Statement of Forensic Accounting Standards

(December 2002)

Note from the Institute of Chartered Accountants in Australia

This note, prepared by the technical editor, is not part of APS 11.

Historical development

December 2002: APS 11 was operative from the date of issue. It deals with the professional aspects of the practice of forensic accounting. Forensic accounting involves, inter alia, assisting clients with a financial investigation of the quantum of economic loss, valuations of shares and other assets, breaches of professional standards or relevant corporations or securities law and fraud and preparing the results are using dispute resolution or litigation.

Paragraph

Miscellaneous Professional Statement APS 11

Statement of Forensic Accounting Standards

Part 1

Introduction

1. This Statement is limited to the professional aspects of forensic accounting services as distinct from any responsibilities which may be imposed by law or other authority.

Disciplinary Proceedings

2. The Standards set out in this Statement are mandatory and are subject to disciplinary proceedings.

Definitions

3. For the purposes of this statement:

"*Forensic accounting services*" means the provision of professional services (but not legal services) in:

APS

(a) assisting or advising clients in any aspect of accounting relating to the financial investigation of:

(i) the quantum of economic loss;

(ii) valuations of shares and other assets;

(iii) breaches of professional standards or relevant corporations or securities law;

(iv) fraud; and

(v) such other investigative work; and

(b) presentation of the results of that analysis for the purposes of dispute resolution or litigation in a Court or Tribunal or other forum, and the giving of evidence.

Forensic accounting services does not include services provided as an arbitrator, conciliator or similar role.

"*Member*" means a member in practice and where applicable includes a member's firm, company, other entity or any employees thereof.

"*Forensic accountant*" and "Expert" mean a member engaged in the provision of forensic accounting services.

Part 2

The Standards

4. Forensic Accounting Standards are basic principles governing the professional responsibilities which a member must exercise in the course of providing forensic accounting services. The Standards are shown in bold type followed by discussion or amplification.

General Standards

Professional Independence

5. **The Code of Professional Conduct on Professional Independence applies to the provision of forensic accounting services in the same manner as it applies to other forms of professional practice.**

6. **A member must not accept or continue to carry out an engagement to undertake forensic accounting services where the engagement would give rise to a conflict of interest for the member or the member's firm.**

7. **A member may assist and advise a client in resolving a dispute but must take all possible steps to ensure that such a role does not place the member, or the member's firm, in a position of conflict arising from a retainer as an independent expert witness.**

8. The onus of resolving an actual or perceived conflict of interest rests with the member.

Skill and Competence

9. **A member engaged in the provision of forensic accounting services must apply the same degree of skill and competence that is required to be exercised in performing any other professional work.**

10. It is the responsibility of each member to evaluate his or her ability to render forensic accounting services and to determine what services will be offered to clients.

11. Before accepting an engagement to provide forensic accounting services, the member must exercise professional judgement to determine if he or she is qualified to offer the requested expert advice. Matters to be considered include:

(a) whether the member has been trained or practised in this area of professional practice; and

(b) the member's knowledge, experience and expertise in the type of work requested.

12. Engagements may require the consideration of matters that are outside a member's professional expertise. In such cases, the member should either refuse to accept the engagement or seek expert assistance or advice from a suitably qualified third party. The member should disclose in any reports or other relevant communications the extent of the reliance upon the advice of such a third party.

Reasonable Care

13. **A member must take reasonable professional care in the provision of forensic accounting services.**

14. The exercise of reasonable care requires a critical review at every level of supervision of the work done, and the judgment exercised, by those assisting in the assignment. Where the expert has utilised the services of partners, consultants or professional staff, it should be made clear that the work has been carried out by personnel acting under the control and direction of the expert.

15. A member should take reasonable care to ensure that the client has a clear understanding of the nature of the engagement (See APS 2: Terms of Engagement).

Confidentiality

16. **Information received by a member in the provision of forensic accounting services must not be used for any purposes other than the proper performance of professional duties.**

17. Unless there is a legal duty to disclose, a member must not convey any information relating to a client's affairs to a third party without the client's permission.

Professional Behaviour

18. **Where there is any direct or indirect communication between a member and a potential client which is, in substance, an arrangement to provide forensic accounting services, with or without charging a fee, the member must comply with the provisions of the Code of Professional Conduct (F3 – Changes in Professional Appointments).**

Incorrect or Misleading Information and Changes in Opinion

19. **A member shall not be associated with a report or an expression of opinion on behalf of a client if the member is aware that the report or opinion is based upon or contains incorrect or misleading information, or omits material information.**

20. A member who becomes aware that a report or opinion is based upon incorrect or misleading information or omits material information must immediately inform his or her client that information has been received that invalidates previous opinions. In such circumstances, earlier opinions should be revised and reissued.

Performance Standards

Quality Control

21. **Members must comply with the requirements of the APS 4 Statement of Quality Control Standard.**

22. **In partic[illegible], members must ensure that:**

APS

(?) ... assignment is adequately documented.

Estimates

23. During the course of providing forensic accounting services, members may be instructed, or may seek, to utilise estimates or make assumptions concerning past or future events, facts or amounts, where more accurate data is not available or where the obtaining of better or more reliable data is not appropriate or practicable. In such circumstances, members should ensure that the use of such estimates or assumptions is:

(a) reasonable in the circumstances; and

(b) suitably qualified and disclosed.

Court Imposed Standards

24. A member providing forensic accounting services must adhere to any duties and performance requirements imposed under the law or set out in various guidelines established by Courts or Tribunals in various State and Federal jurisdictions.

Part 3

Remuneration

25. A member providing forensic accounting services shall be remunerated for such services by way only of professional fees computed in accordance with the Code of Professional Conduct (section D and F6).

26. No part of any fee charged or received, whether directly or indirectly, when acting as an independent accounting expert is to be related to the outcome of a matter or the amount of the damages awarded.

27. Members' attention is drawn to the provisions of the Code of Professional Conduct, section D2, Advisory Services – Fees and Commissions.

Statement of Financial Advisory Service Standards

(October 2005)

Note from the Institute of Chartered Accountants in Australia

This note, prepared by the technical editor, is not part of APS 12.

Historical development

October 2005: APS 12 was operative from 1 November 2005. It governs all aspects of financial advice provided by members of CPA Australia and the Institute of Chartered Accountants in Australia, including clear definitions in relation to fees and commissions, whether fees should be the preferred method of remuneration, and the banning of heavy initial-fee discounting. It provides an objective set of measures against which members, who are involved in the provision of financial advisory services, can be assessed.

- may diminish the usefulness of the pack if it is no longer comparable to previous results and the results of other divisions
- may result in a reduction in organisation and shareholder wealth

7. Make a Decision

Balance the consequences against the Fundamental Principles and any other rules or values and select the alternative that best fits. Develop a clear plan of action with specific objectives.

In the light of the analysis, Susan could adopt the following plan:

First, Susan can try once more to explain to Harry that the national office determines accounting policies and that a change in accounting policy must be disclosed in the statutory accounts.

If this fails to resolve the issue, then Susan could explain to Harry that she would need to raise the matter as an accounting issue with the accounting department in the national office.

If this fails to resolve the issue and if Harry commences disciplinary action against Susan, then Susan should explain the basis of her actions in writing to Harry and to management at the national office.

Joint Guidance Notes GN2

Forensic Accounting

(December 2002)

Contents

Introduction

1. The Forensic Accounting Special Interest Group ("**FASIG**") is a group of members of The Institute of Chartered Accountants in Australia ("**the Institute**") with representation from CPA Australia, who practice in the area of "*forensic accounting*".
2. Forensic accounting services are defined in paragraph 3 of APS 11.
3. Forensic accountants may be engaged as "*independent accounting experts*" or as "*consultant accounting experts*" – collectively referred to as forensic accountants throughout these Guidance Notes.
4. The purpose of these Guidance Notes is to provide a practical guide for members who act as independent accounting experts. It is not intended to be a "how-to" guide, but to be a reference to assist members to identify issues.
5. These notes are intended for guidance purposes only and do not replace or interpret the requirements of the Supplementary Royal Charter, the By-Laws, Code of Professional Conduct or [illegible]nical Standards.

6. In view of the nature of forensic accounting, m[illegible]bers are reminded of the prohibition on the giving of advice that might be deemed [illegible] be legal advice, unless members are appropriately licensed by the relevant State and Federal authorities.

Role and duty of an independent accounting expert

7. The Federal Court Practice Direction "Guidelines for Expert Witnesses in Proceedings in the Federal Court of Australia" dated 15 September 1998, includes the following statements under the heading "General Duty to the Court":
   - "An expert witness has an overriding duty to assist the Court on matters relevant to the expert's area of expertise;
   - An expert witness is not an advocate for a party.
   - An expert witness's paramount duty is to the Court and not to the person retaining the expert."
8. Other Courts have issued similar guidance with respect to the role and duty of expert witnesses. These documents have been issued by the Courts to codify the general principles of independence and objectivity. These principles are inherent in the standards generally expected of all members.
9. As set out above, the primary role of an independent accounting expert in litigation is to assist the Court by providing opinions or interpretations of factual information, based upon the expert's expertise in a subject area which is outside of the knowledge, skill or experience of the Court.
10. The primary duty of the independent accounting expert is to the Court and not to his or her client. The expert should ensure that in providing opinions he or she does not act as an advocate. The expert should at all times ensure that the work done, including any opinions given in evidence, is consistent with this overriding obligation.
11. The independent accounting expert is subject to the normal duty of an expert witness.
12. An independent accounting expert must not do anything which compromises, impairs, or is likely to impair either:-
    - the expert's duty to the Court; or
    - the expert's independence or integrity.

Role and duty of a consultant accounting expert

13. Consultant accounting experts provide a range of services including an assessment of the strengths and weaknesses of the positions of the parties to a dispute, and/or assistance in the development of strategies to resolve the dispute in the best interest of clients.
14. The role of a consultant accounting expert is fundamentally different from that of an independent accounting expert, in that the consultant accounting expert's primary duty is to his or her client and not to the Court. Despite this difference, members who act as consultant accounting experts are reminded that the professional standards set out in APS 11 apply to all the provisions of forensic accounting services.
15. The consultant accounting expert should be aware that, due to the proximity of his or her relationship with a client and/or the client's legal representatives, there may be a perception that the consultant accounting expert cannot act independently if subsequently engaged to act as an independent accounting expert.
16. Accordingly, if a member is requested to act as an independent accounting expert, having previously acted as a consultant accounting expert, the member should consider whether his or her work as a consultant accounting expert is likely to impair the member's independence or compromise his or her primary duty to the Court. If the member concludes that such an impairment exists, or may be perceived to exist, he or she should decline the assignment.

Engagemer[illegible]ssues

Scope of expertise

17. Since the role of the independent accounting expert is to assist the Court, it is essential that the independent accounting expert has the necessary expertise. Therefore, in consultation with the client or the client's legal representatives, the independent accounting expert should consider whether he or she has the necessary knowledge, skill or experience to carry out the requested assignment.
18. The independent accounting expert should make it clear to the client or the client's legal representatives at the earliest opportunity when a particular question or issue falls outside his or her field of expertise.

Independence

19. In a forensic accounting assignment a conflict of interest may exist where the independent accounting expert's ability to carry out the assignment with objectivity could be impaired, or could be perceived to be impaired, by current, past or possible future relationships with parties to the dispute. The criteria for evaluating whether a conflict exists is whether the independent accounting expert is, in fact, able to maintain independence and objectivity.
20. Independent accounting experts should be mindful of and deal with any perceived or apparent conflicts before accepting an assignment.
21. Subject to paragraph 22, an independent accounting expert shall not accept instructions in any matter where there is a conflict of interest that may affect his or her independence.
22. Notwithstanding paragraph 21, where a relationship exists which constitutes a conflict of interest, the independent accounting expert may accept an assignment, provided full disclosure of the relationship is made in writing and the relevant party or parties acknowledge the disclosure and accept the appointment. Where all opposing parties agree to appoint a single independent accounting expert, the independent accounting expert may accept the appointment. Not all conflicts of interest may be adequately dealt with though disclosure and consent. Where doubt exists, legal advice should be obtained.
23. Before accepting an appointment, the independent accounting expert should determine whether a lack of independence or a conflict of interest exists, or is likely to arise in the future. The following are examples of procedures that could be undertaken to determine whether a conflict of interest exists or could arise:-
    - a search for evidence of current involvement with existing and opposing parties and related interests or directorships or shareholdings;
    - a search of interstate or overseas offices for evidence of similar involvement. A multi-office firm may need a formal system to identify relationships that may cause potential conflicts; and
    - a search for evidence of previous involvement in the action.
24. It should be noted that a conflict may exist where other members of the independent accounting expert's firm (as opposed to the individual member) have had an involvement as described above. The procedures set out in the above paragraph should therefore be undertaken for the independent accounting expert's firm as a whole. It is also necessary for the independent accounting expert to continue to monitor potential conflicts where the assignment is lengthy or involves several parties.

Terms of engagement

25. Members are reminded of the obligations regarding engagements required under APS 2. In particular, the independent accounting expert should ensure that the role is clearly defined, and the scope and purpose of the work to be performed is clearly set out.

Fees

26. Members are at all times bound by the Institute's and CPA Australia's Code of Professional Conduct in relation to fees (particularly CPC F6).

27. There is an inherent conflict between the need for independence and objectivity of an independent accounting expert, and success or contingency fee arrangements where the independent accounting expert is financially interested in the outcome of the dispute. In particular, where such arrangements exist and become known in Court proceedings, the independent accounting expert may be discredited on the basis of a lack of independence and objectivity. In a Court environment such perceptions may erode the value of the evidence of the independent accounting expert.

28. Consequently, in relation to work performed as an independent accounting expert, fees are not to be charged or received on a success or contingency fee basis. That is, no part of any fee charged or received when acting as an independent accounting expert is to be related to the outcome of any matter, nor the amount of any damages awarded. Members are reminded that in some jurisdictions, relevant Court rules require the details of fee arrangements be provided to the Court.

29. Independent accounting experts should charge a fee based upon hourly rates or a fixed fee. The basis of fees should be clearly stated in the independent accounting experts' report.

Communications and meetings

30. Members should be aware that details of communications and records of meetings may be discoverable. Consequently, care should be taken when recording instructions and conversations to ensure that the file notes adequately reflect the intentions of the parties at that time.

31. Opinions may change upon receipt of new and additional information. Consequently, it may be desirable for the member to record in the file notes the dates upon which information is received.

Documents and assumptions relied upon

32. In the course of his or her work, the independent accounting expert will be provided with documents and assumptions upon which the independent accounting expert's opinion is to be based. For example, the independent accounting expert may be asked to calculate the loss that would have arisen in a particular set of assumed circumstances.

33. The independent accounting expert is generally entitled to rely on the documents that are provided and is not required to audit this information. However, consistent with the general duty to the Court, the independent accounting expert should review the information provided and consider its reasonableness and consistency with other available evidence. Where the evidence provided to the independent accounting expert is inconsistent with other known data, and the inconsistency is material to the independent accounting expert's conclusions, then the nature and extent of this inconsistency should be brought to the attention of the client and/or the client's legal representatives, and if not resolved to the independent accounting expert's satisfaction, to the Court.

34. Similarly, where the independent accounting expert is asked to base his or her opinion on a set of assumed circumstances, the independent accounting expert should consider whether those assumptions are reasonable and realistic in the light of the independent accounting expert's experience and other available evidence. Where the independent accounting expert considers that an assumption is not reasonable or realistic then the independent accounting expert should bring this to the attention of the client or the client's legal representatives. The independent accounting expert should not base his or her opinion on assumptions that are unreasonable or unrealistic and may mislead the Court.

35. Members are reminded that the Federal Court Practice Direction referred to above requires the independent accounting expert to declare in the report whether any "matters of significance which the expert regards as relevant have to the expert's knowledge been withheld from the Court". In particular the independent accounting expert should consider any other material facts that may detract from his or her opinions.

36. Members are reminded that in certain jurisdictions, Courts require reports by expert witnesses to specify all of the documents and other information relied upon, and may require such material to be attached to the report.

37. Independent accounting experts should record in their file notes or reports all documents and other sources of information relied upon and those considered but not relied upon in preparing their reports.

38. Members should consider the integrity of any documents that come into their possession.

Reports and appendices

Draft reports

39. Generally members should assume that where an independent accounting expert's report is expected to be tendered in evidence, all working papers supporting opinions expressed in that report may also be discoverable, either by an opposing expert and/or by legal representatives and/or a Court or Tribunal.

40. Items that may be subject to discovery include the following:-
    - letters of instruction, including fee arrangements and fees billed;
    - file notes of meetings with solicitors, clients, and other persons;
    - copies of documents relied upon in the preparation of the report;
    - the report, including any drafts thereof if retained;
    - any draft reports contained on computer systems or other electronic media;
    - working papers including computer generated worksheets;
    - review notes; and
    - all data in electronic form.

41. In the course of an independent accounting expert's work, it is likely that draft reports will be produced and provided to the client and/or the client's legal representatives. Draft reports should be submitted only for the following purposes:
    - to verify the factual content of the report, eg background and understanding of the issues in dispute;
    - to verify any verbal instructions;
    - to identify material assumptions relied upon, which may be required to be supported by other evidence; and
    - to identify documents relied upon, but not yet discovered.

42. In view of the possibility of discovery, it may be prudent for members to consult with their client or their client's legal representatives before any written advice is released.

43. The independent accounting expert's report must represent his or her objective and unbiased opinions. Where changes in the independent accounting expert's opinions occur, it may be perceived that the revised opinion is not that of the independent accounting expert. The independent accounting expert should therefore ensure, where his or her opinion has changed during the course of the assignment, that any amendments to draft reports are capable of being explained and that sound reasons for the revised opinion can be demonstrated.

44. Where opinions of the independent accounting expert have changed because of the receipt of additional information, it may be prudent for the independent accounting expert to record the date of receipt of that information to assist in the explanation of any change of opinion.

45. Guidance for the conduct of pre-hearing conferences of opposing independent accounting experts is provided in Appendix 1.

Content of independent accounting expert's report

46. As a guide, and having regard to various Court Rules, an independent accounting expert's written report should clearly and fully state:-
    - the instructions received, whether oral or written, and if written, they should be attached as an appendix to the independent accounting expert's report;
    - the assumed facts upon which the report is based;
    - the independent accounting expert's qualifications and experience relevant to the area of forensic accounting at issue;
    - a list of all documents and sources of information relied upon in the preparation of the report, including where appropriate, details of any other expert's reports which were relied upon;
    - details of material assumptions made;
    - where applicable, a description of the method employed, and why alternative methods were not appropriate;
    - where several opinions are offered, a summary of those opinions should be prepared; and
    - where there is a range of opinions, a summary of the range of opinions.

47. A declaration concerning the provision of information to the Court may also be required in certain jurisdictions.

Visual aids

48. Members should be mindful that complex organisational relationships, transactions or document flows may be more clearly described with the aid of charts or other visual aids, rather than by text alone.

49. It may be helpful to consult with the client and/or the client's legal representatives in the early stages of the assignment in order to determine the most appropriate method of presentation.

Declarations and ongoing obligations

50. Upon completion of the independent accounting expert's report, members are referred to various declarations that may be required in accordance with relevant Court rules.

Appendix 1 – Conference of Independent Accounting Experts

Introduction

1. The ALRC's four-year review of the Federal civil justice system resulted in a report "Managing Justice: A review of the federal civil justice system", which was delivered in February 2000.

2. Recommendations were made in that report about litigation practice, procedure and case management, including the development of guidelines on the conduct of Court or Tribunal ordered, or party arranged, conferences of experts.

3. Concerns were raised in the report about the incidence of and effectiveness of conferences and other pre-hearing contact between experts.

4. It was recommended that experts should take the initiative before a hearing, to correct any misstatement or apparent misunderstanding of the evidence they have provided to the Court.

5. It was recognised that in disputes, experts retained by one party may be instructed to adopt facts and assumptions as the basis for their analysis and opinions that are different from the instructions to experts retained by other parties.

6. Further, it was recognised that often it is not until after all expert evidence is submitted that other issues arise, including issues that may be in common or issues that could give rise to no dispute between experts if some assumptions are found to be fact during trial.

7. The development of this guide is seen as an aid to assist members in addressing these issues.

Guidelines

Aims and objectives

8. In order to perform the primary duty to assist the Court, a pre-trial conference of independent accounting experts should have the following objectives:
    - clarification of significant competing assumptions and/or facts;
    - discussion and/or agreement on competing methodologies;
    - clarification of the above issues at an early stage before trial; and
    - preparation of a joint statement on matters in agreement and matters still in dispute.

9. It is not the objective of the conference of independent accounting experts, unless both independent accounting experts are instructed to do so, to reach agreement on or negotiate on material issues of fact or quantum (ie the ultimate issue), or to explore other issues not currently argued by the parties.

10. Where independent accounting experts are directed by a Court to meet, it is inappropriate that instructions be given by instructing solicitors not to attempt to reach agreement. In that situation, members are reminded of their primary duty to the Court.

11. In order to achieve the required objectives, members are reminded that objectivity is paramount and, therefore, participating in a conference with another independent accounting expert is not to be seen as a medium for advocating one party's cause.

Conduct of meetings

12. Whether instructing solicitors are to attend a conference of independent accounting experts, or whether meetings are to be held "in private", is a matter either for direction by a Court, or the parties themselves.

13. It may be of assistance to develop an agenda before the meeting to ensure that each independent accounting expert has covered all relevant matters and the opposing independent accounting expert has been given sufficient time to address each issue.

14. An outline of a suggested agenda is attached as **Annexure A**.

Notes of meetings

15. It is preferable that any notes issued subsequent to a conference of experts be signed jointly as a record of matters discussed and agreed or disagreed.

Reporting back

16. It is considered appropriate to report back to instructing solicitors the results of discussions with opposing experts, and where necessary, to take additional instructions.
17. Where the experts recommend further conferences but instructions are received not to attend further conferences, any joint report should communicate that fact to the Court via the Joint Statement of experts.

Joint Statement

18. Where relevant, as a result of a conference, members should confirm in writing:-
    - a list of issues that have been agreed;
    - a list of issues that have not been agreed, including, in each instance, the basis or reasons for disagreement;
    - a list of further issues, if any, that have arisen and that were not included in the original agenda for the discussion; and
    - a record of further action, if any, to be taken, including if appropriate, the holding of further discussions between experts.
19. If, as a result of those discussions, certain adjustments are required to an expert's earlier opinions, the effect of any changes should be clearly set out within the Joint Statement together with the reasons thereof, including detailed calculations.
20. The Joint Statement should be made available expeditiously to the Court and to all parties.

Costs

21. Where, as a matter of practicality, one expert agrees to substantially prepare the Joint Statement, that expert should seek instructions from their instructing party as to who bears the costs.
22. It is preferable that agreement be reached with all relevant parties as to the likely cost of the preparation of the Joint Statement prior to the conference.
23. If costs are to be shared, time records should be kept with sufficient detail to facilitate cost sharing.

Declarations

24. Members are reminded, when completing the Joint Statement, of any declarations that must be made under relevant Court guidelines.

Annexure A

In the matter of

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Agenda

Time: ______________________________

Place: ______________________________

Attendees: ______________________________

- Questions (refer attached)
- Material issues in dispute
- Material assumptions
- Methods
- Agreed assumptions and methods
- Effect of agreed assumptions and methods
- Action in relation to matters still disagreed
- Agreed notes of meeting
- Agreed responsibility and timetable for Joint Statement