



Expert's report in respect of

Fleet Technologies Limited (Subject to a Deed of Company Arrangement)

Date:

23 May 2025

Instructed by:

Maddocks

Report of:

John Melliush

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Glossary

The following abbreviations and terms are used throughout this report:

Term	Meaning
\$	Australian Dollar
Act	Corporations Act 2001 (Cth)
Administrators	Christopher Johnson and Joseph Hayes of Wexted Advisors
AEST	Australian Eastern Standard Time
ALLPAAP	All present and after-acquired property, a term associated with security interests under the PPSA
ARITA	Australian Restructuring Insolvency and Turnaround Association
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
CEO	Chief Executive Officer
CFO	Chief Financial Officer
COO	Chief Operating Officer
ComfortDelGro Corporation Ltd or CDC	Singapore-based company, which in 2024, acquired A2B Australia, a leading Australian taxi network
Company	Fleet Technologies Limited (Subject to a Deed of Company Arrangement)) ACN 152 473 482, operated from Ground Floor, 50 Miller Street North Sydney NSW 2060
Convertible Note 2022	Convertible Notes issued between 17 August 2022 and 25 February 2025 for \$5.0M, at 8% interest rate, maturity date of 30 June 2025, valuation of \$20.0M, with a 30% discount
DD	Due diligence
Directors	Matthew Juracich, Garry Duurma, Ben Scott and Simon Bayley
DIRRI	Declaration of Independence, Relevant Relationships and Indemnities, pursuant to s436DA of the Act and Code dated 27 March 2025
Deed Fund	Funding made available to meet certain creditor claims under the DOCA Proposal
DOCA	Deed of Company Arrangement
DOCA Proposal	DOCA proposal received on 10 April 2025. See Appendix I
DOCA Proponent	Mr Mark Osborn, an investor of the Company, who has sourced the DOCA Contribution from the Financiers, as listed in Schedule 1 of the DOCA Proposal at Appendix I
EBITDA	Earnings before interest, tax, depreciation and amortisation
ERV	Estimated Realisable Value
Financiers	The parties contributing to the DOCA, as outlined in Schedule 1 of Appendix I
First Meeting	The first meeting of creditors of the Company held on 4 April 2025 pursuant to section 436E of the Act

Term	Meaning
FYXX	Financial year ending 30 June 20XX
HYXX	Half year for the financial year period from 1 July 20XX to 31 December 20XX
IPR	Insolvency Practice Rules (Corporations)
k	Thousand
Non-Participating Creditors	As detailed in Appendix I, includes all Noteholders
M	Million
Management	Ben Scott (CEO and Director), Louis Persohn (COO and Company Secretary) and Paul Ringrose (CFO)
NBIO	Non-binding indicative offer
NDA	Non-disclosure agreement
PAAS	Platform as a Service
PMSI	Purchase Money Security Interest as defined in the PPSA
POD	Proof of Debt Form
PPSA	Personal Property Securities Act 2009 (Cth)
PPSR	Personal property Securities Register – a register set up under the PPSA for the registration of security interest
Administrators Report or Report	This report, prepared pursuant to IPR 75-225 of the Act about the business, property, affairs and financial circumstances of the Company
R&D	Research and development
Radium Capital	Secured creditor, Innovation Structured Finance Co., LLC trading as Radium Capital, holds an ALLPAAP security interest for R&D funding provided
Revised DIRRI	Updated DIRRI dated 10 April 2025, including net Deed Funding received between appointment date and 9 April 2025. See Appendix D.
ROCAP	Report on Company Activities and Property submitted by the Directors on 2 April 2025 and lodged with ASIC.
SGC	Superannuation Guarantee Charge
Section or “s”	Section of the Act, or Section of the Report
Second Meeting	Meeting held pursuant to Section 439A of the Act where creditors determine the future of the Company, convened for 24 April 2025
Shareholders	The Shareholders of the Company at the appointment date
Software Platform	All aspects of the Software as a Service platform as capitalised in the Company Balance Sheet
Swan Taxis	Taxi company acquired by ComfortDelGro in October 2010
Secured Creditor	Radium Capital
TBC	To be confirmed
The Period	The Administration period to the Second Meeting, being 25 March 2025 to 24 April 2025
USA	United States of America

Term	Meaning
Wexted Advisors or WXA	Wexted Pty Ltd atf Wexted Unit Trust t/as Wexted Advisors, Level 17, 68 Pitt Street, Sydney NSW 2000
YTD	Year to date, a period starting from the beginning of the current financial year and continuing up to a defined date
YTD25	Year to date 25 March 2025, based on draft Management Accounts from the Xero accounting software package.

All amounts in this report and any annexures prepared by me are in Australian Dollars and exclude GST, unless otherwise indicated. Although amounts in tables are generally presented on a rounded basis, in most cases, the unrounded figures are used in subsequent calculations. Accordingly, minor variances may exist in table totals when recalculated manually.

Executive Summary

1. On 11 April 2025, Maddocks requested that I provide a report in this matter and specifically respond to their letter of instruction of the same date. On 7 May I received further correspondence including additional documents.
2. My instructions enclosed a copy of Part 31 Division 2 of the *Uniform Civil Procedure Rules* 2005 (NSW) (**Rules**), and the Expert Code of Conduct set out in schedule 7 of the Rules (**Code**).
3. I have read, understood, and complied with the Code and agree to be bound by it.
4. My opinions are wholly or substantially based upon my specialised knowledge.
5. I have made all the inquiries which I believe are desirable and appropriate and no matters of significance that I regard as relevant have, to my knowledge, been withheld from the Court.

Qualifications

6. I am a Fellow of Chartered Accountants Australia and New Zealand. I joined Ferrier Hodgson, a specialist insolvency firm, in 1987 and became a Partner of the firm in July 1998. I ceased to be a partner of the firm on 31 December 2015 and from 18 February 2019 I operated as a sole practitioner. On 18 February 2019 I joined PCI Partners as a Partner. I am a Registered Liquidator and Registered Trustee in Bankruptcy. Throughout my professional career I have been involved in all manner of formal insolvencies and in recent years prepared many expert witness reports concerning solvency related matters.
7. Further details of my qualifications and experience are attached as **Annexure A**.

Instructions

8. I have been instructed by Maddocks, solicitors acting on behalf of Messrs Christopher Johnson and Joseph Hayes in their capacity as joint and several administrators of the Company, to provide an expert opinion in accordance with their letter of instruction dated 11 April 2025, which is attached as **Annexure B**.
9. This letter of instruction requested that I prepare an opinion in relation to the residual equity value in the Company for Shareholders taking into account, among other things, the guidance set out in the ASIC Regulatory Guide 111 (Content of Expert Reports).

Summary of Opinions

10. Having regard to the opinions and calculations set out in this report it is my opinion that there is no residual equity value in the Company for Shareholders on the basis that the Company is in administration.

A. Qualifications and Experience of Expert

11. I have the following qualifications and relevant professional memberships and designations:
 - Bachelor of Economics, Macquarie University
 - Fellow of Chartered Accountants Australia and New Zealand (CAANZ)
 - Fellow of the Australian Restructuring Insolvency & Turnaround Association (ARITA)
 - Graduate of the Australian Institute of Company Directors
12. I joined Ferrier Hodgson in 1987 and became a partner in July 1998. I ceased to be a partner on 31 December 2015. From 1 January 2016 to 18 February 2019, I operated as a sole practitioner, and on 18 February 2019, I joined PCI Partners.
13. I am a Registered Trustee and Registered Liquidator with more than 40 years' experience in insolvency.
14. In recent years, I have provided many expert witness reports regarding solvency and forensic matters for use in litigation.
15. Further details of my experience are at **Annexure A**.

B. Instructions and Information Sources

Instructions

- 16.** On 11 April 2025 I was instructed by Maddocks, solicitors for the Administrators, to prepare an expert's report. On 7 May I received further correspondence including additional documentation. Copies of this correspondence is attached at **Annexure B**.
- 17.** This letter of instruction requested I prepare an assessment of the Company assets and liabilities and specifically answer the following question:
- 1) What is the residual equity value in the Company for the Shareholders?

Compliance

- 18.** I have approached my instructions and the preparation of this report with regard to the duties of an expert witness as outlined in the Code. I agree to be bound by the Code.
- 19.** In preparing this report, I have complied with APES 215 Forensic Accounting Services, issued by the Accounting Professional and Ethical Standards Board. This Standard includes mandatory requirements which must be followed by members of CAANZ when they provide Forensic Accounting Services, including Expert Witness Services. This Expert Witness Service was conducted in accordance with this Standard. This Code of Conduct is attached as **Annexure C**.

Independence

- 20.** I have not had relationships or previous dealings with any of the parties to these proceedings.
- 21.** I am being remunerated for providing forensic accounting services based on a rate per hour. I am not remunerated based on a success or contingency fee, or on a basis related to the matter's outcome.

Information sources

- 22.** To prepare this report, I was provided with the material set out in my letter of instruction (and subsequent correspondence) which included those documents listed in **Annexure D**.

C. Summary of Opinions & Assumptions

23. In undertaking my investigations of the material provided I have formed the following opinions:

- i) That the Company has not yet been able to commercialise the Software Platform to the point that it is capable of producing positive cashflows.
- ii) The Company has no goodwill or enterprise value above the value represented by its individual assets.
- iii) The current value of the Company's assets is represented by the amount that the Deed proponent is prepared to contribute to acquire those assets, which is \$603,000. (subject to certain retained liabilities).
- iv) The total value of liabilities for the Company is \$6,902,930.
- v) In accordance with the ASIC Regulatory Guide 111 this analysis has been prepared on the basis that the Company was subject to external administration (Voluntary Administration and now subject to a Deed of Company Arrangement). However, I have chosen not to include the costs of terminating staff in my calculations. This approach has no effect on my opinion that the residual equity value is nil.
- vi) The value of the Company's liabilities far exceeds the current value of its assets.
- vii) Any compensation which may be awarded to the Companies joint venture vehicle, Fleet Mobility, arising from a termination of a contract with Swan Taxis is unlikely effect my opinion as to residual equity value, as the gross value of the claim is far less than the calculated shortfall of assets over liabilities.
- viii) There is no residual equity value for the Shareholders of the Company.

24. Each of the opinions formed above rely on having made the following assumptions:

- i) The calculation made by the Administrators in relation to the realisable value of receivables is reasonable.
- ii) That the driver equipment has no realisable value.
- iii) That the leasehold improvements have no realisable value.
- iv) That the estimates provided by a valuer for the estimated realisable value of office equipment and furniture is reasonable.

- v) The calculations undertaken by the Administrators in determining a likely value for the research and development tax refund are reasonable.
- vi) The calculations prepared by the Administrators in relation to employee entitlements are accurate.
- vii) The amount disclosed by the Administrators as owing to statutory creditors is accurate.
- viii) The estimate prepared by the Administrators as to the likely amount of unsecured creditor claims is reasonable.

D. Methodology

Definition of residual equity value

25. I have formed my opinion as to the **residual equity value of the Company**, being the value of the Company attributable to shareholders after accounting for all secured and unsecured liabilities, priority claims, and any contingent or future obligations.
26. Residual equity value is typically assessed as:

“The net amount that would be available to ordinary shareholders after realising the assets of the Company and settling all external claims and liabilities, including any costs of realisation or winding up.”
27. I believe this value reflects what shareholders would receive in a notional realisation of the business, for instance, through a winding-up of the business, accounting for the fair value of assets and the full extent of liabilities.

Approach to opinion in respect of residual equity value

28. In my view, an opinion as to residual equity value requires an assessment of:
 - a) The fair or realisable value of the Company's assets;
 - b) The full extent of known and anticipated liabilities and priority claims; and,
 - c) Whether surplus value remains once those obligations are met.
29. This requires an analysis of:
 - a) The Company's adjusted balance sheet (to reflect fair values);
 - b) The timing and priority of liabilities; and,
 - c) The realisability of assets under either going concern or break-up assumptions.
30. The results of that analysis should be reviewed in the context of the Company's overall financial position and future prospects.
31. With respect to the above, I have conducted the following analysis in my review of the residual equity value of the Company:
 - a) A review of the Company's profit and loss in order to determine whether the business holds an enterprise value in excess of its balance sheet assets. This analysis will have regard to: -
 - Discounted Cashflow Model (DCF) Method; and,
 - b) Capitalisation of Earnings;
 - c) A review of the balance sheet in order to determine: -
 - The fair value of the assets of the Company; and,

- A calculation of all known and contingent liabilities which would be payable prior to any distribution to Shareholders.
- d) Consideration of any other issues that may impact the assets and liabilities of the Company which are not currently reflected in the financial records of the Company.

E. Company Background

Background

- 32.** The Company was incorporated on 4 August 2011 and as at 25 March 2025, employed 17 staff from a leased premises situated at Ground Floor, 50 Miller Street, North Sydney, NSW 2060.
- 33.** The Company provides a Platform as a Service (PaaS) to ground transport companies focussing on taxi and private hire that is also applicable for waste management and last mile logistics.
- 34.** Historically, the Company has successfully raised debt (\$5M) and equity (\$47.2M) to fund technology development and pursue strategic pathways in the transport industry.
- 35.** Between 17 August 2022 and 25 February 2025, the Company raised \$5.0M in convertible notes, at an 8% interest rate, with a maturity date of 30 June 2025 on a valuation of \$20.0M with a 30% discount (Convertible Note 2022), to fund operations and the expansion into the WA taxi market through Swan Taxis and into the US transport market. A contract between Fleet Mobility Pty Ltd (a 50% joint venture holding of the Company) and Swan Taxis to 30 June 2025, was terminated early in or around 12 June 2024.
- 36.** In early 2025, the Company sought further debt funding to pursue the transport market in the US and received limited interest.
- 37.** On 13 March 2025, WXA staff were asked to attend a meeting with Management at the offices of Maddocks Lawyers to outline the external administration process and obtain background information on the Company's financial position.
- 38.** On 20 March 2025, the Company issued an update to Shareholders advising that the Company was facing financial difficulties as a result of:
 - i) Delays resolving the contract dispute with Swan Taxis;
 - ii) Delays launching contracted customers through the USA due to Flywheel and Uber;
 - iii) Continued difficulty raising capital from existing investors and attracting new investors; and
 - iv) Recent uncertainty in global capital markets.
- 39.** The update to Shareholders provided notice of the pending voluntary administration appointment, and invited Shareholders to assist the Company financially
- 40.** Management has advised that no Shareholders responded with offers of financial support.

- 41.** The directors attributed the financial difficulties of the Company to:
 - i) Management's inability to raise further funds, leading to delay in US product launch; and
 - ii) Termination of the Fleet Mobility joint venture with Swan Taxi, coupled with delays in reaching a commercial settlement.
- 42.** On 25 March 2025, Christopher Johnson and Joseph Hayes of Wexted Advisors were appointed Voluntary Administrators of the Company by the Company's Director pursuant to section 436A of the Act.
- 43.** The First Meeting was held on 4 April 2025 in accordance with section 436E of the Act.
- 44.** The Second Meeting was held on 24 April 2025 and creditors resolved to approve the proposed Deed of Company Arrangement ("DOCA").

F. Profit and Loss Analysis

47. Below is a summary of the profit and loss from audited financial statements for FY22, FY23, FY24, and management accounts for FY25YTD as per the position shown in the Xero accounts at the date of liquidation.

Fleet Technologies Limited (Administrators Appointed)				
Profit and Loss	2022	2023	2024	FY25YTD
Trading Income	249,016	1,971,405	1,161,081	387,299
Cost of Sales	240,997	627,186	678,237	349,355
Gross Profit	8,019	1,344,219	482,845	37,945
<i>GP Margin (%)</i>	3.2%	68.2%	41.6%	9.8%
Other Income	312,549	974,935	1,129,281	202,769
Operating Expenses	1,932,818	3,148,130	3,601,943	2,727,937
Net Profit	(1,612,251)	(828,976)	(1,989,817)	(2,487,224)

48. Prior to FY22 the company had incurred losses of \$46M.
49. The summary above shows that the Company has experienced consecutive trading losses since FY22.
50. The Company incurred a net loss of \$2.49M in FY25YTD, reflecting ongoing operating deficits.
51. The business has failed to achieve profitability at any stage and has consistently relied on external funding to continue trading.
52. Operating costs, particularly salaries and wages, represent a substantial portion of expenses, which have not been matched by revenue generation. These factors severely undermine any argument for positive, maintainable earnings or growth potential.
53. The contract with Swan Taxis in Western Australia was for the period up to 30 June 2025, although I understand this terminated early in or around June 2024. This led to decreased revenue, including the reduction in gross margin observed in FY25YTD.
54. Salaries and Wages accounted for ~72% of the Company's FY25 operating expenses. Despite the decline in revenue, these expenses remained constant as the Company sought opportunities in the US market.
55. The Company has not generated, nor is it expected to generate in the foreseeable future any sustainable positive earnings which would be necessary to support the business having any going concern, or enterprise value.

G. Balance Sheet Analysis

56. The table below shows a summary of balance sheets for the period FY22 to FY25YTD as extracted from the Administrators Section 439A report.

Fleet Technologies Limited (Administrators Appointed)				
Balance Sheet	2022	2023	2024	FY25YTD
Current Assets	1,248,059	1,441,669	1,409,203	220,459
Non-Current Assets	1,476,795	1,535,456	1,823,396	2,216,595
Total Assets	2,724,853	2,977,125	3,232,599	2,437,054
Convertible Note 2022	0	1,444,127	3,354,422	5,479,676
Other Current Liabilities	2,390,320	1,925,700	2,203,551	1,769,976
Total Liabilities	2,390,320	3,369,827	5,557,973	7,249,652
Net Assets	334,533	(392,702)	(2,325,374)	(4,812,597)
Current asset ratio	0.52	0.75	0.64	0.03
<i>Source: Management Accounts, WXA calculation</i>				

57. The movements in the balance sheet over this period are consistent with the fact that the business has been loss-making during this time and has been supported only by continuing contributions of loans and equity.
58. Shown in the table below are details of the most up to date balance sheet extracted from Xero at end February 2025, together with the Directors ROCAP and the Administrators' estimate of realisable values. I have not audited or verified the financial statements or management accounts.

Fleet Technologies Limited (Administrators Appointed)				
Balance Sheet	As at 28 Feb 2025 (\$)	Book Value 25 Mar 2025 (\$)	ROCAP (\$)	Administrator ERV (\$)
Current Assets				
Bank	197,744	72,942	72,942	30,215
Receivables	207,606	57,504	65,686	57,504
Prepayments	95,166	95,166	-	-
Security Deposit - Premises	18,104	18,104	8,147	8,147
Total Current Assets	518,620	243,716	146,775	95,866
Non-Current Assets				
Patents	23,036	23,037	-	Unknown
Software Platform	3,598,437	3,598,440	-	Unknown
Driver Equipment	-	-	-	-
Leasehold Improvement	-	-	-	-
Office Equipment	14,570	14,570	14,570	14,570
Office Furniture	704	705	705	705
Formation Costs	767	-	-	-
Capitalised Government Incentives	(1,439,027)	-	-	-
Total Non-Current Assets	2,198,487	3,636,752	15,275	15,275
Total Assets	2,717,107	3,880,469	162,050	111,141
Current liabilities				
Secured Creditors	402,697	378,583	-	382,369
Employee Entitlements	637,341	697,460	545,508	1,443,977
Statutory Creditors	208,196	247,466	199,473	259,686
Convertible Note 2022	5,479,676	5,510,200	5,510,200	5,510,200
Other Unsecured Creditors	761,858	212,374	202,196	185,676
Total Liabilities	7,489,768	7,046,083	6,457,377	7,781,908
Net Asset Surplus/(Deficit)	(4,772,661)	(3,165,614)	(6,295,327)	(7,670,766)

59. My comments in relation to each of the categories of balance sheet items are discussed below;

60. Cash at bank:

The Administrators' report details the reasons why Cash at bank is only recoverable in the amount of \$30,215, arising from \$30,676.39 being held to support credit card arrangements. As a result, I am in agreement with the estimate of realisable value of cash at \$30,215.

61. Receivables:

Receivables have been estimated to have a realisable value of between nil and \$57,504. I have not conducted my own investigations into Receivables, and I rely on the Administrators estimate of realisable value and adopt the figure of \$57,504.

62. Security Deposits and Bond

I accept the explanation provided by the Administrators for the estimated realisable value of \$8,147 and I adopt this estimate.

63. Patents / Software Platform

At the time of the Administrators report the value of Patents and the Software Platform were unknown. My assessment of the value of these assets is contained at **Section H**.

64. Driver Equipment

According to the Administrators report, the driver equipment was comprised of EMV devices, smartphones and printers issued to operators (taxi drivers). The book value of the driver equipment has been fully depreciated. Given that the equipment has been provided to thousands of taxi drivers over the past several years, the Administrators have assessed this equipment to have no commercial value and I agree with that assessment.

65. Leasehold Improvements

Leasehold improvements have a net nil book value, and I am of the opinion that a nil realisable value is appropriate.

66. Office Equipment

The Administrators have obtained a desktop valuation for the office equipment, which provided an estimated realisable value between \$7,100 and \$20,300. I have adopted the value estimated by the Administrators at \$14,570.

Other Assets

- 67.** In addition to the above assets, two further assets, not included in the balance sheet, have been identified being a potential refund from the ATO in relation to research and development expenditure, and a potential legal claim arising from the termination of a contract.

68. Legal Claim

It was disclosed in the Administrators S 439A report that the Company held an interest in a joint venture. Fleet Mobility Pty Ltd. This entity held potential damages claim arising out of the early termination of a contract for the provision of services. Specifically the Administrators stated:

“Joint Venture 50% interest in Fleet Mobility Pty Ltd, and any potential litigation claim. Fleet Mobility Pty Ltd was established with Netcabs to operate the Swan Taxi agreement and share in profits. The Swan Taxi Agreement was terminated prior to our appointment. The profit and loss statement for the period 1 July 2024 to 31 January 2025 records revenue of \$953.7K from Swan Taxis and gross profit of \$455.1K, the profit share between the Fleet Technologies Pty Ltd and Netcabs was \$207.6K each for FY25. The 31 January 2025 balance sheet of Fleet

Mobility Pty Ltd records net assets of Nil and no current or retained earnings. Subject to legal advice, although based on preliminary estimates the potential claims against Swan Taxis may be between Nil and \$500K."

I have given consideration to this statement, as well as the file note prepared by the Administrators dated 12 April 2025. Based on this information it is my opinion that if legal advice was obtained which supported an entitlement to make a claim, the best possible outcome that could be achieved would be no more than \$500K.

Accordingly, in the absence of any further advice, this claim should be valued as having a possible value of between nil and \$500K.

69. R&D Tax Refunds:

According to the Administrators Section 439A report, the R&D Tax Refund for FY25, to be received in October 2025, is estimated to be between \$650,000 and \$785,000.

I have been provided with the Administrators' calculations in respect of the claim, and I agree with the conclusion reached, which was, at this time the potential refund should be valued at between \$650,000 and \$785,000. I note that this asset is subject to a security held by Radium Capital as discussed below, and it is intended that, pursuant to the proposed DOCA, the secured creditor's claim will be met upon the realisation of this refund.

The amount of the claim will be subject to change in this final period, and the secured claim will continue to increase until the refund is received. Further, the refund may be at risk of being offset against existing taxation liabilities.

Having regard to all of these issues it is my opinion that the Research and Development Refund should be valued at no more than \$785,00 at this point in time.

Conclusion

- 70.** I consider that the estimated realisable value of the Company's assets, including R&D tax refunds but excluding the value of the Software Platform will be approximately \$896,141. The valuation of the software is discussed in **Section H** below.

Having regard to the potential legal recovery which may be made via Fleet Mobility Pty Ltd, that claim is likely to have a Nil value, but could have a potential value of up to \$500K. This range will be factored into my final opinion as to the equity value for Shareholders.

Liabilities

71. Secured Creditors

The only secured creditor is Innovation Structured Finance Co., LLC, trading as Radium Capital, which holds a security interest over all present and after acquired property of the Company. The debt owing to Radium upon the Administrators appointment was \$382,369 and interest continues to accrue. Radium Capital has a priority claim over all future Company tax refunds for the recovery of R&D Funding provided for the financial year ending FY25. I rely on the Administrator's assessment of the debt owing to the secured creditor.

72. Employee Entitlements

The Administrators have valued existing priority creditors at \$565,000, which includes long-service leave, annual leave, and Superannuation.

I note that the Administrators estimate a further \$618,700 would become owing to priority creditors for retrenchment should creditors resolve to place the Company into liquidation at the second meeting of creditors.

Notwithstanding that potential redundancy claim, I am evaluating the business assets at the current date and accordingly it is my opinion that for the purpose of this exercise that priority creditors should be valued at \$565,000.

I am aware of the guidance in ASIC's Regulatory Guide 111 to value assets in this scenario at their winding up value, however the inclusion of termination payments in this calculation is, in my opinion, likely to give a distorted result as to the value of the Company's net assets.

73. Statutory Creditors

The Administrators have concluded an amount of \$259,686 is owing to statutory creditors. I note that the ATO has submitted a Proof of Debt in the amount of \$247,466. Additionally, the Administrators are awaiting on a Proof of Debt from Revenue NSW and as such, they have accounted for an extra ~\$12K in the total value of statutory creditors. Given a Proof of Debt has been received from the ATO and Revenue NSW is yet to advise of their debt owing, I will adopt the figure outlined by the Administrators being \$259,686.

74. Convertible Noteholders

The Administrators outline the Noteholders' debt of \$5,510,200 can be split between Financier Noteholders under the DOCA Proposal with claims of approximately \$2,900,000, with the balance of Non-Financier Noteholders who have claims approximately \$2,600,000. As I do not have access to the exact figures and split of Financier Noteholders and Non-Financier Noteholders, I will assume for the purposes of my calculations that the Administrators ERV is accurate.

75. Other Unsecured Creditors

Based on the advised claims and Proof of Debt forms received by the Administrators to date, the amount owing to ordinary unsecured creditors is approximately \$185,676. This amount is based on the following calculation: -

Component	Amount (\$)
Estimated total creditor claims	445,362
<i>Less: - ATO Proof of Debt</i>	247,466
<i>Less: - Westpac Credit Card Debt</i>	30,676
<i>Less: - LeaseLabs</i>	3,400
<i>Less: - ASIC</i>	200
<i>Add: - Provision for future unidentified unsecured creditors</i>	22,056
Total Estimated creditor claims	185,676

Based on the estimated creditor value and the deductions outlined above, I am in agreement with the Administrators that the total value of unsecured creditors should be estimated at \$185,676.

Conclusion

- 76.** As a result of the above analysis, it is my opinion that the total value of creditor claims which should be assessed for the purpose of calculating the existing residual equity value is \$6,902,930.

H. Valuation

- 77.** In accordance with the methodology set out in **Section D** of this report, to calculate the residual equity value of the company it was my intention to determine whether there was any additional enterprise value (or goodwill) in the Company by applying two common methods of valuation, the Discounted Cash Flow Model, and the Capitalisation of Earnings Model.
- 78.** Consideration would also be given to the individual assets contained in the Company's balance sheet to obtain the fair and reasonable value of the Company's assets.
- 79.** The residual equity value of the Company would then be calculated by offsetting the total value of known and anticipated liabilities against the total asset value, and determining whether a surplus exists. That surplus would be equal to the residual equity value of the Company.
- 80.** Consideration of the discounted cashflow model and the capitalisation of maintainable earnings is given below.

Discounted Cashflow (DCF)

- 81.** The Discounted Cash Flow (DCF) method has been applied to estimate the enterprise value of the Company on a going concern basis, by forecasting future free cash flows and discounting them to present value using an appropriate discount rate.
- 82.** The DCF method is based on the principle that the value of a business is equal to the present value of its expected future free cash flows. The process involves:
 - a) Forecasting the Company's free cash flows over a five-year period;
 - b) Estimating a terminal value to reflect cash flows beyond the explicit forecast period; and
 - c) Discounting these amounts to present value using a Weighted Average Cost of Capital (WACC).
- 83.** The Company did not generate any positive cash flows for any period between FY22 to FY25YTD as outlined in **Section F** of this report and does not appear to have generated any positive cashflows throughout its period of operation.
- 84.** I have not been provided with any forecasts for the Company which show that the business has been or will be capable of producing any positive cashflows.
- 85.** In the circumstances, the application of any DCF analysis would indicate that the business holds no enterprise value outside of the individual assets contained in the Company's balance sheet.

Capitalisation of Earnings

- 86.** This method estimates the value of the business by capitalising a maintainable level of earnings using an appropriate market-derived multiple.

87. The Capitalisation of Earnings approach is based on the following principles:

- a) The value of a business is a function of its ability to generate future maintainable earnings;
- b) An appropriate multiple is applied to those earnings, reflecting risk, growth prospects, and prevailing market conditions; and,
- c) The resulting Enterprise Value is adjusted for net debt and other non-operating assets or liabilities to determine the residual equity value.

88. My investigations into the Company's audited financial statements for FY22, FY23, FY24 and management accounts for FY25YTD as per the position shown in the Xero accounts at the date of liquidation show that the Company experienced continuing material losses. In particular:

- a) The Company recorded cumulative net losses exceeding \$2.4 million over the most recent 12 months; and,
- b) Depreciation and amortisation amounted to \$54,000 and \$1.27 million respectively;

From this, the estimated EBITDA (Earnings Before Interest, Tax, Depreciation and Amortisation) is:

$$\begin{aligned} \text{EBITDA} &= \text{Net Loss} + \text{Depreciation} + \text{Amortisation} \\ &= -\$2,460,752 + \$54,000 + \$1,270,000 = -\$1,136,752 \end{aligned}$$

Given the consistent operating deficits, a maintainable EBITDA figure has been estimated at approximately -\$2.0 million, based on normalisation for any exceptional or non-operating items.

89. Given the trading position of the Company, its negative earnings, and the industry risk profile:

- a) A positive multiple is not meaningful in this case due to negative earnings.
- b) For indicative purposes, a market multiple for small-cap technology or transport platform businesses typically ranges from 4X to 8X EBITDA in normal operating circumstances; and,
- c) However, where EBITDA is negative, the multiple does not produce a meaningful positive valuation.

90. Accordingly, the application of this valuation method would not produce any positive result and therefore a valuation of the Company's assets will consist only of the individual assets contained in the balance sheet.

Valuation of individual assets

91. An analysis of the Company's balance sheet in **Section G** of this report concluded that the realisable value of assets was in the order of \$896,141 plus the value of intellectual property whose value was at that time unknown.

- 92.** Since that time the Administrators have engaged in a process to market the business for sale.
- 93.** The Administrators undertook a marketing and sale process of the business which has included:-
- i) Advertisements in the Australian Financial Review,
 - ii) Engaged a business broker, Resolve to market the business to interested parties,
 - iii) Wexted LinkedIn page and Wexted website seeking urgent Expressions of Interest (EOI).
- 94.** During the sale process, the Administrators received:
- i) EOIs from 18 interested parties;
 - ii) 10 parties executed the NDA / CA and obtained access to the data room; and
 - iii) Two parties provided an NBIO for the purchase of the software only, (i.e. those NBIOs were not for the business as a going concern and did not provide for the retention of employees. These offers were of a nominal value, and subject to further due diligence (DD);
- 95.** This process resulted in no party providing a binding offer by the deadline or subsequently.

DOCA Proposal

- 96.** Upon the appointment of the Administrators, the Financiers, (primarily noteholders), had committed to Management to providing non-recourse funding of \$500K to Wexted Advisors Trust Account, for the purpose of funding the trade on operations (including wages, PAYG, superannuation, rent etc), and the WXA Voluntary Administrators' remuneration and expenses (including legal fees), up to the date of the second meeting of creditors.
- 97.** This funding was provided on the basis that the contribution would form a potential DOCA Proponent's Deed Fund.
- 98.** Subsequently, the administrators received \$500K of non-recourse deed funding from the DOCA Proponent to allow for the continued trading of the business during the administration period up to the date of the Second Meeting and to meet external administration fees and expenses.

99. The specific terms of the DOCA are as follows:-

- a) The DOCA Proponent is Mr Mark Osborn, an investor in the Company. The funding is sourced from various third-party Financiers.
- b) The total Deed Fund consists of the following: -

Component	Amount (\$)
Deed funding (pre-DOCA operations)	500,000
Assignment of employee entitlements	565,000
Direct contribution toward iCare	3,000
DOCA contribution	100,000
Cash at bank and debtors	[variable]

c) The following parties will not participate in the DOCA distribution:

- Noteholders (to receive shares instead);
- Employees (entitlements preserved via employment); and
- Secured Creditor (expected to be repaid via future R&D refund).

100. Proceeds from the Deed Fund will be applied in the following order:

1. Administrators' trading liabilities.
2. Administrators' disbursements.
3. Administrators' remuneration.
4. Deed Administrators' disbursements (e.g., Court/ASIC costs);
5. Deed Administrators' remuneration.
6. DOCA Proponent's direct payment to iCare.
7. Dividend to participating unsecured creditors only (excludes Noteholders)

101. The following is a comparison of the outcome from a DOCA scenario compared to a Liquidation scenario: -

Estimated Return under DOCA:

- i) Unsecured Creditors: Between 4.5 and 44.7 cents in the dollar
- ii) Noteholders: Receive equity only, no cash dividend
- iii) Employees & iCare: 100% paid
- iv) Secured Creditor: Expected to be repaid in full

Estimated Return under Liquidation:

b) All Unsecured Creditors (incl. Noteholders): Nil return

i) Employees: Only 2.5 cents in the dollar in low scenario

- 102.** The effect of the DOCA is that all liabilities will be cleared (with the exception of employee entitlements) and that the Company will retain ownership of all of its assets, including all intellectual property. Although the secured creditor claim will sit outside the DOCA, and that claim will be met upon the realisation of the ATO research and development refund.
- 103.** It is often the case that existing stakeholders will place the highest value on an insolvent business. The process by which the business assets are retained via the implementation of a DOCA provides additional benefits to the purchaser/deed proponent by way of continuity of business as well as the benefit of avoiding liquidation and the associated claims that may be made against Directors.
- 104.** In this instance, the realisation of the research and development refund will also be enhanced by continuing operations.
- 105.** The total cost to the Deed proponents to implement this arrangement consists of the original contribution of \$500K, plus an additional contribution of \$100K, as well as a payment to iCare of approximately \$3,000, totalling \$603,000.
- 106.** Following completion of the DOCA the Company will have assets of \$896,141, less the secured claim of Radium Capital (\$382,369) and the employee entitlements of \$565,000, resulting in a balance sheet which has negative net assets of \$51,228.
- 107.** As a result of the above calculations, it appears that the Deed Proponent has invested \$603,000 to acquire the Software Platform and net assets (which total negative \$51,228.) On this basis, it is my view that the Deed Proponent has valued the Software Platform at \$654,228.
- 108.** In the absence of any other offers to acquire the Software Platform, it is my opinion that this is the appropriate value to adopt for the purpose of calculating the residual equity for Shareholders.

109. These calculations are summarised in the table below: -

Component	Amount (\$)
Administrators ERV – tangible assets	111,141
Add: - Research & Development refund	785,000
Less: - Security interest claim owing to Radium Capital	382,369
Less: - Other employee entitlements	565,000
Total Net Assets	(51,228)
Add: - Software Platform	654,228
Total Assets	603,000
Less: - Total Liabilities	5,955,561
(Original assessment of \$6,902,030 less the amount owing to the secured creditor and for employee entitlements which are both factored in above)	
Total Surplus / (Deficiency)	(5,352,561)

110. As a result of my investigations and calculations which are set out above, it is my opinion that there is no residual equity value for the Shareholders of the Company.

111. For the purposes of the above calculation, I have valued the potential legal claim as having nil value. In the event that claim were to be valued at its highest, being \$500K, it would have no impact on my opinion that there is no residual equity value for the shareholders of the Company, as that figure is substantially lower than the calculated shortfall of \$5.35M.

Date: 23 May 2025

John Melliush

John Melliush
PCI Partners

Level 17, 9 Castlereagh Street
Sydney NSW 2000
Telephone: 9299 1840

Annexures

List of Annexures

- A. Resume of John Melliush
- B. Letter of Instruction
- C. Expert Witness Code of Conduct
- D. Index of Material Provided

Annexure A

Resume of John Melliush

John Melliush is one of Sydney's most trusted insolvency specialists. He has more than 35 years experience in personal and corporate insolvency across a wide variety of industries. John has led large teams in the restructure of retail, finance, property and manufacturing businesses but has also been hands on in the conduct of a high volume of basic insolvency matters including bankruptcies and court liquidations.

This experience has led to John having a strong technical focus and is often called upon to give expert testimony in relation to a variety of solvency related matters, in particular the preparation of solvency reports.

February 2019 – Current - Partner at PCI Partners

Undertaking all types of formal and informal insolvency matters as well as preparing expert reports in relation to insolvency and forensic accounting issues. John is a Registered Trustee (since 1997) and Registered Liquidator (since 1998)

January 2016 to January 2019 - John Melliush - Chartered Accountant

John specialised in helping businesses navigate change, growth and profit improvement strategies. Joining the leadership team on a full time or part time basis his focus is co-designing and implementing strategies which ensure that businesses are actively responding to the changes and competitive forces affecting their markets.

John was also engaged from time to time to act as an expert witness in relation to formal insolvency matters. These roles included the preparation of solvency reports, the assessment of practitioner remuneration or the general conduct of insolvency practitioners.

July 1987 to December 2015 - Employee and Partner at Ferrier Hodgson

John had more than 28 years experience at one of Australia's leading corporate recovery firms including 18 years as a partner of the firm. During his time with Ferrier Hodgson John headed up the firm's Property and Construction specialisation team and handled hundreds of assignments in diverse industries, ranging from construction, real estate, property development and retail, John has experience in all forms of formal insolvency appointments including :-

- Official Liquidations
- Members and Creditors Voluntary Liquidations
- Voluntary Administrations and Corporate Receiverships
- Bankruptcy and Part X Administrations

John was regularly consulted on engagements involving financiers and the realisation of distressed property assets. John holds postgraduate qualifications in both insolvency law and property investment and development.

Former Board member and National President of ARITA

Australian Restructuring Insolvency & Turnaround Association (ARITA) represents practitioners and other associated professionals who specialise in the fields of restructuring, insolvency and turnaround.

John was a Board member for 10 years including 2 years as National President and 3 years as a Director and Treasurer of Insol International.

During this time John liaised with various government departments regarding amendments to the Bankruptcy Act and the Corporations Act as it concerned insolvency issues. He was instrumental in bringing about the IPA Code of Conduct as well as the requirement to provide creditors with detailed remuneration reports.

Qualifications and Memberships

- Bachelor of Economics, Macquarie University
- Fellow of Chartered Accountants Australia and New Zealand (CAANZ)
- Registered Trustee
- Registered Liquidator
- Graduate Diploma of Advanced Insolvency Law, University of Southern Queensland
- Graduate Diploma of Property Investment & Development, University of Western Sydney
- Managing Professional Services Firms Harvard Graduate School of Management
- Fellow of the Australian Restructuring Insolvency & Turnaround Association (ARITA)

Expert Witness Matters

2000-2025

- **Sargent Security** – Prepared a solvency report on behalf of the Liquidator in relation to a labour hire/security business in response to another Expert's solvency report and then prepared a Joint Experts Report.
- **Ashington Development** – Prepared a solvency report in response to a report prepared by the liquidator in voidable transaction proceedings. BBY was a stockbroking firm with in excess of \$40M in liabilities.
- **BBY Ltd** – Prepared a solvency report in response to a report prepared by the liquidator in voidable transaction proceedings. BBY was a stockbroking firm with in excess of \$40M in liabilities.
- **K-C Trade Pty Ltd** – Prepared a solvency report on behalf of the liquidator in relation to a business that operated as a national wholesaler of medical products.
- **SBL Solutions Pty Ltd** – Prepared an expert witness report in proceedings brought to set aside a deed of company arrangement. The business operated as a contractor in the building and construction industry.
- **Estate of Linn** – Assisted solicitors acting for a beneficiary of a deceased estate to calculate the total value of the estate.
- **VIG Group Pty Ltd** – Prepared a solvency report on behalf of the liquidator in relation to a number of group companies engaged in residential and commercial property development.
- **Anderson Training and Recruitment Pty Ltd** - Prepared a solvency report on behalf of the liquidator in relation to a business engaged in training and recruitment.
- **SX Projects Pty Ltd** - Prepared a solvency report for the liquidator in the matter of SX Projects Pty Ltd (In liquidation) which was a construction business undertaking medium sized commercial and residential projects.
- **Wickham Securities Ltd** – Acted as an insolvency expert in the class action brought by various investors against Sandhurst Ltd as Trustee in the matter of Wickham Securities Ltd (In liquidation). Specifically the role included a calculation of returns to investors in the event that the Trustee had appointed a Receiver at an earlier point in time, including the estimated costs of that administration.
- **GR Finance Ltd** - Acted as an insolvency expert in the class action brought by various investors against Sandhurst Ltd as trustee in the matter of GR Finance Ltd (In liquidation). Specifically the role included a calculation of returns to investors in the event that the Trustee had appointed a Receiver at an earlier point in time, including the estimated costs of that administration.
- **Pie Face Ltd** - Prepared a solvency report for the liquidator in the matter of Pie Face Ltd (In liquidation) which was a manufacturer and retailer of food products in a franchise environment.
- **SLM Marketing Pty Ltd** - Prepared a solvency report for the liquidator in the matter of SLM Marketing Pty Ltd (In liquidation) which was a marketer of gift card products.
- **Total Hoardings Pty Ltd** – Prepared a solvency report in response to the liquidators' expert's report regarding solvency in the matter of Total Hoardings Pty Ltd.
- **Blenkinsop Trust** – Prepared an expert review of the remuneration claimed in the administration of the Belinkinsop Trusts. Remuneration claimed was in excess of \$1m.
- **Joe and Joe Developments Pty Ltd** – Prepared an expert opinion on the remuneration which should have been incurred by a reasonable and diligent external administrator in the winding up of the company in proceedings brought by the shareholders against their solicitor.
- **Tiaro Coal Ltd** – Prepared an expert report in relation to the value of a shareholding held in a mining venture disposed of by Tiaro Coal Ltd (In liquidation)

- **Shuangfu Developments Pty Ltd** – Prepared an expert opinion in relation to the conduct of an external administrator in relation to holding a meeting of creditors in the matter of Shuangfu Developments Pty Ltd (Subject to a deed of company arrangement).
- **Truth (SA) Pty Ltd** – Prepared an expert opinion in relation to the conduct of the liquidator in the matter of Truth (SA) Pty Ltd (In liquidation) including a review of the liquidators remuneration



Maddocks

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11 April 2025

**Privileged
Private & Confidential**
John Melliush
PCI Partners

By email: jmelliush@pcipartners.com.au

Dear John

**Letter of Instruction
In the matter of Fleet Technologies Limited (Administrators Appointed) ACN 152 473 482**

We act for Christopher Johnson and Joseph Hayes in their capacity as joint and several administrators (the **Administrators**) of Fleet Technologies Limited (Administrators Appointed) ACN 152 472 482 (the **Company**).

We are instructed to engage you to prepare an independent expert opinion in response to the question set out in Section 5 below. To help you prepare your report, we provide the following information and documents. Please let us know if you require any further instructions or documents.

1. Background

- 1.1 The Company is a public, non-listed company.
- 1.2 On about 25 March 2025, the Administrators were appointed as voluntary administrators under section 436A of the Company.
- 1.3 On about 31 March 2025, the Administrators commenced a sales process of the Company (**Sales Process**).
- 1.4 The Sale Process was run as an Expressions of Interest (**EOI**) campaign for the sale of the business and assets. The Sale Process was advertised by the Administrators in the Australian Financial Review on 31 March 2025, and also via LinkedIn.
- 1.5 Under the EOI:
 - 1.5.1 Non-binding indicative offers were required to be submitted by 5pm on 8 April 2025; and
 - 1.5.2 Binding offers were required to be submitted by 5pm on 11 April 2025.
- 1.6 During the period of the EOI, the Administrators:
 - 1.6.1 EOI received from 17 parties
 - 1.6.2 10 parties executed NDA's and obtained access to the data room;

- ## 2. Relevant documents

- ### 3. Expert witness documents

- page 2

- #### 4. Instructions

- ## 5. Question

- ## 6. Assumptions

- (a) value any underlying assets, and where necessary business(es), using the guidance in Part C of RG 111, including crosschecks⁵;

⁵ see RG 111.74(a)

- (b) consider valuation evidence provided by the sales process conducted by the administrator (if any) as well as the value (if any) of potential recoveries for voidable transactions⁶; and
 - (c) seek specialist technical assistance, where relevant, consistent with the requirements in Section E of RG 112⁷.
- 6.1.6 the selection of the appropriate approach and methods to value company assets and/or businesses will depend on the facts and circumstances involved, available data and your professional judgement. The rationale for the selection of the approach and method used should be fully disclosed in the report.
- 6.1.7 The IER is to comply with:
 - (a) the UCPR;
 - (b) the Code;
 - (c) any relevant ASIC guides, including, for instance, Regulatory Guide 6 and Regulatory Guide 111 (both of which are included in the brief).
- 6.1.8 It is intended that the IER will be used:
 - (a) by the Administrators in the Court Application;
 - (b) by the Administrators in the ASIC Approval Application; and
 - (c) to help shareholders decide whether to oppose the Court Application and to understand why their shares are being expropriated without any consideration.

7. Confidentiality

- 7.1 We confirm that all communications, oral or written, between Maddocks, the Administrators and you and/or your agents and employees are subject to legal professional privilege. This means that those communications are strictly confidential and privileged and should remain so unless the Client gives permission to disclose them.
- 7.2 Any document (including electronic documents such as emails) that you produce in the course of your engagement should be:
 - 7.2.1 addressed to Danielle Funston, Partner at Maddocks Lawyers; and
 - 7.2.2 clearly marked 'Privileged and confidential'.
- 7.3 You should do everything reasonably necessary to protect the confidentiality of all information acquired during the course of your engagement.

8. Obligations

- 8.1 On accepting this appointment, you agree to:
 - 8.1.1 comply with any Court timetable or any timetable provided by us;

⁶ see RG 111.74(b)

⁷ see RG 111.74(c)

- Please do not hesitate to contact on if you require any further information.

Houston

[9828926:47883487_2]

Index to Documents

Tab	Document	Date
1.	Part 31 Division 2 of the <i>Uniform Civil Procedure Rules 2005</i> (NSW) (UCPR) and the Expert Witness Code of Conduct, Schedule 7 of the UCPR (Code); Supreme Court of NSW Practice Note SC GEN 23 Use of Generative Artificial Intelligence	
2.	ASIC Regulatory Guide 6: Takeovers: Exceptions to the general prohibition	March 2024
3.	ASIC Regulatory Guide 111: Content of Expert Reports	20 October 2020
4.	First Creditor's Report	27 March 2025



Maddocks

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Our Ref 9828926

7 May 2025

Privileged
Private & Confidential
John Melliush
PCI Partners

By email: jmelliush@pcipartners.com.au

Dear John

Supplementary Brief to Expert
In the matter of Fleet Technologies Limited (Subject to a Deed of Company Arrangement)
ACN 152 473 482

We refer to our letter of instructions dated 11 April 2025 which enclosed a brief of documents (**Letter of Instructions**).

By way of update to the Letter of Instruction, please find enclosed herewith a Supplementary Brief of documents, being the documents referred to in the attached index.

Please do not hesitate to contact us if you require any further information.

Yours faithfully

Danielle Funston
Partner

Annexure "C"

APES 215 Forensic Accounting Services

[Supersedes APES 215 Forensic Accounting Services issued in June 2023]

REVISED: October 2024

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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 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 January 2025 and supersedes APES 215 issued in June 2023. 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 all the mandatory requirements of APES 215 when they provide a **Forensic Accounting Service** that is an **Expert Witness Service**. **Members** in Australia shall follow the mandatory requirements of APES 215 except for those in Section 5, when they provide a **Forensic Accounting Service** that is not an **Expert Witness Service**.**
- 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 **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**.**
- 1.9 The Standard is not intended to detract from any responsibilities which may be imposed by law or regulation.
- 1.10 All references to **Professional Standards**, guidance notes and legislation are references to those provisions as amended from time to time.
- 1.11 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**.

- 1.12 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)*.

Confidential Information means any information, data or other material in whatever form or medium (including written, electronic, visual or oral) that is not publicly available.

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, 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 evidence 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.

*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 an 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:

- (a) 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.
- (b) 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 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 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 an 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 use 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 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 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 an 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 party¹ 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**.
- 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**.

1 The term 'reasonable and informed third party' is explained in paragraph 120.5 A9 of the **Code**.

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 Where there is an expectation that a **Member's Report** will refer to the **Member's** specialised knowledge and/or 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.
- 3.15 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.
- 3.16 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.
- 3.17 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

- 3.18 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**.
- 3.19 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. Engagement and other 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 300 *Applying the Conceptual Framework – Members in Public Practice* and Section 320 *Professional Appointments of the Code*.
- 4.3 A **Member in Business** who is approached by the **Member's Employer** to undertake a **Forensic Accounting Service** shall comply with Section 200 *Applying the Conceptual Framework – Members in Business* and Section 220 *Preparation and Presentation of Information 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 party² 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 party³ 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.

² The term 'reasonable and informed third party' is explained in paragraph 120.5 A9 of the **Code**.

³ The term 'reasonable and informed third party' is explained in paragraph 120.5 A9 of the **Code**.

- 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
 - (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

- 7.1 A **Member in Public Practice** shall comply with the requirements of APES 320 *Quality Management 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 use a system of quality management that includes appropriate policies and procedures dealing with elements of quality management including but not limited to:
- (a) Governance and Leadership;
 - (b) **Professional Standards**;
 - (c) Resources;
 - (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

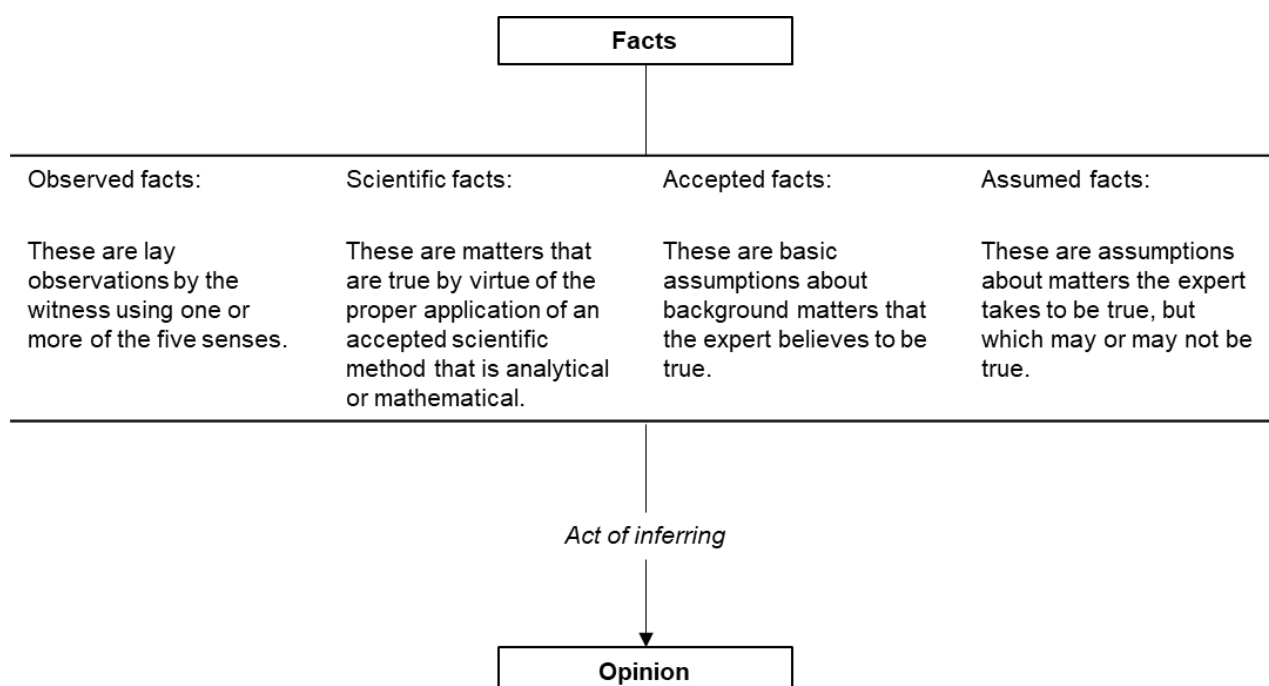
The International Ethics Standards Board for Accountants (IESBA) has not issued a pronouncement equivalent to APES 215.

Appendix 1 – Facts, assumptions, and opinions

*This Appendix contains some examples to assist a **Member** in 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

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



Observed facts and scientific facts

Observed facts and scientific facts are both based on observations by the 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 witness using one or more of the five senses, but are not based on the application of the 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

⁴ 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*, 11th 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 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

An opinion is an inference 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](#) uses 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

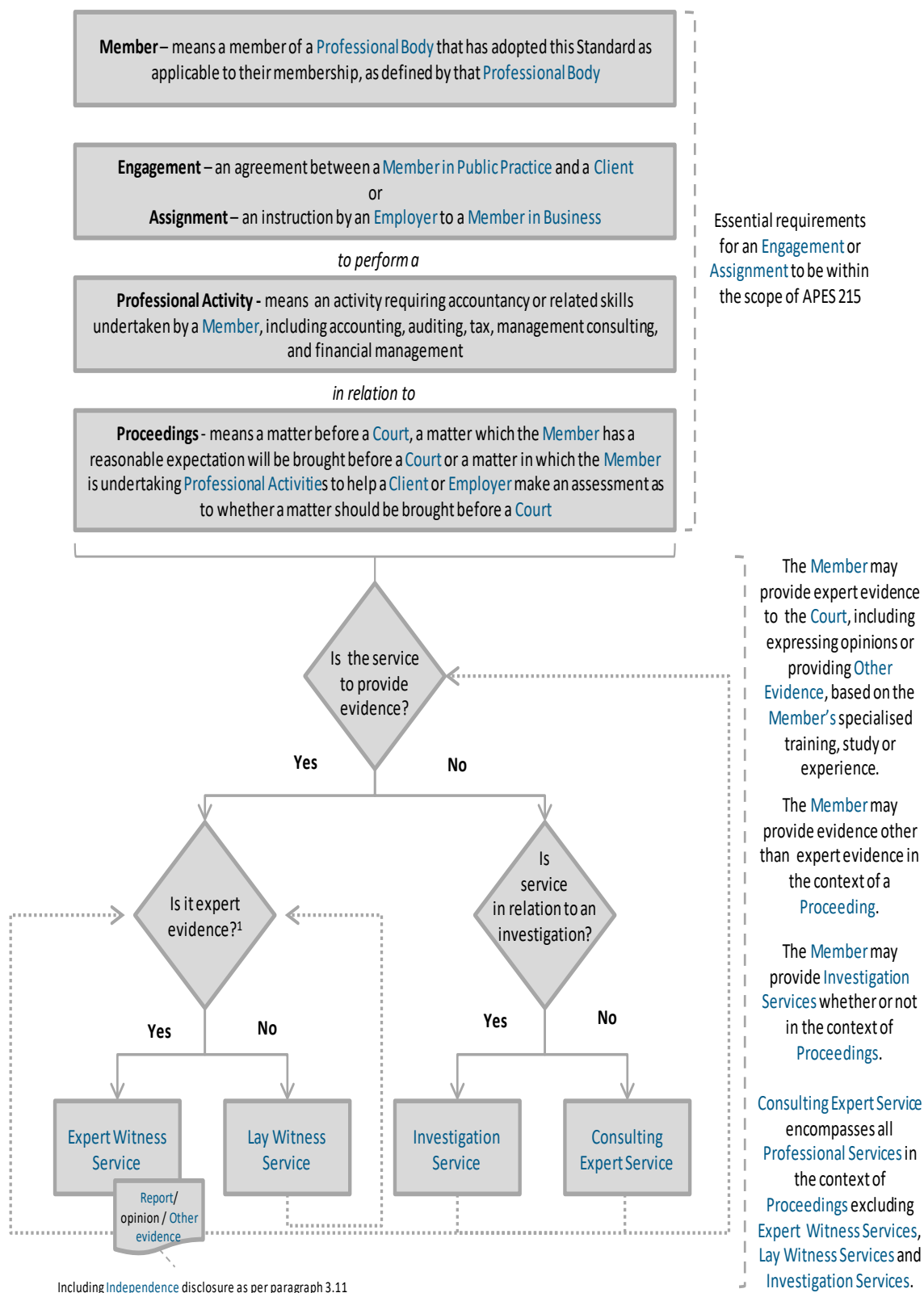
expressing an opinion. On the other hand, if the [Member](#) were instructed to assume a figure for the beta then that would be an assumption.

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.



¹ 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	Consulting Expert Service
2	Dispute mediator	Consulting Expert Service
3	Adviser to investigation by law enforcement/regulatory agency	Consulting Expert Service (unless the <i>Member</i> is or is likely to provide an opinion or <i>Other Evidence</i> to the Court)
4	Prepare a <i>Report</i> for a company in a dispute	Expert Witness Service
5	Prepare a <i>Report</i> for a regulatory body on a listed company's compliance with accounting standards	Expert Witness Service
6	<i>Member</i> employed by/engaged by a law enforcement/regulatory body to provide an analysis of complex transactions for <i>Proceedings</i>	Expert Witness Service
7	<i>Member</i> employed by/engaged by a law enforcement/regulatory body to provide a summary of transactions for <i>Proceedings</i>	Lay Witness Service (where the <i>Member</i> does not use specialised knowledge derived from training, study or experience in accounting or refer to specialised knowledge and/or training, study or experience in accounting) Expert Witness Service (where the <i>Member</i> is or is likely to provide an opinion or <i>Other Evidence</i> to the Court and/or the <i>Member's Report</i> refers to the <i>Member's</i> specialised knowledge and/or training, study or experience in accounting)
8	<i>Member</i> employed by a company under investigation subpoenaed to provide a factual witness statement	Lay Witness Service

No.	Nature	Conclusion
9	Member employed by a company under investigation subpoenaed to provide a factual witness statement and subsequently asked to apply expertise	Expert Witness Service
10	Member employed by a company under investigation subpoenaed to provide an opinion on the appropriate accounting for a chart of transactions	Expert Witness Service
11	<i>Insurance Claim</i> – Provision of loss adjusting services requiring accounting skills	Consulting Expert Service (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	Consulting Expert Service (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	Consulting Expert Service (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	Expert Witness Service
15	<i>Family Law</i> – Engaged to provide consulting advice related to another accounting expert's opinion	Consulting Expert Service (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	Consulting Expert Service
17	Member employed by a company investigating a potential criminal offence or civil matter	Investigation Service (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	Lay Witness Service (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	Lay Witness Service (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	Lay Witness Service
21	Member requested to give evidence in relation to observations of a motor vehicle accident in which the Member was involved	Not a Forensic Accounting Service

No.	Nature	Conclusion
		(the Member is acting as a lay witness and not undertaking a Professional Activity)
22	Member employed by a revenue authority undertaking an investigation into a taxpayer's affairs	Expert Witness Service
23	Member is employed by a regulatory agency tasked with the review of a trust account in which alleged irregularities have occurred	Expert Witness Service

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 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 that sets out an analysis of a number of complex transactions and related accounting journals and ledger entries. The chart or document 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 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 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 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 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 various bank accounts. 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 to be used to present evidence of the bank documents used to prepare the chart or summary, to 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: **Lay Witness Service** – if 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. Further, in order to remain a **Lay Witness Service**, any submissions or evidence presented to the **Court** must not refer to the **Member's** specialised knowledge and/or training, study or experience in accounting.

Expert Witness Service – if 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** specialised knowledge and/or 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**.

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. 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 – 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 June 2023)

APES 215 *Forensic Accounting Services* was originally issued in December 2008 and revised in December 2013, December 2015, July 2019 and June 2023 (extant APES 215). APES 215 has been revised by APESB in October 2024. A summary of the revisions is given in the table below.

Table of revisions*

Paragraph affected	How affected
1.2	Amended
2 – Definition of Confidential Information	Added
3.9 - Footnote 1	Amended
3.18	Amended
3.19	Amended
5.1 - Footnote 2	Amended
5.2 - Footnote 3	Amended
7.2	Amended

* Refer Technical Update 2024/5

Index to Supplementary Brief

Tab	Document	Date
1.	Second Creditor's Report	14 April 2025
2.	Email from Simon Bayley to Luke Fay	31 July 2022
3.	Document named " <i>Ingogo Term Sheet (Convertible Note) 2022-07-15</i> "	
4.	Document named " <i>2022 Convertible note pricing</i> "	
5.	Spreadsheet named " <i>2022 Con-Note Calculator</i> "	
6.	Spreadsheet named " <i>R and D Exp – Ingogo Ltd – YE 30 June 2025 interim Workpaper to 31 March 2025 13042025_REDACTED</i> "	
7.	ASIC Search - Fleet Mobility Pty Ltd.pdf	
8.	Fleet Technologies - Assets Listing.xlsx	
9.	Fleet Technologies 2023 Annual Financial Report - Auditor Signed (31102023).pdf	
10.	Fleet Technologies 2024 Annual Financial Report - Auditor Signed (31102024).pdf	
11.	Fleet Technologies-Business Overview-WXA.pdf	
12.	FLEET USA 2025 Financial Model Projection - Wexted 20250407_DATAROOM.xlsx	
13.	Fleet_Mobility_Pty_Ltd_-_Balance_Sheet FY23.pdf	
14.	Fleet_Mobility_Pty_Ltd_-_Balance_Sheet FY24.pdf	
15.	Fleet_Mobility_Pty_Ltd_-_Profit_and_Loss FY23.pdf	
16.	Fleet_Mobility_Pty_Ltd_-_Profit_and_Loss FY24.pdf	
17.	Fleet_Mobility_Pty_Ltd_-_Profit_and_Loss YTD Jan 25.pdf	
18.	FLT - Balance Sheet.pdf	
19.	FLT - P&L 1Jul24 to 28Feb25.pdf	



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20.	FLT- P&L FY24FY23.pdf
21.	FLT-Binding Offer Form.docx
22.	FLT-Non-binding Indicative Offer Form.docx
23.	FLT01-250410-Litigation summary-WXA.pdf
24.	Org Chart.pdf