



Annual Review of APES 330 *Insolvency Services* (revised November 2011)

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1. Executive Summary

1.1. Background

Accounting Professional and Ethical Standards Board (APESB) issued APES 330 *Insolvency Services* (the Standard) in September 2009 with an effective date of 1 April 2010. APES 330 sets out mandatory requirements and guidance for Members in Public Practice that provide Insolvency Services. In November 2011, APESB revised APES 330 to align it with the revised IPA Code. The revised Standard has an effective date 1 April 2012.

1.2. Reason for this report

In accordance with APESB's constitution, an annual review needs to be performed on each professional standard. This report presents a review of issues reported to APESB by stakeholders such as insolvency practitioners, professional accounting bodies and Firms and a proposed course of action to address the issues identified.

1.3. Issues identified

Treasury released an exposure draft of the amendments to be included in the *Insolvency Law Reform Bill* (the Bill). The closing date for comments on the exposure draft was 8 March 2013. It is expected that Treasury will release a second tranche of the Bill shortly that will set out further consequential amendments to the corporate and personal insolvency legislation as a result of the reforms in the Bill, together with transitional measures. It is anticipated that draft regulations will also be released for public consultation. Following finalisation of the Bill and the draft regulations, the IPA Code and APES 330 will need to be revised in order to align with the Government's insolvency law reforms.

1.4. Summary of Actions/Recommendations

Technical staff will monitor the release of the second tranche of the Insolvency Law Reform Bill and the draft regulations. Following its release, APES 330 will be reviewed to incorporate any amendments required due to these legislative reforms.

Review of Issues

2.1 The upcoming release of Insolvency Law Reform Bill in 2013

Issue

Treasury has released an exposure draft of the primary amendments to be included in the Insolvency Law Reform Bill. Following the finalisation of the Bill and the accompanying regulations, the IPA Code and APES 330 will need to be revised in order to align with the Government's insolvency law reforms.

The ED implements reforms previously released in the proposal paper, *A modernisation and harmonisation of the regulatory framework applying to insolvency practitioners in Australia* released in December 2011. The ED provides a framework for corporate and personal insolvency regulation that promotes a high level of practitioner professionalism and competency, enhances transparency and communication between insolvency practitioners and stakeholders, and promotes increased efficiency in insolvency administration. The closing date for submissions was March 2013.

A second tranche of the Bill is expected to be released shortly setting out further consequential amendments to the corporate and personal insolvency legislation as a result of these reforms, along with transitional measures. Draft regulations will also be released for public consultation.

Important elements of the Insolvency Law Reform Bill include:

- creation of a new Schedule to the Corporations Act and Bankruptcy Act that aligns the registration process for registered liquidators and registered trustees.
- the newly aligned registration process based upon the existing Bankruptcy Act provisions to replace the current systems for registration of liquidators and registered trustees.
- a single class of practitioner in corporate insolvency.
- reforms to the insurance obligations of insolvency practitioners that will significantly strengthen the penalties attached to not holding adequate and appropriate insurance, improve the regularity with which practitioners are required to show evidence of their insurance to the regulators, and allow for the insurance obligations for insolvency practitioners to more easily be amended in light of the insurance markets prevailing at a relevant period of time.
- requirement for insolvency practitioners to lodge an annual practitioner return.
- obligation for insolvency practitioners to inform their respective regulator when the trustee becomes aware of prescribed significant events that would result in the practitioner automatically being deregistered by law, by a regulator without reference to a committee, or the practitioner ceases to have adequate and appropriate insurance.
- capacity for the regulators to deregister or suspend a practitioner directly without referral to a committee on certain objectively determinable grounds.
- application of the reforms to apply the current three-person committee approach to the registration and discipline of liquidators.

Impacted Stakeholders

Members in Public Practice, Firms and professional accounting bodies.

Action/Recommendation

Technical staff will monitor the release of the second tranche of the Insolvency Law Reform Bill and the draft regulations. Following its release, APES 330 will be reviewed to incorporate any amendments required due to these legislative reforms.