

## APES 215 Forensic Accounting Services

[Supersedes APES 215 Forensic Accounting Services Issued in July 2019]

EXPOSURE DRAFT **XX/22**

ISSUED **XXX 2022**

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### **Commenting on this Exposure Draft**

This Exposure Draft, Proposed Standard APES 215 *Forensic Accounting Services*, was developed and approved by the Accounting Professional & Ethical Standards Board Limited (APESB).

The proposals in this Exposure Draft may be modified in light of comments received before being issued in final form. Comments are requested by **XX XXX 202X**.

Comments should be addressed to:

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APESB would prefer that respondents express a clear overall opinion on whether the proposed amendments, as a whole, are supported and that this opinion be supplemented by detailed comments, whether supportive or critical, on any matter. APESB regards both critical and supportive comments as essential to a balanced view of the proposed amendments.

APESB also invites comments regarding these proposed amendments from small and medium-sized firms.

Respondents are asked to submit their comments electronically through the APESB website, using the link <https://apesb.org.au/current-projects/>.

Please submit comments in both a PDF and Word file. All comments will be considered a matter of public record and will ultimately be posted on the website [www.apesb.org.au](http://www.apesb.org.au).

APESB prefers that comments are submitted via its website. However, if there are practical difficulties, comments can also be sent to [sub@apesb.org.au](mailto:sub@apesb.org.au) or mailed to the address noted above. Whilst APESB prefers formal submissions we also encourage opinions and comments to be sent via email to [sub@apesb.org.au](mailto:sub@apesb.org.au).

### **Obtaining a copy of this Exposure Draft**

This Exposure Draft is available on the APESB website: [www.apesb.org.au](http://www.apesb.org.au)

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## Reasons for issuing Exposure Draft 0X/2X

APESB is proposing to revise APES 215 *Forensic Accounting Services* (APES 215) for the reasons set out below.

### Definitions and Examples in APES 215

APESB received a [submission](#) from the Australian Securities and Investments Commission (ASIC) recommending that APESB amend some of the definitions and examples in APES 215. ASIC contends evidence adduced to the court under section 50 of the *Evidence Act 1995* (Evidence Act) is not expert evidence but lay observations. Section 50 of the Evidence Act enables evidence to be adduced of the contents of 2 or more documents as a summary if the court is satisfied it would not be possible to conveniently examine otherwise due to the volume or complexity of the documents. The opinion rule does not apply to evidence adduced under section 50.

ASIC contends that bank officers produce the underlying documents to the court, including bank statements, bank vouchers and trace reports, and ASIC's Forensic Accounting Services officers highlight and summarise key information directly from those source documents. As such, ASIC believes that amendments to APES 215 are required in respect of the definitions of Lay Witness Service and Other Evidence and Examples 6 and 7 in Appendix 3.

### Quality Management Conforming Amendments

In December 2020, the International Auditing and Assurance Standards Board (IAASB) issued new quality management standards which will supersede the IAASB's quality control standards from 15 December 2022. The Auditing and Assurance Standards Board (AUASB) issued Australian equivalents of the IAASB's quality management standards in March 2021. The AUASB Quality Management Standards will apply to Australian assurance practices from 15 December 2022.

APESB reissued APES 320 *Quality Control for Firms* as APES 320 *Quality Management for Firms that provide Non-Assurance Services* (reissued APES 320) in February 2022, effective from 1 January 2023.

As a result of the finalisation of the above standards, APESB proposes to amend APES 215 for quality management conforming amendments, to ensure it remains consistent with the reissued APES 320 and where applicable AUASB Quality Management Standards.

## Key requirements and guidance in Exposure Draft 0X/21

This Exposure Draft sets out the proposed amendments to the extant APES 215. The key revisions to APES 215 proposed in ED 0X/2X include:

- Addition of paragraph 1.8 to clarify that for a Forensic Accounting Services other than Expert Witness Services must comply with the requirements in APES 215 except Section 5;
- References to Appendix 1 in the definitions of Expert Witness Service, Lay Witness Service and Other Evidence and references to Appendices 2 and 3 in the definition of Forensic Accounting Services;
- Amendments to the definition of Lay Witness Service to note that such services do not require the Member to ~~utilise~~ the Member's specialised knowledge derived from the Member's training, study or experience;-
- Quality Management conforming amendments to paragraphs 1.1, 7.1 and 7.2;
- New paragraph 3.14 that if the Member's Report discloses the Member's specialised knowledge derived from training, study or experience then the Member must perform the service as an Expert Witness Service;

- Amendments to Appendix 1 to better differentiate observed facts and scientific facts, the latter is based on the Member's specialised knowledge derived from the Member's training, study or experience;
- Amendments to Appendix 2 to highlight that Expert Witness Services must comply with all the requirements in APES 215, whereas Forensic Accounting Services other than Expert Witness Services must comply with the requirements of the Standard other than Section 5;
- Amendments to examples 6 and 10 of Appendix 3 to remove references to 'summary' so as not to inadvertently confuse this with a summary adduced under Section 50 of the Evidence Act;  
~~and~~
- Amendments to example 7 of Appendix 3 to include an example where Section 50 of the Evidence Act may and may not apply; ~~and~~.
- Amendments to example 21 of Appendix 3 so that the example relates to a lay witness and not a Lay Witness Service as defined in APES 215.

#### **Proposed Operative Date**

It is proposed that this Standard will be effective for engagements commencing on or after **XX XXX 202X**.

Early adoption of the revised Standard will be permitted.

## APES 215 Forensic Accounting Services

[Supersedes APES 215 Forensic Accounting Services issued in ~~July~~December 2013~~6~~]

REVISED: ~~XXX~~July 202~~X~~19

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## 1. Scope and Application

- 1.1 The objective of APES 215 *Forensic Accounting Services* is to specify a Member's professional and ethical obligations in respect of:
- the provision of a *Forensic Accounting Service* to a Client or Employer;
  - the types of *Engagements* or *Assignments* that are a *Forensic Accounting Service*;
  - applicable *Independence* requirements;
  - relationships and the provision of other *Professional Activities* that create threats to compliance with the fundamental principles;
  - the obligations of a Member who provides an *Expert Witness Service* and the required disclosures in the *Member's Report*; and
  - applicable quality ~~management~~*control* and documentation obligations.
- 1.2 Accounting Professional & Ethical Standards Board Limited (APESB) has revised professional standard APES 215 *Forensic Accounting Services* (**the Standard**), which is effective for *Engagements* or *Assignments* commencing on or after 1 ~~XXX~~*January 202X0* and supersedes APES 215 issued in ~~July~~*December 20195*. Earlier adoption of this Standard is permitted.
- 1.3 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**, preceded or followed by discussion or explanations in normal type. APES 215 should be read in conjunction with other professional duties of *Members*, and any legal obligations that may apply.
- 1.4 **Members in Australia shall follow the mandatory requirements of APES 215 when they provide *Forensic Accounting Services*.**
- 1.5 **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.**
- 1.6 **Where a *Professional Activity* which, when it commenced was not a *Forensic Accounting Service*, later becomes a *Forensic Accounting Service*, the Member shall comply with the requirements of this Standard from that time onwards.**
- 1.7 **Where a Member is undertaking a *Forensic Accounting Service*, other than an *Expert Witness Service*, which later becomes an *Expert Witness Service*, the Member shall comply with the requirements of Section 5 of this Standard from that time onwards.**
- 1.8 **Where a Member is undertaking a *Forensic Accounting Services*, other than an *Expert Witness Service*, the Member shall comply with the requirements of this Standard other than Section 5.**
- ~~4.81.9~~ **Members shall comply with other applicable *Professional Standards* and be familiar with relevant guidance notes when performing *Professional Activities*. All *Members* shall comply with the fundamental principles outlined in the *Code*.**
- ~~4.91.10~~ The Standard is not intended to detract from any responsibilities which may be imposed by law or regulation.
- ~~4.101.11~~ All references to *Professional Standards*, guidance notes and legislation are references to those provisions as amended from time to time.

4.141.12 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**.

4.121.13 In this Standard, unless otherwise specified, words in the singular include the plural and vice versa, words of one gender include another gender, and words referring to persons include corporations or organisations, whether incorporated or not.

## 2. Definitions

Defined terms are shown in the body of the Standard in title case.

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 **Professional Activities** 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 **Professional Activities** are provided by a **Member in Public Practice** in respect of **Engagements** of either a recurring or demand nature.

**Code** means APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)*.

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

**Consulting Expert Service** means a **Professional Activity** provided in the context of **Proceedings**, other than an **Expert Witness Service**, a **Lay Witness Service** or an **Investigation Service**. It includes acting as an adviser, an arbitrator, a mediator, a member of a professional tribunal, an expert in an expert determination, a referee or in a similar role.

**Contingent Fee** means a fee calculated on a predetermined basis relating to the outcome of a transaction or the result of the services performed by the **Firm**. 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 bodies exercising judicial or quasi-judicial functions and includes professional disciplinary tribunals, industrial and administrative tribunals, statutory or parliamentary investigations 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 **Professional 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 **Writing**.

**Expert Witness** means a **Member** who has been engaged, assigned or otherwise obligated to provide an **Expert Witness Service**. As an Expert Witness, the **Member** may express opinions or provide **Other Evidence** to the **Court** based on the **Member's** specialised knowledge derived from the **Member's** training, study or experience on matters such as whether technical or **Professional Standards** have been breached, the amount of damages, the amount of an account of profits, or the amount of a claim under an insurance policy. Generally, all opinion evidence is expert evidence if it is wholly or substantially

based on the specialised knowledge derived from the Member's training, study or experience. However, not all expert evidence is opinion evidence. Expert evidence may be opinion or Other Evidence.

**Expert Witness Service** means a Professional Activity provided in the context of Proceedings to give expert evidence, ~~whether orally or in the form of a Report or both, in certain circumstances, orally.~~

*Appendix 1 includes a discussion on expert evidence, facts, assumptions and opinions and some examples to assist a Member to determine whether a matter is a fact, an assumption or opinion for the purposes of APES 215.*

**Firm** means:

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

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

*Appendix 2 includes a Decision Tree, and Appendix 3 includes examples of Forensic Accounting Services, to assist a Member to determine the type of Forensic Accounting Service the Member has been engaged, assigned or otherwise obligated to provide for the purposes of APES 215.*

**Independence** comprises:

- (e) Independence of mind - the state of mind that permits the expression of a conclusion without being affected by influences that compromise professional judgement, thereby allowing an individual to act with integrity, and exercise objectivity and professional scepticism.
- (f) Independence in appearance - the avoidance of facts and circumstances that are so significant that a reasonable and informed third party would be likely to conclude that a Firm's, or a Member's integrity, objectivity or professional scepticism has been compromised.

**Investigation Service** means a Professional Activity to perform, advise on, or assist with an investigation, whether in the context of Proceedings, or in connection with allegations of, or concerns regarding conduct that may be illegal, unethical or otherwise improper in respect of which the Member has a reasonable expectation that the matter will be brought before a Court.

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

**Lay Witness Service** means a Professional Activity provided in the context of Proceedings to ~~give~~provide evidence other than expert evidence, whether orally or in the form of a Report or both. This service involves the Member giving evidence on matters ~~within the Member's professional knowledge~~ that are directly observed or perceived by the Member ~~that does not require the Member to use the Member's specialised knowledge derived from the Member's training, study or experience.~~

*Appendix 1 includes a discussion on facts (including observed facts), assumptions and opinions and some examples to assist a Member to determine whether a matter is a fact, an assumption or opinion for the purposes of APES 215.*

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

**Member in Business** means a **Member** working in areas such as commerce, industry, service, the public sector, education, the not-for-profit sector, or in regulatory or professional bodies, who might be an employee, contractor, partner, director (executive or non-executive), owner-manager or volunteer.

**Member in Public Practice** means a **Member**, irrespective of functional classification (for example, audit, tax or consulting) in a **Firm** that provides **Professional Services**. This term is also used to refer to a **Firm** of Members in Public Practice and means a practice entity and a participant in that practice entity as defined by the applicable **Professional Body**.

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

*Appendix 1 includes a discussion on expert evidence, facts, assumptions and opinions and some examples to assist a Member to determine whether a matter is a fact, an assumption or opinion for the purposes of APES 215.*

**Proceedings** means a matter before a **Court**, a matter which the **Member** has a reasonable expectation will be brought before a **Court** or a matter in which the **Member** is undertaking **Professional Activities** to help a **Client** or an **Employer** make an assessment as to whether a matter should be brought before a **Court**.

**Professional Activity** means an activity requiring accountancy or related skills undertaken by a **Member**, including accounting, auditing, tax, management consulting, and financial management.

**Professional Bodies** means Chartered Accountants Australia and New Zealand, CPA Australia and the Institute of Public Accountants.

**Professional Services** means **Professional Activities** performed for **Clients**.

**Professional Standards** means all standards issued by Accounting Professional & Ethical Standards Board Limited and all professional and ethical requirements of the applicable **Professional Body**.

**Report** means a written report, affidavit or written statement that is for the purpose of communicating expert evidence or lay evidence in **Court**.

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

**Writing** means a mode of representing or reproducing words in a visible form and includes words in an electronic format capable of being converted to printed text.

### 3. Fundamental responsibilities of Members

3.1 A **Member** providing a **Forensic Accounting Service** shall comply with Part 1 *Complying with the Code, Fundamental Principles and Conceptual Framework* of the **Code** and with relevant laws and regulations.

### Public interest

- 3.2 In accordance with Section 100 *Complying with the Code* of the Code, a Member shall observe and comply with the Member's public interest obligations when providing a Forensic Accounting Service.
- 3.3 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 Subsection 111 *Integrity* and Subsection 112 *Objectivity* of the Code.
- 3.4 Members in Public Practice shall comply with Section 310 *Conflicts of Interest* of the Code.
- 3.5 When a Member is requested to perform an Expert Witness Service and the Member or the Member's Firm has previously provided a Forensic Accounting Service other than an Expert Witness Service, the Member shall consider whether the Member is able to perform the Expert Witness Service in an objective manner.

### Professional Independence

- 3.6 When a Member in Public Practice is engaged to provide a Forensic Accounting Service which requires Independence or when the Member purports to be independent in providing a Forensic Accounting Service, the Member shall comply with Independence as defined in this Standard.
- 3.7 A Member in Public Practice shall determine 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).
- 3.8 Where a Forensic Accounting Service is an assurance Engagement, the Member in Public Practice shall comply with Part 4A *Independence for Audit and Review Engagements* or Part 4B *Independence for Assurance Engagements Other than Audit and Review Engagements* of the Code, as applicable.
- 3.9 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,
- and the proposed Professional Service is related to the Expert Witness Service, and the Member determines that a reasonable and informed third party<sup>1</sup> would regard the objectives of the proposed Professional Service to be undertaken as being inconsistent with the objectives of the Expert Witness Service, then the Member shall decline the Engagement or the relevant part thereof.
- 3.10 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 a Client for whom the Member provides other Professional Services.

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1 The term 'reasonable and informed third party' is explained in paragraph 120.5 A64 of the Code.

- 3.11 A **Member** who is providing an **Expert Witness Service** shall disclose all matters in the **Member's Report** that would assist the **Court** to assess the degree of the **Member's Independence**.

#### Professional competence and due care

- 3.12 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 Subsection 113 *Professional Competence and Due Care* of the **Code**.

- 3.13 **Forensic Accounting Services** generally require a **Member** to have specialised knowledge derived from the **Member's** 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 specialised knowledge derived from the **Member's** training, study or experience.

- 3.14 ~~Wherea there is an expectation that the **Member's Report** will specifies—disclose the **Member's specialised knowledge derived from the Member's training, study or experience**, the **Member** shall perform the service that is the subject of the **Report** as an **Expert Witness Service** for the purposes of this **Standard**.~~

- 3.143.15 In accordance with Section 230 *Acting with Sufficient Expertise* of the **Code**, a **Member in Business** shall only undertake **Assignments** for which the **Member** has, or can obtain, sufficient training or expertise and shall not intentionally mislead an **Employer** as to the level of expertise or experience possessed, nor shall a **Member** fail to seek appropriate expert advice and assistance when required.

- 3.153.16 Where a **Forensic Accounting Service** or part thereof requires the consideration of matters that are outside a **Member in Public Practice's** professional expertise, the **Member** shall seek expert assistance or advice from a suitably qualified third party on those matters or decline all, or that part of, the **Forensic Accounting Service**. Where the **Member** relies upon the advice of a third party, the **Member** shall disclose in any **Report** issued by the **Member** the name and qualifications of the third party and the area in the **Report** where the third party advice has been obtained.

- 3.163.17 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 **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.

#### Confidentiality

- 3.173.18 A **Member** who acquires confidential information in the course of performing a **Forensic Accounting Service** for a **Client** or **Employer** shall comply with Subsection 114 *Confidentiality* of the **Code**.

- 3.183.19 Subject to legislative requirements, where a **Client** or **Employer** has given a **Member** 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** or **Employer's** permission.

#### 4. Professional Engagement matters

- 4.1 A **Member in Public Practice** shall document and communicate the **Terms of Engagement** to provide a **Forensic Accounting Service** to a **Client** in an **Engagement Document** in accordance with APES 305 *Terms of Engagement*.
- 4.2 A **Member in Public Practice** who is approached by a potential **Client** to undertake a **Forensic Accounting Service** shall comply with Section 320 *Professional Appointments* of the **Code**.

#### 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**,

and the proposed **Expert Witness Service** is related to the other **Professional Service**, and the **Member** determines that a reasonable and informed third party<sup>2</sup> would regard the objectives of the proposed **Expert Witness Service** to be undertaken as giving rise to a conflict with the objectives of the other **Professional Service**, then the **Member** shall decline the **Engagement** or the relevant part thereof.

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

and the **Member** determines that a reasonable and informed third party<sup>3</sup> would regard the objectives of the proposed **Expert Witness Service** to be undertaken as giving rise to a conflict with the objectives of the other service, or if the **Member's** objectivity is impaired as a result of the **Employer's** interest in the outcome of the **Proceedings**, then the **Member** shall decline the **Assignment** or the relevant part thereof.

- 5.3 Paragraph 5.2 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.
- 5.4 A **Member** who is acting as an **Expert Witness** shall comply with the following:
- (a) the paramount duty to the **Court** which overrides any duty to the **Client** or **Employer**;
  - (b) a duty to assist the **Court** on matters relevant to the **Member's** area of expertise in an objective and unbiased manner;
  - (c) a duty not to be an advocate for a party; and

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2 The term 'reasonable and informed third party' is explained in paragraph 120.5 A64 of the **Code**.

3 The term 'reasonable and informed third party' is explained in paragraph 120.5 A64 of the **Code**.

- (d) a duty to make it clear to the **Court** when a particular question or issue falls outside the **Member's** expertise.

5.5 A **Member** who is acting as an **Expert Witness** should comply with evidentiary and procedural requirements relating to **Expert Witnesses**.

### The Report of an Expert Witness

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

- (a) the instructions received, whether oral or in **Writing**;
- (b) any limitations on the scope of work performed;
- (c) a statement of the **Member's** training, study or experience that are relevant to the matters on which the **Member** is providing expert evidence;
- (d) whether any of the opinions, findings or conclusions of the **Member** are not based wholly or substantially on the **Member's** specialised knowledge derived from training, study or experience;
- (e) the relationships, if any, the **Member** or the **Member's Firm** or the **Member's Employer** has with any of the parties to the **Proceedings** (including any of the matters referred to in paragraphs 3.9, 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;
- (f) the extent, if any, of reliance by the **Member** on the work of others;
- (g) the opinions formed, or **Other Evidence** given, by the **Member**;
- (h) whether an opinion or **Other Evidence** is provisional rather than concluded, and, if so, the reasons why a concluded opinion or concluded **Other Evidence** has not been provided;
- (i) the significant facts upon which the opinions or **Other Evidence** are based;
- (j) the significant assumptions upon which the opinions or **Other Evidence** 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; and
  - (ii) if the **Member** chose to make the assumption, then the reason why the **Member** made that choice;
- (k) if the **Member** considers that an opinion or **Other Evidence** may be misleading because a significant assumption is likely to mislead, then a statement to that effect and an explanation of why the assumption is likely to mislead;
- (l) where applicable, that the **Member's** opinion or **Other Evidence** is based upon another person's report;
- (m) the reasoning by which the **Member** formed the opinions or arrived at the **Other Evidence**, including an explanation of any method employed and the reasons why that method was chosen;
- (n) a list of all documents and sources of information relied upon in the preparation of the **Report**;
- (o) any restrictions on the use of the **Report**; and
- (p) a statement that the **Expert Witness Service** was conducted in accordance with this Standard.

- 5.7 In providing an **Expert Witness Service**, a **Member** should consider whether APES 225 *Valuation Services* is applicable to the **Engagement** or **Assignment**. APES 225 requires, amongst other things, that a **Member** make certain disclosures in a **Report**.
- 5.8 If a **Member** is not certain whether a matter is a significant assumption or an opinion, the **Member** should consult the legal representative of the **Member's Client** or **Employer**.
- 5.9 Working papers document the work performed by the **Member** and the process by which the **Member** arrived at an opinion or **Other Evidence** that may or may not be used in a **Report**. A working paper is not considered a **Report** unless it was specifically designed to communicate expert evidence to the **Court**.

## 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** who was engaged or assigned to provide an **Expert Witness Service** becomes aware that an opinion expressed or **Other Evidence** given by the **Member** in a **Report** or in oral evidence was based on information that was false, misleading or contained material omissions and that situation has not been subsequently disclosed in a **Report** or in oral testimony, the **Member** shall promptly inform, as appropriate, the legal representative of the **Client**, the **Employer** or the **Court** of the situation. The **Member** shall also consider whether it is necessary to issue a supplementary **Report**.
- 6.3 Where a **Member** encounters or becomes aware of instances of non-compliance or suspected non-compliance with laws and regulations (NOCLAR) when performing a **Forensic Accounting Service**, the **Member** shall comply with Section 260 *Responding to Non-Compliance with Laws and Regulations* (for **Members in Business**) or Section 360 *Responding to Non-Compliance with Laws and Regulations* (for **Members in Public Practice**) of the **Code**.
- 6.4 A **Member** providing a **Forensic Accounting Service** may be dealing with a suspected or actual illegal activity that is likely to be within the scope of the NOCLAR provisions of the **Code** as set out in Section 260 for **Members in Business** and Section 360 for **Members in Public Practice**. In these circumstances, it is more than likely that the **Member** and the **Client** or **Employer**, as applicable, are applying some or all of the processes and procedures described in the applicable NOCLAR response framework. However, the **Member** should still consider the **Member's** obligations under the relevant NOCLAR provisions in the **Code** and determine whether or not further action by the **Member** is required.

## 7 Quality ~~Management~~**Control**

- 7.1 A **Member in Public Practice** shall comply with the requirements of APES 320 *Quality ~~Management~~**Control** for Firms that provide Non-Assurance Services or where the Engagement is determined to be an assurance Engagement in accordance with paragraph 3.7, the Member shall comply with the requirements of Auditing Standard ASQM 1 Quality Management for Firms that Perform Audits or Reviews of Financial Reports and Other Financial Information, or Other Assurance or Related Services Engagements issued by the AUASB.*

- 7.2 A **Member in Business** who undertakes a **Forensic Accounting Service** should utilise a system of quality ~~management~~~~control~~ that includes appropriate policies and procedures dealing with elements of quality ~~management~~~~control~~ including but not limited to:
- (a) ~~Governance and Leadership responsibilities for quality within the Employer;~~
  - (b) ~~Professional Standard~~~~ethical requirements;~~
  - (c) ~~human r~~esources;
  - (d) **Assignment** performance; and
  - (e) monitoring ~~and remediation.~~
- 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.
- 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**.

## 8 Professional fees

- 8.1 A **Member in Public Practice** providing a **Forensic Accounting Service** shall be remunerated for such **Professional Service** by way of professional fees computed in accordance with Section 330 *Fees and Other Types of Remuneration* of the **Code**.
- 8.2 A **Member in Public Practice** shall not enter into a **Contingent Fee** arrangement or receive a **Contingent Fee** for:
- (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 to be independent.
- 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 Standards Board for Accountants (IESBA) has not issued a pronouncement equivalent to APES 215.

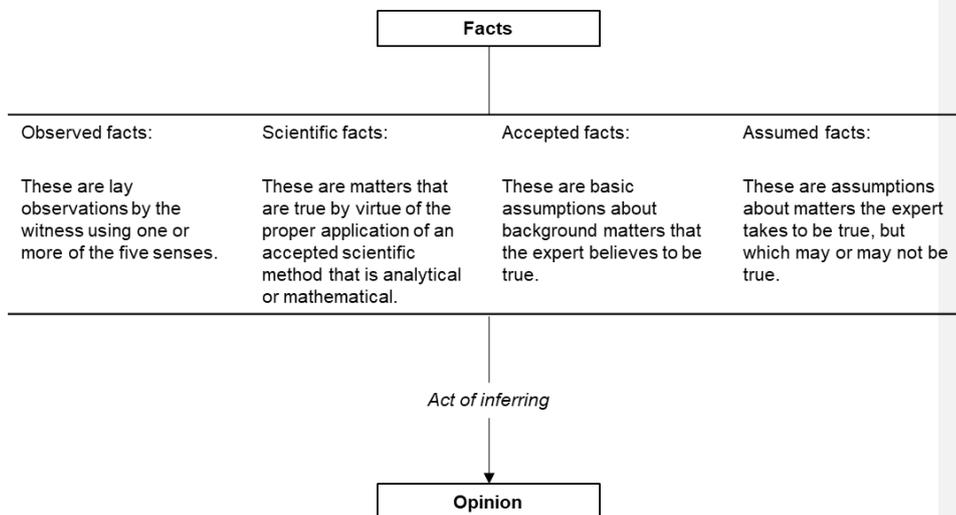
## Appendix 1 – Facts, assumptions, and opinions

This Appendix contains some examples to assist a Member ~~in determine determining~~ whether a matter is a fact, an assumption or an opinion for the purposes of APES 215. Members are cautioned that the determination of whether a matter is a fact, an assumption or an opinion under this Standard is a matter of professional judgement, based on the particular facts and circumstances. The examples contained in this Appendix are provided for illustrative purposes only. In all of the examples presented below it is assumed that there are no unmentioned facts which would be relevant to the consideration as to whether a matter is a fact, an assumption or an opinion.

### Classification of facts and nature of an opinion for expert evidence

An opinion is an inference drawn from facts. In the context of expert evidence, facts may be classified as observed, scientific, accepted, or assumed.<sup>4</sup> An opinion is an inference drawn from facts.

**Commented [JR1]:** We have reproduced the diagram and changed the wording under 'Observed facts' as discussed at the Taskforce meeting, but it is not showing as a mark-up.



### Observed facts and scientific facts

Observed facts and scientific facts are both based on observations by the expert witness. They differ in that observed facts are lay observations but scientific facts are expert observations.

Observed facts are lay observations because they are based on perceptions by the expert witness using one or more of the five senses, but are not based on the application of the expert witness's expertise. An example would be the observation by a land valuer of the presentation of a property.

On the other hand, scientific facts are based on the expertise of the expert witness but do not involve any significant degree of expert judgement. It has been said that scientific facts are true by virtue of the proper application of an accepted scientific method that is analytical or mathematical. An example might be a complex financial calculation by a Member that is based on the application of specialised knowledge but that does not amount to an opinion. This would occur where the results of the calculation

<sup>4</sup> See *ASIC v Rich* [2005] NSWSC 149 and, in particular, paragraphs 186, 187, 260 to 263, and 270 to 272. See also chapter 15 *Opinion* of J. D. Heydon, *Cross on Evidence*, 11<sup>th</sup> edition, LexisNexis Butterworths Australia, 2017.

flow mathematically or analytically without requiring inferences or questions of judgement if the underlying financial records are proved and if the calculation is done correctly.

Under APES 215, both observed facts and scientific facts are facts. Evidence in an Expert Witness Service could include both observed facts and scientific facts. Whereas evidence in a Lay Witness Service will consist of observed facts only and but not scientific facts.

### Accepted facts and assumed facts

Accepted facts and assumed facts both involve assumptions made by an expert.

Accepted facts are basic assumptions about background matters that the expert believes are true. An example would be a basic assumption about the workings of the market economy. Another example would be a basic assumption about the dating of information or the provenance of documents.

On the other hand, assumed facts are assumptions about matters that may or may not be true but which the expert witness assumes are true for the purpose of forming his or her opinion. An example, in a contractual dispute involving a claim for lost profits, would be an assumption about the selling price of a product but for the alleged breach of contract. If the expert witness's opinion depends upon accepted facts or assumed facts then those facts must be proved or admitted in order for the expert witness's opinion to be given weight.

Under APES 215, both accepted facts and assumed facts are assumptions, although whether any particular accepted fact or assumed fact is a significant assumption will depend on the circumstances.

### Opinions

In the context of expert evidence, an An opinion is an inference made by the expert drawn from facts.

### **Examples**

1. The Member has been asked to calculate the cost of goods sold expense for a period based on balances for opening stock, purchases and closing stock that have already been agreed by the parties. In calculating the expense, the Member applies specialised knowledge derived from the Member's training, study or experience using a well-accepted method which is not controversial (i.e. that cost of goods sold expense is equal to opening stock plus purchases less closing stock). However, the calculation does not require the Member to apply any significant degree of expert judgement. In this case, the figure calculated by the Member is a fact rather than an opinion (i.e. because it is in the nature of a scientific fact). On the other hand, if the Member were instructed to assume a figure for the cost of goods sold expense then that would be an assumption.
2. The Member has been asked to quantify the lost profits that would have been earned by a business but for a breach of duty. Among other things, this may require the Member to choose a figure for the sales revenue that the business would have earned but for the breach of duty. The question of what would have happened to sales revenue but for the breach requires the Member to consider a situation that is hypothetical rather than real and which, therefore, cannot be a question of fact. If in assessing the figure for sales revenue the Member applies specialised knowledge derived from the Member's training, study or experience and a significant degree of expert judgement then the Member will be expressing an opinion. On the other hand, if the Member were instructed to assume a figure for the sales revenue then that would be an assumption.
3. The Member uses the Capital Asset Pricing Model (CAPM) to determine a discount rate for the valuation of a business using the discounted cash flow method. The Member must choose a figure for the beta, which is an input to the CAPM. In the normal course, the Member will choose a beta after having gathered relevant information and having performed relevant analyses. In assessing the figure for beta the Member will use specialised knowledge derived from the Member's training, study or experience and a significant degree of expert judgement. Therefore, the Member

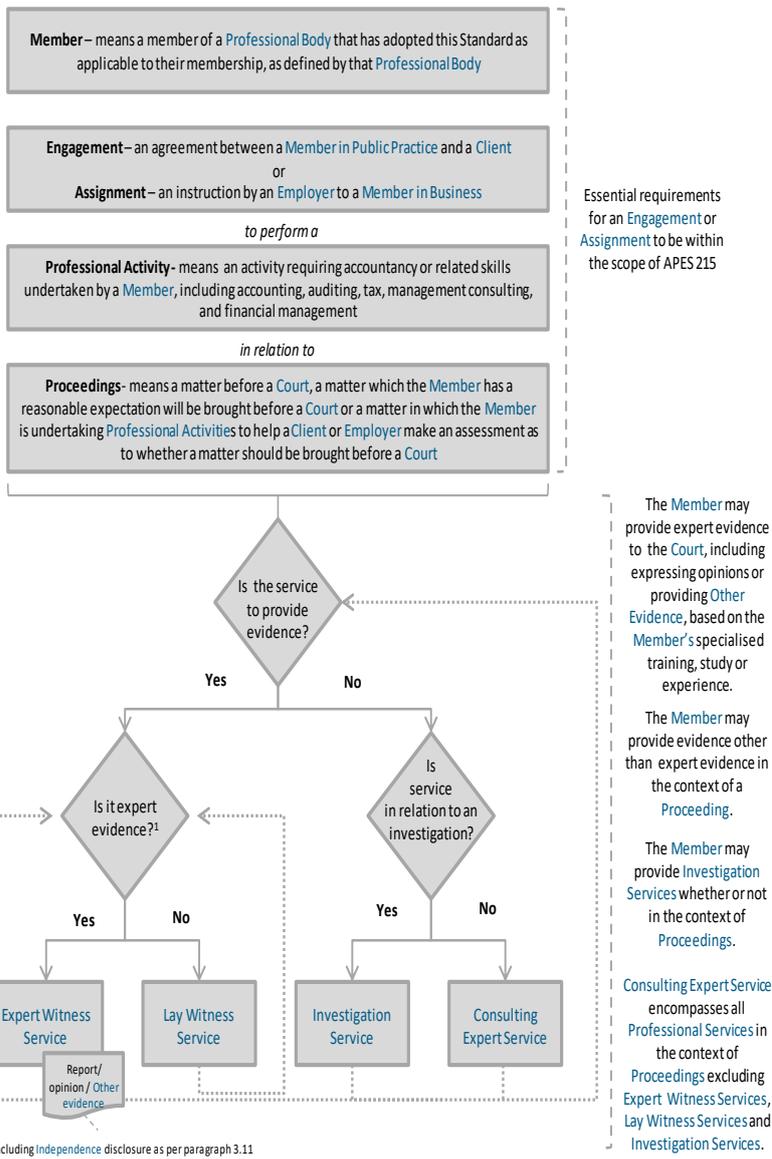
will be expressing an opinion. On the other hand, if the [Member](#) were instructed to assume a figure for the beta then that would be an assumption.

## Appendix 2 – Decision Tree to determine the type of Forensic Accounting Service

This Appendix contains a decision tree schematic to assist or determine whether a particular service is a [Forensic Accounting Service](#) for the purposes of APES 215 and, if so, whether the [Engagement](#) or [Assignment](#) is an [Expert Witness Service](#), a [Lay Witness Service](#), a [Consulting Expert Service](#) or [Investigation Service](#). Each type of [Forensic Accounting Service](#) carries professional obligations specific to its purpose and therefore it is important for [Members](#) to make this determination.

[Members](#) are cautioned that the determination of whether a particular service is a [Forensic Accounting Service](#) under this Standard is a matter of professional judgement, based on the particular facts and circumstances.

The critical determination is whether a particular [Forensic Accounting Service](#) is an [Expert Witness Service](#). Subsequently whether evidence is deemed admissible by the [Court](#) is a matter for the [Court](#). However, this is likely to happen after the [Forensic Accounting Service](#) has been wholly or substantially provided by the [Member](#). The important step is for the [Member](#) to assess, both initially and during the [Engagement](#) or [Assignment](#), whether it is a [Forensic Accounting Service](#) and, if so, which one. If the [Member](#) determines that it is an [Expert Witness Service](#), a subsequent decision to not admit the evidence from that [Expert Witness Service](#) does not change the nature of the [Forensic Accounting Service](#). It is the intention to give expert evidence that is relevant and in turn creates the obligation for a [Member](#) to comply with the requirements of this Standard including Section 5. If the service to be provided is a [Forensic Accounting Service](#) but not an [Expert Witness Service](#), the [Member](#) is required to comply with the requirements of the Standard other than Section 5.



<sup>1</sup> Whether or not evidence is accepted as expert evidence is an after the fact matter. A **Member** must comply with the Standard in anticipation that evidence will be treated as expert evidence.

### Appendix 3 – Examples of Forensic Accounting Services

This Appendix analyses some examples to assist a Member to determine the type of Forensic Accounting Services provided by a Member for the purposes of APES 215.

Members are cautioned that the determination of the type of Forensic Accounting Service provided by a Member under this Standard is a matter of professional judgement, based on the particular facts and circumstances. The examples contained in this Appendix are provided for illustrative purposes only and are not intended to be, and cannot be, all inclusive. The examples are not a substitute for reading the full text of APES 215 and applying the Standard to the particular circumstances to determine the type of Forensic Accounting Service provided by a Member. In all of the examples presented below it is assumed that there are no unmentioned facts which would be relevant to the consideration by a Member to determine the type of Forensic Accounting Service.

No.	Nature	Conclusion
1	Participation in a professional tribunal	<u>Consulting Expert Service</u>
2	Dispute mediator	<u>Consulting Expert Service</u>
3	Adviser to investigation by law enforcement/regulatory agency	<u>Consulting Expert Service</u> (unless the Member is or is likely to provide an opinion or Other Evidence to the Court)
4	Prepare a Report for a company in a dispute	<u>Expert Witness Service</u>
5	Prepare a Report for a regulatory body on a listed company's compliance with accounting standards	<u>Expert Witness Service</u>
6	Member employed by/engaged by a law enforcement/regulatory body to provide an <del>analysis-summary</del> of complex transactions for Proceedings	<u>Expert Witness Service</u>
7	Member employed by/engaged by a law enforcement/regulatory body to provide a summary of <del>transactions a flow of funds</del> for Proceedings	<u>Expert Lay Witness Service</u> (where the Member does not use specialised knowledge derived from training, study or experience in accounting)  <u>Expert Witness Service</u> (where the Member is or is likely to provide an opinion or Other Evidence to the Court and/or the Member's Report specifies the Member's professional qualifications and/or specialised knowledge derived from training, study or experience in accounting)
8	Member employed by a company under investigation subpoenaed to provide a factual witness statement	<u>Lay Witness Service</u>
9	Member employed by a company under investigation subpoenaed to provide a factual witness statement and subsequently asked to apply expertise	<u>Expert Witness Service</u>

APES 215 Forensic Accounting Services

No.	Nature	Conclusion
10	Member employed by a company under investigation subpoenaed to provide an opinion on the appropriate accounting for a chart of transactions	<b>Expert Witness Service</b>
11	<i>Insurance Claim</i> - Provision of loss adjusting services requiring accounting skills	<b>Consulting Expert Service</b> (unless the Member is or is likely to provide an opinion or Other Evidence to the Court)
12	<i>Insurance Claim</i> - Provision of advice requiring accounting skills	<b>Consulting Expert Service</b> (unless the Member is or is likely to provide an opinion or Other Evidence to the Court)
13	Member requested to determine amount of restitution or payment on a fraud or compensation matter	<b>Consulting Expert Service</b> (unless the Member is or is likely to provide an opinion or Other Evidence to the Court)
14	<i>Family Law</i> – Appointed by the Court to provide a Report including opinion evidence	<b>Expert Witness Service</b>
15	<i>Family Law</i> – Engaged to provide consulting advice related to another accounting expert's opinion	<b>Consulting Expert Service</b> (unless the Member is or is likely to provide an opinion or Other Evidence to the Court)
16	<i>Family Law</i> – Engaged, as a neutral party, to mediate between two accounting experts who have provided expert opinions to the Court	<b>Consulting Expert Service</b>
17	Member employed by a company investigating a potential criminal offence or civil matter	<b>Investigation Service</b> (unless the Member is or is likely to provide an opinion or Other Evidence to the Court)
18	Member requested to testify facts of purchases made on construction project account	<b>Lay Witness Service</b> (unless the Member is or is likely to provide an opinion or Other Evidence to the Court)
19	Member requested to provide an affidavit in respect of processes the Member undertook as part of a forensic investigation, specifically in relation to the collection and securing of computer forensic evidence	<b>Lay Witness Service</b> (unless the Member is or is likely to provide an opinion or Other Evidence to the Court)
20	Member requested to give evidence in relation to the Member's observations of a staff member who has been charged with theft of company equipment/ property	<b>Lay Witness Service</b>
21	Member requested to give evidence in relation to observations of a motor vehicle accident in which the Member was involved	<del>Lay witness</del> <b>Lay-Witness</b>
22	Member employed by a revenue authority undertaking an investigation into a taxpayer's affairs	<b>Expert Witness Service</b>
23	Member is employed by a regulatory agency tasked with the review of a trust account in which alleged irregularities have occurred	<b>Expert Witness Service</b>

#### Example 1 Participation in a professional tribunal

*Facts:* The Member has been asked to be a member of a professional tribunal handling a disciplinary matter involving an auditor. Professional tribunals typically include disciplinary bodies of the Professional Bodies and statutory boards involved in the review of auditors and liquidators. As a member of the professional tribunal, the tribunal will be relying on the Member's specialised knowledge derived from the Member's training, study or experience in providing informed input to allow the tribunal to determine the issues to be raised and decided upon before the tribunal.

*Analysis:* Consulting Expert Service – the Member is using the Member's specialised knowledge derived from the Member's training, study or experience in accounting to provide assistance in respect of a Proceeding, but is not giving evidence (expert or lay) in the Proceedings. The Member has been chosen to be a tribunal member in part because of the Member's specialised knowledge derived from the Member's training, study or experience.

#### Example 2 Dispute mediator

*Facts:* The Member has been asked to be a mediator in a dispute between two parties over lost profits that would have been earned by a business but for a breach of duty. As a mediator, the Member will be neutral and impartial and will assist the parties identify the issues, such as the accounting treatment of transactions, consider options and negotiate solutions. The parties must reach their own agreement and the mediator will not make any decisions about the dispute.

*Analysis:* Consulting Expert Service – the Member is using the Member's specialised knowledge derived from the Member's training, study or experience in accounting to provide assistance to mediate the Proceedings, but is not giving evidence (expert or lay) in the Proceedings. The Member has been chosen to be the mediator in this matter in part because of the Member's specialised knowledge derived from the Member's training, study or experience in accounting.

#### Example 3 Adviser to investigation by law enforcement/regulatory agency

*Facts:* The Member has been asked to be an adviser to an investigation being conducted by a law enforcement/regulatory agency. The Member's specialised knowledge derived from the Member's training, study or experience in accounting will be used in providing advice (written and/or oral) to members of the investigation team on accounting issues and transactions that are, or are intended to be, investigated. The Member can act as an adviser to the investigation even when Proceedings are contemplated or have commenced. It is not envisaged that the Member will be required to provide evidence and/or a report in the Proceedings (if any) arising from the investigation.

*Analysis:* Consulting Expert Service – the Member is using the Member's specialised knowledge derived from the Member's training, study or experience in accounting to provide assistance to the investigation, but is not giving evidence (expert or lay) in the Proceedings. The Member has been chosen to assist in the investigation in part because of the Member's specialised knowledge derived from the Member's training, study or experience in accounting.

However, if during this process, it is decided that the Member either is, or is likely, to give expert evidence (an opinion or Other Evidence) in this matter, then it would become an Expert Witness Service from that time. Where, during the conduct of an Engagement, the scope of work changes significantly, a Member in Public Practice should amend and reissue the Terms of Engagement, particularly where it will result in an Expert Witness Service.

#### Example 4 Prepare a Report for a company in a dispute

*Facts:* The Member has been asked by a company involved in a dispute, or the company's legal advisers, to prepare a Report to quantify the lost profits that would have been earned by a business but for a breach of duty or a breach of contract. It is highly likely that the Report will be produced in Court in relation to legal action that is contemplated or has been commenced by the company. It is also highly

likely that the **Member** will have to give evidence in the **Court** about matters covered in the **Report**. The **Member's** specialised knowledge derived from the **Member's** training, study or experience in accounting will be used in assessing the issues in dispute and preparing the **Report**. The **Report** will express opinions about the lost profits that would have been earned by a business but for a breach of duty.

**Analysis: Expert Witness Service** – the **Member** is using the **Member's** specialised knowledge derived from the **Member's** training, study or experience in accounting to provide assistance to the **Court** through the provision of written and/or oral evidence. As it is not lay evidence (i.e. the **Member** is not simply describing what the **Member** observed or did), it is considered expert evidence (whether or not it involves the expression of opinions).

**Example 5 Prepare a Report for a regulatory body on a listed company's compliance with accounting standards**

**Facts:** The **Member** has been asked by a regulatory body to prepare a **Report** on whether certain accounting standards have been complied with by a listed company. The **Report** will be produced in **Court** in relation to legal action that has been commenced by the regulatory body against directors of the company. It is also highly likely that the **Member** will have to give evidence in **Court** about matters covered in the **Report**. The **Member's** specialised knowledge derived from the **Member's** training, study or experience in accounting will be used in assessing the accounting standards in issue and preparing the **Report**. The **Report** will express opinions about the accounting standards that were used and whether the accounting standards were or were not complied with.

**Analysis: Expert Witness Service** – the **Member** is using the **Member's** specialised knowledge derived from the **Member's** training, study or experience in accounting to provide assistance to the **Court** through the provision of written and/or oral evidence. It is not lay evidence as the **Member** is expressing opinions on a matter in which the **Member** has specialised knowledge derived from the **Member's** specialist training, knowledge and experience.

**Example 6 Member employed by/engaged by a law enforcement/regulatory body to provide an analysis summary of complex transactions for Proceedings**

**Facts:** The **Member** is employed by a law enforcement/regulatory body and has been asked to **analyse and prepare a chart or document summary that sets out an analysis of summarises** a number of complex transactions and related accounting journals and ledger entries. The chart or **document summary** will be produced by the **Member** in **Court** in relation to legal action that has been commenced by the law enforcement/regulatory body. The chart or **document summary** is likely to aid the comprehension of material that is to be produced for the **Court**. The **Member** offers no opinions in the chart or **document summary** that has been prepared.

**Analysis: Expert Witness Service** – the **Member** is using the **Member's** specialised knowledge derived from the **Member's** training, study or experience in accounting to provide assistance to the **Court**, through the **preparation and presentation of the chart/document summary setting out the Member's analysis of the transactions**. As it is not lay evidence (i.e. the **Member** is not simply describing what the **Member** observed or did), it is considered expert evidence (even though it may not involve the expression of opinions).

**Example 7 Member employed by/engaged by a law enforcement/regulatory body to provide a summary of transactions a flow of funds for Proceedings**

**Facts:** The **Member** is employed by a law enforcement/regulatory body and has been asked to prepare a chart or summary that summarises **transactions from the flow of funds/money through** various bank accounts **and trace the use of these funds/money**. The chart or summary will be produced by the **Member** in **Court** in relation to legal action that has been commenced by the law enforcement/regulatory body. The chart or summary is **intended likely to be used to adduce evidence of the bank documents used to prepare the chart or summary, aid the comprehension of material that is to be produced for the**

Court pursuant to section 50 of the *Evidence Act 1995 (Cth) (the Act)*. The Member offers no opinions in the chart or summary.

*Analysis: **Expert Lay Witness Service** – the Member is giving evidence on matters that are directly observed or perceived by the Member and the Member is not using the Member's specialised knowledge derived from the Member's training, study or experience in accounting when preparing the chart or summary. The Member is not providing assistance to the Court, in an expert capacity through the chart/summary of transactions. As it is not lay evidence (i.e. the Member is not simply describing what the Member observed or did), it is considered expert evidence (even though it may not involve the expression of opinions).*

*However, if during this process, the extraction of information and/or presentation of the chart or summary requires the Member to use, or is facilitated by, the Member's specialised knowledge derived from the Member's training, study or experience in accounting, it will be an **Expert Witness Service** for the purposes of APES 215, notwithstanding that the Member intends to present the chart or summary as a summary admissible pursuant to section 50 of the Act.*

*Further, in circumstances where the Court receives submissions or evidence including in the Member's Report directed to the Member's professional qualifications in accounting and/or the Member's specialised knowledge derived from the Member's training, study or experience in accounting, the Member should proceed on the basis that the service is an **Expert Witness Service** for the purposes of APES 215, regardless of whether it is intended that the Court will receive that evidence pursuant to section 50 of the Act.*

**Example 8 Member employed by a company under investigation subpoenaed to provide a factual witness statement**

*Facts:* The Member is or was employed by a company that has been the subject of an investigation by a law enforcement/regulatory body which has subsequently asked or subpoenaed the Member to provide a witness statement covering the Member's involvement in and observations of specific transactions and activities of the company without drawing on the Member's specialised knowledge derived from the Member's training, study or experience.

*Analysis: **Lay Witness Service** – the Member is not using the Member's specialised knowledge derived from the Member's training, study or experience to provide assistance to the law enforcement/regulatory body, and hence to the Court, through the Member's observations made. As the Member is simply describing what the Member observed or did, it is not considered expert evidence.*

**Example 9 Member employed by a company under investigation subpoenaed to provide a factual witness statement and subsequently asked to apply expertise**

*Facts:* The Member is or was employed by a company that has been the subject of an investigation by a law enforcement/regulatory body which has subsequently asked or subpoenaed the Member to provide a witness statement covering the Member's involvement in and observations of specific accounting transactions and activities of the company without drawing on the Member's specialised knowledge derived from the Member's training, study or experience. Upon examination during the Proceedings the Member is asked to provide an opinion to aid the Court in understanding accounting records presented as evidence.

*Analysis: **Expert Witness Service** – the Member is using the Member's specialised knowledge derived from the Member's training, study or experience in accounting to provide assistance to the Court, in support of the Member's observations made. Since the Member has subsequently been asked to provide an opinion on a matter in which the Member has specialised knowledge derived from the Member's training, study or experience, it is not a **Lay Witness Service** lay evidence.*

When the **Member** is asked to provide an opinion or **Other Evidence** in **Court** proceedings, then it would become an **Expert Witness Service** from that time.

**Example 10 Member employed by a company under investigation subpoenaed to provide an opinion on the appropriate accounting for a chart of transactions**

*Facts:* Similar facts to Example 8, but the **Member** is required to give the **Member's** opinions on what the reasons for the transactions were and/or whether they were in accordance with generally accepted accounting practice.

*Analysis:* **Expert Witness Service** – the **Member** is using specialised knowledge derived from the **Member's** training, study or experience in accounting to provide assistance to the law enforcement/regulatory body, and hence to the **Court**, in providing opinions on the transactions through the chart/summary of transactions. As it is not lay evidence (i.e. the **Member** is not simply describing what the **Member** observed or did), it is considered expert evidence (even though it may not involve the expression of opinions).

**Example 11 Insurance Claim – Provision of loss adjusting services requiring accounting skills**

*Facts:* The **Member** is assigned to provide loss adjusting services in respect of an insurance claim that involve use of the **Member's** specialised knowledge derived from the **Member's** training, study or experience in accounting. The **Member** is to assess the claim value with respect to both material damage and business interruption in accordance with the insurance policy.

*Analysis:* **Consulting Expert Service** – the **Member** is using specialised knowledge derived from the **Member's** training, study or experience in accounting to provide assistance to one party in the matter (i.e. the insurance company or the insured), but is not (at least initially) engaged to give evidence (expert or lay) in the **Proceedings**. It is to be presumed that the **Member** has been chosen to assist because of the **Member's** specialised knowledge derived from the **Member's** training, study or experience in accounting.

However, if during this process, it is decided that the **Member** either is, or is likely to be asked, to provide an opinion or **Other Evidence** to the **Court** in the matter, then it would become an **Expert Witness Service** from that time. Where, during the conduct of an **Engagement**, the scope of work changes significantly, a **Member in Public Practice** should amend and reissue the **Terms of Engagement**, particularly where it will result in an **Expert Witness Service**.

**Example 12 Insurance Claim – Provision of advice requiring accounting skills**

*Facts:* The **Member** has been asked to determine the appropriate amount of compensation a claimant is entitled to under an income protection (or similar) insurance policy or statutory scheme. The **Member's** specialised knowledge derived from the **Member's** training, study or experience will be used in providing advice (written and/or oral) to the **Employer**, statutory agency or insurance company on the claimant's entitlements. It is not envisaged that the **Member** will be required to provide evidence and/or a report to the **Court** in the **Proceedings** (if any) arising from the assessment.

*Analysis:* **Consulting Expert Service** – the **Member** is using specialised knowledge derived from the **Member's** training, study or experience in accounting to provide assistance to the investigation, but is not giving evidence (expert or lay) in the **Proceedings**. It is to be presumed that the **Member** has been chosen to undertake the assessment in part because of the **Member's** specialised knowledge derived from the **Member's** training, study or experience in accounting.

However, if during this process, it is decided that the **Member** either is, or is likely, to give an opinion or **Other Evidence** in this matter then it would become an **Expert Witness Service** from that time. Where, during the conduct of an **Engagement**, the scope of work changes significantly, a **Member in Public Practice** should amend and reissue the **Terms of Engagement**, particularly where it will result in an **Expert Witness Service**.

**Example 13 Member requested to determine amount of restitution or payment on a fraud or compensation matter**

*Facts:* The Member has been asked to determine the amount of restitution or overpayment in a fraud or compensation matter based on the evidence obtained up until that time. The Member's specialised knowledge derived from the Member's training, study or experience will be used in providing advice (written and/or oral) to members of the investigation team on the amount of restitution or overpayment. It is not envisaged that the Member will be required to provide evidence and/or a report to the Court in the Proceedings (if any) arising from the review/assessment.

*Analysis:* **Consulting Expert Service** – the Member is using specialised knowledge derived from the Member's training, study or experience in accounting to provide assistance to the investigation, but is not giving evidence (expert or lay) in the Proceedings. It is to be presumed that the Member has been chosen to undertake the assessment in part because of the specialised knowledge derived from the Member's training, study or experience in accounting.

However, if during this process, it is decided that the Member either is, or is likely, to give an opinion or Other Evidence in this matter then it would become an **Expert Witness Service** from that time. Where, during the conduct of an Engagement, the scope of work changes significantly, a Member in Public Practice should amend and reissue the Terms of Engagement, particularly where it will result in an Expert Witness Service.

**Example 14 Family Law – Appointed by the Court to provide a Report including opinion evidence**

*Facts:* The Member is appointed by the Court following representations by the parties' solicitors to provide a Report for both parties to the dispute including opinion evidence on valuation and accounting matters.

*Analysis:* **Expert Witness Service** – the Member is using the Member's specialised knowledge derived from the Member's training, study or experience to provide a written Report as a joint expert to the Court. It is not lay evidence as the Member is expressing opinions and/or providing Other Evidence on a matter or matters in which the Member has specialised knowledge derived from the Member's training, study or experience.

**Example 15 Family Law – Engaged to provide consulting advice related to another accounting expert's opinion**

*Facts:* The Member is asked by one of the parties to a matrimonial dispute to provide consulting advice (as a "shadow") in relation to another accounting expert's opinion. When asked, the Member is not expected to file a report giving the Member's opinion to the Court, but merely to assist the instructing party and their solicitor.

*Analysis:* **Consulting Expert Service** – the Member is using the Member's specialised knowledge derived from the Member's training, study or experience in accounting to provide assistance to one party to the dispute, but is not giving evidence (expert or lay) in the Proceedings. The Member has been chosen to assist because of the Member's specialised knowledge derived from the Member's training, study or experience in accounting.

However, if during this process, it is decided that the Member either is, or is likely, to be asked to provide an opinion or Other Evidence to the Court in the matter, then it would become an **Expert Witness Service** from that time. Where, during the conduct of an Engagement, the scope of work changes significantly, a Member in Public Practice should amend and reissue the Terms of Engagement, particularly where it will result in an Expert Witness Service.

**Example 16 Family Law – Engaged, as a neutral party, to mediate between two accounting experts who have provided expert opinions to the Court**

*Facts:* The **Member** is asked by the solicitors for both parties to a matrimonial dispute to mediate between two accounting experts who have provided expert opinions on the valuation of business assets with the parties to the dispute present at the mediation. As a mediator the **Member** will be neutral and impartial and will assist the parties identify the issues between the two expert valuers, consider options and negotiate solutions. The parties must reach their own agreement and the mediator will not make any decisions about the dispute.

*Analysis:* **Consulting Expert Service** – the **Member** is using the **Member's** specialised knowledge derived from the **Member's** training, study or experience in accounting to provide assistance to mediate the **Proceedings**, but is not giving evidence (expert or lay) in the **Proceedings**. The **Member** has been chosen to be the mediator in this matter in part because of the **Member's** specialised knowledge derived from the **Member's** training, study or experience in accounting.

**Example 17 Member employed by a company investigating a potential criminal offence or civil matter**

*Facts:* The **Member** is asked by the **Member's Employer** to undertake or assist in investigating a potential criminal offence or civil matter with the intention of identifying the facts, determine the financial implications/overpayment/amount inappropriately obtained and ultimately assisting the **Employer** to understand the situation and make a fully informed decision on what action should be taken. It is not envisaged that the **Member** will be required to provide evidence and/or a **Report** to the **Court** in the **Proceedings** (if any) arising from the investigation.

*Analysis:* **Investigation Service** – the **Member** is using specialised knowledge derived from the **Member's** training, study or experience in accounting in the investigations to assist the **Employer** in understanding the matter and assist in determining what action should be taken, but is not giving evidence (expert or lay) in the **Proceedings**. The **Member** has been chosen to investigate this matter in part because of the **Member's** specialised knowledge derived from the **Member's** training, study or experience in accounting.

However, if during this process, it is decided that the **Member** either is, or is likely to be asked, to provide an opinion or **Other Evidence** to the **Court** in the matter, then it would become an **Expert Witness Service** from that time.

**Example 18 Member requested to testify facts of purchases made on construction project account**

*Facts:* The **Member** is employed as a project accountant on a construction project. The **Member** has been asked by the **Member's Employer** to appear in **Court** to provide a statement on the total amount of purchases made on account for a recently completed construction project which is in legal dispute. The **Member's** participation is restricted to providing a factual representation of the purchases processed by the **Member** in the project accounting ledger and the fact that the **Member** observed the construction project in progress. It is not envisaged that the **Member** will be required to provide an opinion and/or **Other Evidence** and/or provide a **Report** to the **Court** in the **Proceedings**. The terminology used in the **Member's** statement is expressed in a manner that the **Court** can understand without technical accounting assistance.

*Analysis:* **Lay Witness Service** – the **Member** is not using specialised knowledge derived from the **Member's** training, study or experience in accounting in the statement to assist the **Court** in understanding the matter and assist in determining what action should be taken, and is not giving expert evidence in the **Proceedings**. The **Member** has been chosen to participate in this matter only due to the **Member's** employment on the project team.

However, if during this process, it is decided that the **Member** either is, or is likely, to be asked to provide an opinion or **Other Evidence** in **Court** proceedings, then it would become an **Expert Witness Service** from that time.

**Example 19 Member requested to provide an affidavit in respect of processes the Member undertook as part of a forensic investigation, specifically in relation to the collection and securing of computer forensic evidence**

*Facts:* A **Member** has been engaged to assist with the identification, collection and secure storage of electronic evidence held by an organisation. The **Member** provides an affidavit/statement detailing the actions and steps taken to perform the above **Engagement** or **Assignment**. The **Member** has been subpoenaed to **Court** to give this evidence.

*Analysis:* **Lay Witness Service** – the **Member** is not using the **Member's** specialised knowledge derived from the **Member's** training, study or experience in accounting in the statement to assist the **Court** in understanding the matter nor is the **Member** assisting the **Court** in determining what action should be taken. The **Member** has been chosen to participate in this matter only because of the **Member's** skills in electronic evidence retrieval, without any analysis or examination of the underlying evidence collected.

However, if at any stage during this process, it is decided that the **Member** either is, or is likely to have the additional responsibility of providing an opinion or **Other Evidence** in relation to the summarising or charting of that evidence collected using specialised knowledge derived from the **Member's** training, study or experience then it would become an **Expert Witness Service** from that time. Where, during the conduct of an **Engagement**, the scope of work changes significantly, a **Member in Public Practice** should amend and reissue the **Terms of Engagement**, particularly where it will result in an **Expert Witness Service**.

**Example 20 Member requested to give evidence in relation to the Member's observations of a staff member who has been charged with theft of company equipment/property**

*Facts:* The **Member** is employed as an accountant by an accounting **Firm**. The **Member** was present when another staff member allegedly took a laptop, mobile phone and other company equipment from the office to their home and was involved in some discussion surrounding the alleged theft with the staff member who has been charged. The **Member** has provided a witness statement/affidavit about the **Member's** observations and discussions with the accused and has been subpoenaed to **Court** to provide evidence about this matter. The **Member's** participation is restricted to providing a factual account of the **Member's** observations and discussions leading up to and after the alleged theft.

*Analysis:* **Lay Witness Service** – the **Member** is not using specialised knowledge derived from the **Member's** training, study or experience in accounting in the statement/affidavit to assist the **Court** in understanding the matter nor is the **Member** assisting the **Court** in determining what action should be taken. The **Member** has been chosen to participate in this matter solely because of what the **Member** had witnessed.

**Example 21 Member requested to give evidence in relation to observations of a motor vehicle accident in which the Member was involved**

*Facts:* The **Member** is employed as an accountant and was involved in a motor vehicle accident where the **Member** was driving a vehicle and was not at fault for the accident. The at-fault driver has been charged with criminal offences as a result of the motor vehicle accident. The **Member** has provided a witness statement/affidavit setting out the **Member's** observations and knowledge of the circumstances surrounding the motor vehicle accident. The **Member** has been subpoenaed to **Court** to give this evidence.

*Analysis:* **Lay Witness Service** – the **Member** is not providing a **Lay Witness Service for the purposes of APES 215, as the witness statement/affidavit does not form part of a Professional Activity. The Member is not** using specialised knowledge derived from the **Member's** training, study or experience in

accounting in the statement/affidavit to assist the **Court** in understanding the matter nor is the **Member** assisting the **Court** in determining what action should be taken. The **Member** has been chosen to participate in this matter only because of the **Member's** involvement in the motor vehicle accident and what the **Member** had witnessed.

**Example 22 Member employed by a revenue authority undertaking an investigation into a taxpayer's affairs**

*Facts:* The **Member** is employed by a government revenue authority and is undertaking a review of a taxpayer's affairs in connection with a **Proceeding**, and with a view to providing a **Report** on the findings to the **Court**. The work is likely to result in an assessment or amended assessment for the taxpayer as there are alleged breaches of the applicable tax legislation.

*Analysis:* **Expert Witness Service** – the **Member** is using the **Member's** specialised knowledge derived from the **Member's** training, study or experience in accounting and taxation knowledge to formulate the **Report** and the conclusions contained therein to the **Court**. In this situation, the **Member** will be expressing an opinion or providing **Other Evidence** about the interpretation of the relevant legislation, its application to the factual findings concerning specific items of the review and whether the alleged breaches result in an unidentified liability (or overpayment). It is not lay evidence as the **Member** is expressing opinions and/or providing **Other Evidence** on matters in which the **Member** has specialised knowledge derived from the **Member's** training, study or experience.

**Example 23 Member is employed by a regulatory agency tasked with the review of a trust account in which alleged irregularities have occurred**

*Facts:* The **Member** is employed in a regulatory agency and is undertaking a review of a trust account in which alleged irregularities have occurred. The **Member** is tasked with performing a review and providing a **Report** on the findings to the **Court**.

*Analysis:* **Expert Witness Service** – the **Member** is using the **Member's** specialised knowledge derived from the **Member's** training, study or experience in accounting to formulate the **Report** to the **Court**. It is not lay evidence, as the **Member** will be expressing opinions and/or providing **Other Evidence** on matters in which the **Member** has specialised knowledge derived from the **Member's** training, study or experience.

**Appendix 4 – Summary of revisions to the previous APES 215 (Issued in ~~July~~December 2019~~5~~)**

APES 215 *Forensic Accounting Services* was originally issued in December 2008 and revised in December 2013, ~~and~~ December 2015 ~~and July 2019 (extant APES 215)~~. APES 215 has been revised by APESB in ~~XXX~~July 202~~X~~19. A summary of the revisions is given in the table below.

**Table of revisions\***

Paragraph affected	How affected

\* Refer Technical Update 202~~X~~19/2~~X~~