

25 March 2019

The Chairman  
Accounting Professional & Ethical Standards Board  
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Dear Nancy

**Exposure Draft 04/18 – Proposed Standard: APES 330 Insolvency Services**

CPA Australia represents the diverse interests of more than 163,000 members working in 125 countries and regions around the world. We make this submission on behalf of our members and in the broader public interest.

CPA Australia is broadly supportive of the amendments proposed to the existing standard in the Exposure Draft and offers the following comments for consideration by the APESB.

Paragraph 3.23 of the Exposure Draft defines what is excluded from being considered an 'Inducement'. It is suggested that to provide further guidance and context to members with regards to documentation, this section refer to section 340 of APES 110. Section 340 of APES 110 provides requirements and guidance for identifying, managing and documenting inducements.

- To assist members to understand the guidance offered in paragraph 4.10(a), it is suggested that this paragraph be further clarified by using subsections as follows:

*4.10 The following circumstances and relationships are not considered to create a threat to the Independence of a Member in Public Practice, who is considering acceptance or continuance of an Appointment:*

*(a) a third party who is not an Associate or Related Entity of an insolvent Entity engaging the Member, the Member's Firm or a Network Firm to investigate, monitor or advice on the affairs of the insolvent Entity on behalf of the third party*

*i. where the scope of the Engagement will not compromise the Member's Independence and;*

*ii. will not be subject to review or challenge in a subsequent Administration; and*

*iii. any Professional Fees received for the Engagements would not be a preferential payment in a subsequent Administration; or*

*(b) the transition of an Appointment...*

- Further to the structural changes to paragraph 4.10(a), it is suggested that the term 'preferential payment' be either included in Section 2: Definitions or cross-referenced to relevant legislation.

- Paragraph 4.11 includes the term ‘bar’ with respect to a reason for acceptance or retention of an Appointment. The term ‘bar’ appears to be often referred to in context as a minimum level of acceptable behaviour. Therefore, it is suggested that this paragraph may be better expressed by the term ‘barrier’.
- Non-compliance with laws and regulations (NoCLAR) is a mandatory requirement in paragraph 5.2 of the Exposure Draft. For consistency with Standards which have recently been amended (such as APES 220), we suggest that the paragraph 5.2 reflect the mandatory requirement in paragraph 7.8 of APES 220 which includes the reference to NoCLAR for members in business and members in practice.
- Paragraph 6 is headed ‘*Dealings with property and other assets*’. To align terminology with other standards, particularly APES 310 *Client Monies*, it is suggested that the term ‘*Dealings with*’ be removed resulting in the heading ‘Property and other assets’.
- When examining minimum behavioural expectations of a member when reflecting on commercial judgement applied to the execution of an insolvency engagement, paragraph 8.10 uses a ‘reasonable person’ as the appropriate test. It is suggested that the ‘reasonable person’ test be strengthened to that of a reasonable person in the position of a member providing similar professional insolvency services.
- To address concerns about members’ responsibilities with respect to record keeping, it is suggested that paragraph 8.13 include the term ‘verifiable’ in the requirements.

*8.13 ... the Member, in addition to any statutory requirements, shall provide sufficient **and verifiable** information so as to allow the Approving Body to make an informed assessment as to whether the remuneration is reasonable, and shall...*

- To align APES 330 *Insolvency Services* to APES 310 *Client Monies* it is suggested that paragraph 8.21 cross reference to APES 310. This is particularly important with respect to ‘Pre-Appointment Services’ where the member is not acting in the capacity of Liquidator or External Administrator for the Entity. Any monies collected at this point should be considered Client Monies to which APES 310 would apply.

If you have any questions regarding this submission, please contact Josephine Haste CPA, Policy Adviser – Ethics and Professional Standards on +613 9606 9693 or [josephine.haste@cpaaustralia.com.au](mailto:josephine.haste@cpaaustralia.com.au).

Yours faithfully



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