) <sup>99-100</sup> a duty to make it clear to the Court when a particular question or issue falls outside the Member's expertise.

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5.6 A Member who is acting as an Expert Witness also has a duty to comply with evidentiary and procedural requirements relating to Expert Witnesses.

## The Report of an Expert Witness

5.7 Subject to any legal requirements or restrictions, any Report of a Member providing an Expert Witness Service shall clearly communicate:

- (a) the instructions received, whether oral or written;
- (b) any limitations on the scope of work performed;
- (c) details of the Member's training, study and experience that are relevant to the matters on which the Member is providing expert evidence<sup>116</sup>;
- (d) the relationships, if any, the Member or the Member's Firm has with any of the parties to the Proceedings (including any of the matters referred to in paragraphs 3.8, 5.1, or 5.2) that may create a threat or a perceived threat to the Member's obligation to comply with the fundamental principles of the Code (or the Member's paramount duty to the Court) and any appropriate safeguards implemented;
- (e) the extent, if any, of reliance by the Member on the work of others;
- (f) the opinions formed by the Member;
- (g) whether an opinion is provisional rather than concluded, and, if so, the reasons why a concluded opinion has not been formed;
- (h) the significant facts upon which the opinions are based;
- (i) the significant assumptions upon which the opinions are based and the following matters in respect of each significant assumption:
  - i) whether the Member was instructed to make the assumption or whether the Member chose to make the assumption;
  - ii) if the Member was instructed to make the assumption, and it is within the expertise of the Member to express an opinion on that assumption, then whether the Member is aware of any reason why the assumption is unreasonable;
  - iii) if the Member was instructed to make the assumption and it is not within the expertise of the Member to express an opinion on that assumption then the Member shall state that the Member does not express any opinion on that assumption; and
  - iv) if the Member chose to make the assumption then the reason why the Member made that choice.

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**Option 2:**

Where the Member considers that in the context of the Member's Report an opinion stated by the Member may be misleading, by reason of reliance on a significant assumption which the Member considers is not a reasonable assumption, the Member shall set out in the Report such further explanations as are necessary to ensure that the Member's opinion is not misleading.

- (j) where applicable, that the Member's opinion is subject to the veracity of another person's Report upon which the Member's Report is based;
- (k) the reasoning by which the Member formed the opinions, including an explanation of any method employed and the reasons why that method was chosen;
- (l) a list of all documents and sources of information relied upon in the preparation of the Report;
- (m) any restrictions on the use of the Report; and
- (n) a statement that the Expert Witness Service was conducted in accordance with this Standard.

5.8 In providing an Expert Witness Service, a Member should consider whether APES 225 *Valuation Services* is also applicable to the Engagement or Assignment. APES 225 requires, amongst other things, that a Member make certain disclosures in a Report.

5.9 If a Member is not certain of whether a matter is a significant assumption or an opinion, the Member should consult the legal representative of the Member's Client or Employer.

Old section 6: 45,48,121-124 ; Old section 7: 125-129; Old section 8: 97,125,129,133-134

**6. False or misleading information and changes in opinion**

**6.1** A Member shall not knowingly or recklessly make a statement or cause another to make a statement in or in connection with a Forensic Accounting Service that, by its content or by an omission, is false or misleading.

**6.2** If a Member has been engaged or assigned to provide an Expert Witness Service<sup>141</sup> and the Member becomes aware that an opinion expressed by the Member in a Report or in oral evidence is based on false or misleading information or omits material information and that basis or omission has not been disclosed in a Report or in oral testimony, then the Member shall promptly inform, as appropriate, the legal representative, of the Client, the Employer and, or, the Court<sup>142</sup> of the basis or omission. The Member shall also consider whether it is necessary to issue a supplementary report.

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Deleted: 6. Lay Witness Services¶

¶ 6.1 . . . When providing a Lay Witness Service a Member shall comply with the obligation imposed on the Member when giving evidence under oath or affirmation.¶

¶ 7. Consulting Expert Services¶

¶ 7.1 . . . When providing a Consulting Expert Service, the Member's duty is to the Client or Employer.¶

¶ 7.2 . . . Where the Consulting Expert Service, subsequently leads to an Expert Witness Service, then the Member shall comply with the Member's duties specified in paragraph 5.4.¶

¶ 8. Investigation Services¶

¶ When providing an Investigation Service, the Member's duty is to the Client or Employer.¶

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**6.3** If a Member makes a statement under oath or affirmation which is known by the Member to be false or misleading at the time it is made<sup>147</sup>, then the Member may be liable to, legal sanctions and to disciplinary proceedings by the Member's professional body<sup>146</sup>.

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## **7. Quality Control**

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**7.1** A Member in Public Practice shall comply with the requirements of the APES 320 *Quality Control for Firms*.

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**7.2** A Member in Business who undertakes a Forensic Accounting Service should utilise a system of quality control that includes appropriate policies and procedures taking in to consideration the following elements of quality control:

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- (a) Leadership responsibilities for quality within the Employer;
- (b) Ethical requirements;
- (c) Human resources;
- (d) Assignment performance; and
- (e) Monitoring.

**7.3** A Member performing a Forensic Accounting Service shall prepare working papers that appropriately document the work performed, including the basis on which, and the method by which, any calculations, determinations or estimates used in the provision of the Forensic Accounting Service have been made.

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**7.4** A Member should be aware that working papers generated as part of undertaking a Forensic Accounting Service may be required to be furnished to other parties or the Court as evidence. Where appropriate, a Member should maintain the chain of custody, including origin, possession and disposition of documents and other material, particularly originals, relevant to the Engagement or Assignment.

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## **8. Professional fees**

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**8.1** A Member in Public Practice providing a Forensic Accounting Service shall be remunerated for such service by way of professional fees computed in accordance with Section 240 *Fees and other Types of Remuneration* of the Code.

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**8.2** A Member in Public Practice shall not enter into a Contingent Fee arrangement or receive a Contingent Fee for:

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- (a) an Expert Witness Service; or
- (b) a Forensic Accounting Service, other than an Expert Witness Service, that requires Independence or where the Member purports that it has been performed with Independence.

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**8.3** A Member in Business shall not enter into a contingent remuneration arrangement or receive contingent remuneration for an Expert Witness Service.

### ***Conformity with International Pronouncements***

The International Ethics Standard Board for Accountants (IESBA) has not issued a pronouncement equivalent to APES 215.

**6. Lay Witness Services**

**6.1 When providing a Lay Witness Service a Member shall comply with the obligation imposed on the Member when giving evidence under oath or affirmation.**

**7. Consulting Expert Services**

**7.1 When providing a Consulting Expert Service, the Member's duty is to the Client or Employer.**

**7.2 Where the Consulting Expert Service, subsequently leads to an Expert Witness Service, then the Member shall comply with the Member's duties specified in paragraph 5.4.**

**8. Investigation Services**

**When providing an Investigation Service, the Member's duty is to the Client or Employer.**

**.8.2 Where the Investigation Service, subsequently leads to an Expert Witness Service, then the Member shall comply with the Member's duties specified in paragraph 5.4.**

**9.**