

Review of Submissions – Specific Comments Table
Exposure Draft 04/21 relating to proposed revisions to APES 330 *Insolvency Services*

Note: General comments relating to APES 330 are addressed in a separate table. This table excludes minor editorial changes.

| Item No. | Paragraph No. in ED | Respondent | Respondents' Comments | Change made to Standard? |
|----------|--|------------|--|--------------------------|
| 1 | Definition of Restructuring Practitioner | Deloitte | The new small business restructuring regime introduced into the Corporations Act 2001 (Cth) (the Act) at Part 5.3B on 1 January 2021 was, in our view, a welcome addition to Australia's insolvency laws. With it came the introduction of a new restructuring practitioner (RP) role which is unique and distinct from other insolvency appointment roles. We note the proposed standard has added a helpful and succinct definition for this new role. | No |
| 2 | Section 10 | CA ANZ | We strongly support the creation of the new section 10 to specifically clarify the independence requirements for our members when they accept an appointment by a small business as a restructuring practitioner for the company or its restructuring plan. Through our participation in the working group, we noted the challenges of appropriately incorporating the relevant independence considerations within the existing section 4. | No |
| 3 | Section 10 | CPAA | <ul style="list-style-type: none"> It is appropriate that the SBRP be included in APES 330 and be reflected in a separate section to acknowledge the different role of the SBRP in the context of insolvency services. | No |
| 4 | Section 10 | IPA | Alignment between revised APES 330 and insolvency reforms The IPA's assessment of the proposed revisions to APES 330 indicates that they are aligned with the insolvency reforms introduced (so far) by the Government. In particular, we note that section 10 of APES 330 contains new requirements relating to the RP; and that the independence requirements in section 10 of APES 330 align with the requirements in section 456C of the <i>Corporations Act 2001</i> . We note further that the requirements relating to professional fees and expenses in section 10 are consistent with the <i>Insolvency Practice Rules (Corporations) 2016</i> , effective from 01 January 2021. Our understanding of the legislative and regulatory provisions relating to the fees and remuneration to be paid to an RP are based on Rules 60-1B <i>Remuneration for Restructuring Practitioners for Companies</i> and 60-1C <i>Remuneration for Restructuring Practitioners for Restructuring Plans</i> and we note that Appendix 4 to the proposed revised Standard provides sufficient referencing to the requirements. | No |
| 5 | 10.2-10.15 | Deloitte | We note the Australian Restructuring, Insolvency and Turnaround Association (ARITA) provided guidance to its members early this year that they will not be applying their Code of Professional Practice independence requirements to RP appointments. Accordingly, we are supportive of the proposed amendments to the standard which provides that the <i>Section 4 Professional Independence</i> standards do not apply to a RP and that new guidance, at <i>Section 10</i> , has been drafted to address the independence requirements of a RP. We believe the proposed new independence guidance at paragraphs 10.2 to 10.15 for RPs have adequately captured the intention and purpose of the new regime. | No |
| 6 | 10.16-10.29 | CA ANZ | We consider the proposed revisions appropriately capture the obligations of our members appointed as a restructuring practitioner and the specific fee arrangements as outlined in the relevant legislation. | No |

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| 7 | 10.16-10.29 | CPAA | <ul style="list-style-type: none"> It is appropriate that the method of remunerating a SBRP is reflected separately to other insolvency services due to the differences in the remuneration approval process for the SBRP. | No |
| 8 | 10.16-10.29 | Deloitte | Finally, we also note the new paragraphs 10.16 to 10.29 drafted for a RPs remuneration and expenses (also included in the new <i>Section 10</i>) have been crafted in a way that is consistent with the provisions enacted in the <i>Insolvency Practice Rules (Corporations)</i> that apply to RP remuneration. | No |
| 9 | Appendix 2 DIRRI | CA ANZ | This review also provided an opportunity to further enhance the Declaration of Independence Relevant Relationships and Indemnities (DIRRI). | No |
| 10 | Appendix 2 DIRRI | CPAA | <ul style="list-style-type: none"> The changes proposed to the Declaration of Relevant Relationships make the document easier to read for stakeholders. | No |
| 11 | Appendix 3 | ARITA | <p>We have one point to raise which is unrelated to the changes for the small business insolvency reforms, however, it is important as it is a meaningful point of difference between APES 330 and ARITA's Code of Professional Practice (Code).</p> <p>Practice Statement Insolvency 8 of the Code (at 8.2.3) provides guidance that remuneration for time spent communicating with regulators or professional bodies about complaints about the member or the conduct of a particular Administration is not necessary and proper, <u>unless the complaint is deemed spurious by the Regulator</u>.</p> <p>Appendix 3 to APES 330 provides similar guidance except for the underlined part.</p> <p>We know that the Code has always included an exception for spurious complaints as this can be a common problem for insolvency practitioners. However, we cannot recall why APES 330 does not include a similar exception.</p> <p>We have had a member raise this issue with us as the member is dealing with a regulator regarding a complainant that is trying to obstruct the administration process by making complaints to the regulator and nothing has been found against the member. It is just taking up a lot of the member's time.</p> <p>Under the Code, the member would be entitled to charge the time spent to the administration if the complaint(s) is without substance, but the member is concerned about breaching APES 330 if the member were to claim the time.</p> <p>It is ARITA's view that the two standards should be aligned on this point, recognising the exception for spurious complaints.</p> | Yes – Appendix 3 |

RESPONDENTS

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| 1 | ARITA | Australian Restructuring Insolvency & Turnaround Association |
| 2 | CA ANZ | Chartered Accountants Australia and New Zealand |
| 3 | CPAA | CPA Australia |
| 4 | Deloitte | Deloitte Financial Advisory Pty Ltd |
| 5 | IPA | Institute of Public Accountants |