

AT A GLANCE

APES 330 Insolvency Services ED

April 2014

APES 330 Insolvency Services (Exposure Draft 02/14)

APES 330 ED At A Glance provides an overview of the key proposed revisions to the existing APES 330 (2011).

Objective:

APESB is issuing APES 330 *Insolvency Services* Exposure Draft (APES 330 ED) to revise the existing APES 330 (2011). APES 330 sets the requirements and guidance for Members in Public Practice who provide Insolvency Services.

Proposed operative date:

The effective date for the proposed APES 330 is in respect of Insolvency Services commencing on or after **1 September 2014** with early adoption permitted.

For more information:

Visit the APESB website (www.apesb.org.au) for further information on the project's history and the Exposure Draft.

Next steps:

APESB is seeking feedback from stakeholders to inform its development of the revised Standard. APES 330 ED is available for public comment until **6 June 2014**.

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Why revise APES 330 Insolvency Services?

What are the key definitional changes to APES 330?

ARITA's project to revise their Code of Professional Practice

The Australian Restructuring & Turnaround Association (ARITA) recently finalised a project to revise their Code of Professional Practice in response to feedback from practitioners, current industry practice and recent outcomes of disciplinary cases. The ARITA *Code of Professional Practice* (3rd Edition) (the ARITA Code) was finalised in late 2013 and is effective from 1 January 2014. Accordingly, APESB has undertaken a proposal to align the two codes.

Revision of IESBA's International Code and subsequent amendments to APES 110 Code of Ethics for Professional Accountants

The following definitions in APES 330 ED have been revised primarily due to IESBA's revision of the International Code and APESB's subsequent amendments to APES 110 *Code of Ethics for Professional Accountants* (the Code).

APES 330 ED includes the revised definitions for the following terms:

- Independence
- Members in Public Practice
- Professional Services
- Professional Activity/(ies)
- Professional Bodies

What are the key definitional changes to APES 330?

Members' voluntary liquidation

The defined term “*Administration*” has been amended to widen the scope of the proposed APES 330. The scope has been expanded to include members' voluntary liquidations. However, it is proposed in APES 330 ED that Members in Public Practice acting as Controllers or liquidators of members' voluntary liquidations are not subject to the Independence requirements in section 4.

Controller

The definition of “Controller” has been revised to specifically exclude a receiver appointed by the Court. The amended definition of “Controller” is consistent with the ARITA Code.

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What are the other changes to joint Appointments?

Joint Appointments

APES 330 ED proposes to mandate that where a Member in Public Practice accepts an Appointment with another Member, all Members are equally responsible for the decisions made on the Appointment.

What is the new requirement to disclose referrers?

Disclosure of referrers

APES 330 ED proposes a new requirement in respect of the disclosure of referrers. Members are required to disclose the source of a referral in circumstances where the Appointment is due to a specific referral. Accordingly a defined term “*Referring Entity*” has been included in APES 330 ED to clarify who is considered to be a Referring Entity.

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What changes are required to the declarations in the DIRRI?

Declaration in respect of Pre-Appointment Advice

APES 330 (2011) currently requires disclosure of Pre-appointment Advice. APES 330 ED proposes to introduce a new requirement to declare in the *Declaration of Independence, Relevant Relationships and Indemnities* (DIRRI) that no information or advice, beyond that outlined in the DIRRI, was provided.

Member's rationale for believing why there is no conflict of interest

Requirements have been clarified in relation to the declarations made in the DIRRI why the Member in Public Practice believes that the Pre-appointment Advice provided or relationships disclosed do not result in a conflict of interest or duty. The term "believing" has been introduced in APES 330 ED to specify that the declaration must state the Member's reasons for believing why the advice provided or the relationships disclosed do not result in a conflict of interest or duty. This term is consistent with the *Corporations Act 2001*.

What additional guidance has been incorporated in respect of Independence requirements?

What are the changes to Pre-appointment Advice?

Appointment following an advisory role

The guidance in respect of circumstances that are not considered a threat to Independence where a Member in Public Practice is requested to accept an Appointment following an advisory role has been expanded so that it is clear that there will not be a threat where:

- The scope of the advisory role will not compromise Independence and will not be subject to review or challenge; and
- Any Professional Fees received for the advisory role would not be a preference in the subsequent Appointment.

Pre-appointment Advice

APES 330 ED extends the existing prohibition on providing Pre-appointment Advice to both an insolvent company and its directors to include an Insolvent Debtor and any corporate Entity associated with that individual.

What are the changes to disclosure of previous relationships?

Disclosure of relationships with Associates

The mandatory requirement to disclose relationships with Associates of the insolvent Entity which have occurred in the preceding 2 years remains in the Standard. Additional guidance has now been incorporated to encourage a Member in Public Practice to consider disclosing relationships with Associates of the insolvent Entity that have occurred more than 2 years ago.

Business relationships with the insolvent Entity

APES 330 (2011) currently prohibits a Member in Public Practice from consenting to an Appointment where the Member had business dealings with the insolvent Entity. APES 330 ED proposes to amend this requirement to exclude immaterial business relationships and circumstances where the business relationships have occurred more than two years prior to the Appointment.

APES 330 ED now includes additional guidance on what is considered to be a material business relationship.

What are the changes to Expert Witness Obligations?

Expert Witness Obligations

The detailed requirements and guidance in respect of Expert Witnesses has been replaced by referring Members in Public Practice to APES 215 *Forensic Accounting Services* as if an Appointment is an Engagement.

The Witness Report definition relating to the Expert Witness obligations has been removed from APES 330 ED.

What are the changes to remuneration requirements?

Disclosure of remuneration pre-appointment

APES 330 ED proposes a number of new requirements in relation to remuneration for Appointments other than as a Controller or in an Appointment by the Court. A Member in Public Practice is required to provide the basis of fee calculations the Member intends to use, and where relevant, the scale of hourly rates that is proposed to be used in the Appointment to the directors(s) or Insolvent Debtor (as appropriate) prior to the Appointment.

If an estimate or fee quote of the likely fee for an Appointment is provided, this estimate or fee quote must be in writing with a clear explanation of the variables that may affect the estimate or fee quote.

Where fixed fee quotes are provided, the Member in Public Practice is required to take care in determining this fee quote as in certain circumstances there is a perception that a fixed fee may restrict the proper conduct of an Administration.

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What are the changes to remuneration requirements?

Prospective fee approval

APES 330 ED proposes that where a Member in Public Practice has sought prospective fee approval, the fees that the Member proposes to charge shall not differ from the scale of rates provided to the Approving Body at the time of approval, unless a specific formula to increase the scale of rates was incorporated in to the resolution passed by the Approving Body.

Payment of remuneration by third party in non-controller Appointments

Where money is received by the Member in Public Practice for the costs of the Administration (other than in an Appointment as a Controller), apart from funds received from the realisation of assets, this payment must be disclosed to the Approving Body. Professional Fees must not be drawn from these monies without the Approving Body's consent. This requirement does not apply if the *Corporations Act 2001*, *Bankruptcy Act 1966*, ASIC or AFSA stipulates that approval is not required.

What are the changes to requirements in respect of Expenses?

Disclosure of basis of calculation and recovery of Expenses

As an acknowledgement of the creditors rights in terms of understanding what goods and services were provided to the Administration, APES 330 ED proposes that a Member in Public Practice provides details of the Expenses that may be charged from the Administration and the basis of how the Expenses will be recovered by the Firm.

It is also proposed that a Member in Public Practice provide details of Expenses paid from the Administration when seeking approval of Professional Fees from the Approving Body.

Pre-appointment expenses

APES 330 ED specifically prohibits a Member in Public Practice from claiming any pre-appointment disbursements as an Expense.

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What changes in respect documentation are required?

Documentation procedures

A new requirement is proposed in APES 330 ED for a Member in Public Practice to use appropriate procedures for each type of Administration undertaken that ensures statutory timeframes are met in a timely manner.

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Next steps

The deadline for stakeholder comments is **6 June 2014**.

How can I comment on the proposals?

APESB welcomes comments from respondents on any matters in the Exposure Draft. APESB would prefer that respondents express a clear overall opinion on whether the proposed Standard, as a whole, is supported and that this opinion be supplemented by detailed comments, whether supportive or critical, on any matter.

A copy of all submissions will be placed on public record on the APESB website: www.apesb.org.au.

Stakeholders can submit comments electronically through the APESB website in both PDF and Word format:

<http://www.apesb.org.au/apesb-exposure-drafts-open-for-comment>

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