APES 330 Insolvency Services

[Supersedes APES 330 Insolvency Services issued in September 2014]

REVISED: August 2019
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**Conformity with International Pronouncements**

**Appendix 1: Appointee’s Independence**

**Appendix 2: Declaration of Independence, Relevant Relationships and Indemnities**

**Appendix 3: Necessary and proper Professional Fees and Expenses**

**Appendix 4: Summary of revisions to the previous APES 330 (Issued September 2014)**
1. **Scope and application**

1.1 The objectives of APES 330 *Insolvency Services* are:

- to mandate Independence requirements for Members in Public Practice who are responsible for Appointments;
- to mandate that Members in Public Practice provide creditors with a Declaration of Independence, Relevant Relationships and Indemnities (DIRRI) and to specify the minimum requirements of the DIRRI;
- to specify requirements for a Member in Public Practice who intends to replace another practitioner who has commenced an Appointment;
- to specify requirements for a Member in Public Practice to disclose relevant information about Professional Fees and Expenses to the director(s) of the insolvent Entity or to the Insolvent Debtor prior to an Appointment; and
- to specify the quality control and documentation obligations of a Member in Public Practice who provides Insolvency Services.

1.2 Accounting Professional & Ethical Standards Board Limited (APESB) issues APES 330 *Insolvency Services* (the Standard), which is effective for Insolvency Services commencing on or after 1 January 2020 and supersedes APES 330 *Insolvency Services* issued in September 2014. Earlier adoption of this Standard is permitted.

1.3 APES 330 sets the standards for Members in Public Practice in the provision of quality and ethical Insolvency Services. The mandatory requirements of this Standard are in **bold-type**, preceded or followed by discussion or explanations in normal type. APES 330 should be read in conjunction with other professional duties of Members, and any legal obligations that may apply.

1.4 **Members in Public Practice** in Australia shall follow the mandatory requirements of APES 330 when they provide Insolvency Services.

1.5 **Members in Public Practice** practising outside of Australia shall follow the mandatory requirements of APES 330 when they provide Insolvency Services, to the extent to which they are not prevented from so doing by specific requirements of local laws and/or regulations.

1.6 APES 330 sets the standards for Members in Public Practice in the provision of Professional Services to Insolvent Debtors and insolvent Entities. However, the Standard should also be applied by Members, to the extent practicable, for Appointments such as a members’ voluntary liquidation.

1.7 **Members in Public Practice** shall comply with other applicable Professional Standards and be familiar with relevant guidance notes when providing Professional Services. All Members shall comply with the fundamental principles outlined in the Code.

1.8 The Standard is not intended to detract from any responsibilities which may be imposed by law or regulation.

1.9 All references to Professional Standards, guidance notes and legislation are references to those provisions as amended from time to time.

1.10 In applying the requirements outlined in APES 330, Members in Public Practice should be guided not merely by the words but also by the spirit of this Standard and the Code.

1.11 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:

**Acceptable Level** means a level at which a Member in Public Practice using the reasonable and informed third party test would likely conclude that the Member complies with the fundamental principles.

**Administration** means an Appointment under either the Bankruptcy Act 1966, the Corporations Act 2001 or any other legislation. Where appropriate, the term Administration applies to a solvent administration under Chapter 5 of the Corporations Act 2001.

**Appointee** means a Member in Public Practice who is appointed to an Administration.

**Appointment** means the appointment of a Member in Public Practice as a Trustee or as a liquidator or provisional liquidator, an administrator of a deed of company arrangement, a Controller, or a scheme manager under Chapter 5 of the Corporations Act 2001; or an appointment to provide Insolvency Services under any other legislation.

**Approving Body** means the body with authority to approve Professional Fees. Depending on the type of Appointment, this body will be the creditors, the members, a secured creditor, a Committee or the court. In limited circumstances, in an Appointment under the Corporations Act 2001 or the Bankruptcy Act 1966, this approval is provided pursuant to those Acts.

**Associate** means an entity or person defined as an associate in the Corporations Act 2001.

**Close Family** means a parent, child or sibling who is not an Immediate Family member.

**Code** means APES 110 Code of Ethics for Professional Accountants (including Independence Standards).

**Committee** means a committee of inspection.

**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 a Member in Public Practice. A fee that is established by a court or other public authority is not a Contingent Fee.

**Controller** means a Member in Public Practice appointed as controller or managing controller under Part 5.2 of the Corporations Act 2001, or a receiver appointed to property of an individual. It does not include a receiver appointed by the court.

**DIRRI** means the Declaration of Independence, Relevant Relationships and Indemnities.

**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.

**Entity** means any legal, administrative or fiduciary arrangement, organisational structure or other party (including a person) having the capacity to deploy scarce resources in order to achieve objectives.

**Expenses** means the financial outlays incurred or paid by a Member in Public Practice to carry out an Administration. The term includes costs and disbursements.
**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, all 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 or other evidence.

**Expert Witness Service** means a Professional Activity provided in the context of legal proceedings to give expert evidence in a written report, affidavit or written statement or, in certain circumstances, orally.

**Financial Interest** means an interest in an equity or other security, debenture, loan or other debt instrument of an Entity, including rights and obligations to acquire such an interest and derivatives directly related to such interest.

**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.

**Immediate Family** means a spouse (or equivalent) or dependant.

**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 Member’s, a Firm’s, a Partner’s, an employee’s, an agent’s, a consultant’s, or a contractor’s integrity, objectivity or professional scepticism has been compromised.

Australian courts have established legal precedents in respect of independence in the context of Insolvency Services (refer to Appendix 1).

**Inducement** means an object, situation or action that is used as a means to influence another individual’s behaviour, but not necessarily with the intent to improperly influence that individual’s behaviour.

**Insolvency Services** means a Professional Service provided by a Member in Public Practice to an Entity under an Appointment.

**Insolvent Debtor** means a person who is unable to pay debts, whether or not they are subject to an Administration.

**Managerial Employee** means an employee who acts in a managerial capacity within the structure of a Firm, including providing oversight, in the provision of services to clients.

**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 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.
**Network** means a larger structure:

(a) That is aimed at cooperation; and

(b) That is clearly aimed at profit or cost sharing or shares common ownership, control or management, common quality control policies and procedures, common business strategy, the use of a common brand-name, or a significant part of professional resources.

**Network Firm** means a Firm or Entity that belongs to a Network.

**Office** means a distinct sub-group, whether organised on geographical or practice lines.

**Partner** means any individual with authority to bind the Firm with respect to the performance of an Administration.

**Pre-appointment Advice** means any professional advice, whether giving an opinion or not, provided prior to an Appointment to an insolvent Entity or, if the insolvent Entity is a company, to its directors, including advice given to advisors to the insolvent Entity or its directors.

**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 Fees** means the amounts billed, or to be billed, by a Member in Public Practice on account of Professional Services performed, or to be performed, by the Member.1

**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.

**Referring Entity** means an Entity that has introduced or referred a Member in Public Practice to a director(s), Insolvent Debtor or creditor for the purposes of the director(s), Insolvent Debtor or creditor seeking specialist insolvency advice that may result in an Appointment.

**Related Entity** means an entity or person defined as a related entity in the Bankruptcy Act 1966.

**Trustee** means a person defined as a trustee in the Bankruptcy Act 1966.

**Upfront Payment** means any payment to an Appointee prior to the Appointment for the purposes of meeting Professional Fees and/or Expenses of the Appointee.

### 3. Fundamental responsibilities of Members in Public Practice

#### 3.1 A Member in Public Practice providing an Insolvency Service shall comply with Part 1 Complying with the Code, Fundamental Principles and Conceptual Framework of the Code and relevant laws and regulations.

### Public interest

#### 3.2 In accordance with Section 100 Complying with the Code of the Code, a Member in Public Practice shall observe and comply with the Member’s public interest obligations when the Member provides an Insolvency Service.

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1 Professional Fees are also referred to as remuneration in the context of Insolvency Services.
3.3 **A Member in Public Practice** shall not advise an insolvent **Entity** (nor, if the **Entity** is a company, its directors) on how to cause assets to be unavailable in an **Administration** or to otherwise avoid the consequences of the insolvency.

3.4 Paragraph 3.3 does not prevent a **Member in Public Practice** from providing **Professional Services** in respect of the structuring of the financial affairs of a solvent **Entity**.

### Professional competence and due care

3.5 **A Member in Public Practice** providing an **Insolvency Service** shall maintain professional competence, take due care and act in a timely manner in the performance of the **Member’s** work in accordance with Subsection 113 Professional Competence and Due Care of the Code.

3.6 When dealing with other practitioners in transitioning **Appointments** or where there are parallel **Appointments**, a **Member in Public Practice** shall be professional and co-operative, without compromising the **Member’s** obligations in the **Appointment**.

3.7 Where an **Insolvency Service** requires the consideration of matters that are outside the professional expertise of a **Member in Public Practice**, the **Member** shall seek expert assistance or advice from a suitably qualified third party or decline the **Insolvency Service**. Where the **Member** relies on the advice of a third party, the **Member** shall disclose in relevant reports or communications the name and qualifications of the third party and the areas in which third party advice has been obtained. This obligation does not extend to legal advice where disclosure may result in a waiver of legal professional privilege.

3.8 Relevant reports are those reports that include a reference to the subject matter for which expert assistance or advice has been obtained.

3.9 When planning to use the work of a suitably qualified third party, a **Member in Public Practice** shall assess the professional competence and objectivity of that third party, the appropriateness and reasonableness of the work performed, and the fees charged.

3.10 **A Member in Public Practice** shall take all reasonable steps to communicate with **Entities** affected by an **Administration** in a timely and clear manner as to the insolvency processes and the rights and obligations of the **Entities**.

3.11 In undertaking an **Insolvency Service**, a **Member in Public Practice** shall consider any guidance issued by the professional bodies and appropriate regulatory authorities.

3.12 Prior to accepting an **Appointment**, a **Member in Public Practice** shall ensure that the **Member** has the capacity and has access to the necessary resources to conduct the proposed **Administration** in an effective and efficient manner.

3.13 Prior to accepting an **Appointment** from the director(s) of an insolvent **Entity** or **Insolvent Debtor**, a **Member in Public Practice** shall make reasonable enquiries about the identity of the director(s) or **Insolvent Debtor** in accordance with the requirements of APES 320 Quality Control for Firms in relation to the Acceptance and continuance of Client relationships and specific Engagements as if an **Appointment** is an Engagement.

3.14 Reasonable enquiries described in paragraph 3.13 should include meeting with and/or obtaining appropriate documents to confirm the identity of the director(s) or **Insolvent Debtor**, where possible.

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2 **Members in Public Practice** who are also members of the Australian Restructuring Insolvency and Turnaround Association (ARITA) need to consider their obligations in accordance with ARITA’s Code of Professional Practice.
3.15 If a Member in Public Practice accepts an Appointment with another insolvency practitioner, all Appointees are equally responsible for all decisions made on the Appointment.

3.16 A Firm which provides Insolvency Services should establish policies and procedures to ensure that in Appointments involving more than one Appointee, all Appointees are knowledgeable about the conduct of the Administration.

Confidentiality

3.17 A Member in Public Practice who acquires confidential information in the course of an Insolvency Service shall comply with Subsection 114 Confidentiality of the Code.

Professional behaviour

3.18 A Member in Public Practice providing an Insolvency Service shall comply with Subsection 115 Professional Behaviour of the Code, in particular, the requirements in relation to marketing activities.

3.19 When placing an advertisement in respect of an Administration, a Member in Public Practice shall not use that advertisement to market the Member’s Professional Services.

3.20 A Member in Public Practice shall not include slogans, logos, claims about the Member’s Firm, or other promotional material in statutory advertisements.

3.21 A Member in Public Practice may include the Firm’s logo in non-statutory advertisements, as long as that logo does not take prominence in the advertisement.

3.22 A Member in Public Practice providing an Insolvency Service shall comply with Section 340 Inducements, Including Gifts and Hospitality of the Code.

3.23 A Member in Public Practice shall not provide any Inducement to any Entity to secure an Appointment for the Member, or to secure or prevent the Appointment or nomination of another person.

3.24 An Inducement includes any benefit (whether monetary or not) given by a Member in Public Practice, the Member’s Firm, Partners or an employee, an agent, a consultant, or a contractor of the Member, to an Entity which may, in the view of a reasonable person, influence that Entity’s decision to refer or not refer, or to make or not to make, an Appointment.

3.25 An Inducement may not include:
   (a) benefits of insignificant value in aggregate to the Entity which referred or made the Appointment;
   (b) sponsorship of events or publications open to the public, or members of a professional body; or
   (c) retainers or other similar payments to marketing consultants.

3.26 A Member in Public Practice shall not accept an Appointment or perform an Administration that involves:
   (a) referral or other commissions, or monetary or non-monetary benefits;
   (b) spotter’s fees;
   (c) understandings or requirements that work in the Administration will be given to a referrer; or
(d) any other such arrangements that restrict the proper exercise of the Member’s judgement and duties.

4. Professional Independence

4.1 The requirements in Section 4 of this Standard do not apply to Appointments as Controller or liquidator in a members’ voluntary liquidation.

4.2 Paragraph 4.1 does not remove a Member in Public Practice’s obligations to comply with the relevant law in respect of Independence.

4.3 Subject to paragraph 4.4, a Member in Public Practice accepting an Appointment or conducting an Administration shall maintain Independence.³

4.4 Prior to accepting an Appointment, a Member in Public Practice shall identify, evaluate and address threats to the Independence of the Member. Where the Member identifies a threat, the Member shall not accept the Appointment unless:

(a) the threat is trivial and inconsequential;

(b) the threat arises in circumstances or relationships that are permitted by this Standard or law or regulations; or

(c) the Member obtains court approval.

4.5 A Member in Public Practice shall not accept an Appointment where the Member, the Member’s Firm, a Network Firm or their Partners have provided Professional Services to the insolvent Entity or any other Entity which:

(a) has reasonable potential to lead to litigation claims against the Member or the Member’s Firm by a stakeholder of the Administration;

(b) is material to the Administration; or

(c) was related to the structuring of assets of the insolvent Entity in order to avoid the consequences of insolvency, even if that advice was provided at a time when the Entity was solvent.

4.6 Where a Member in Public Practice is requested by an insolvent Entity, its directors or its creditors to consent to an Appointment to replace another person who has commenced the Administration, and the Member intends to agree to the request, the Member shall:

(a) give reasonable notice to the other person being not less than one business day prior to the meeting of creditors, except when the request is received within one business day before that meeting;

(b) not solicit proxies directly or indirectly and shall act, and be seen to act, in the creditors’ interests;

(c) provide to the other person a Declaration of Independence, Relevant Relationships and Indemnities (DIRRI), containing the information required by paragraph 4.24, to be tabled at the meeting where the creditors decide whether to replace the other person;

(d) provide details in the DIRRI of the Member’s relationship with the Entity nominating the Member for the Appointment; and

(e) disclose to the creditors, at the meeting where the creditors decide whether to replace the other person, the basis (including rates where applicable) on which the Member proposes to charge Professional Fees.

³ Australian courts have established legal precedents in respect of independence in the context of Insolvency Services. Members should refer to the definition of Independence and Appendix 1.
4.7 **A Member in Public Practice** conducting an **Administration** shall:

(a) act impartially in the discharge of the **Member’s duties and responsibilities**;

(b) ensure that the **Member’s personal interests do not conflict with the Member’s duties**; and

(c) remain alert for new information or changes in facts and circumstances that may create threats to **Independence**.

4.8 **When circumstances or relationships giving rise to a threat to Independence** are identified after the commencement of an **Administration**, a **Member in Public Practice** shall evaluate that threat and:

(a) continue performing the **Administration** if the **Member** determines that the threat would not have precluded the **Member** from accepting the **Appointment** had the threat been identified prior to the commencement of the **Appointment**. The **Member** shall amend the **Declaration of Independence, Relevant Relationships and Indemnities** (DIRRI) and send it to all the creditors; or

(b) where the threat to the **Independence** of the **Member** would have precluded the **Member** from accepting the **Appointment** had the threat been identified prior to the commencement of the **Appointment**, the **Member** shall notify all creditors and the appropriate regulatory authority of the following:

(i) the nature of the threat;

(ii) the key facts and circumstances;

(iii) reasons why the circumstances or relationships giving rise to the threat were not identified prior to acceptance of the **Appointment**;

(iv) the potential impact on the **Independence** of the **Member**;

(v) the status of the **Administration**;

(vi) the costs of ceasing and transferring the **Appointment**;

(vii) **Professional Fees** and **Expenses** billed and any outstanding amounts; and

(viii) how the threat will be addressed, such as applying to the court to continue the **Appointment**, or for the **Appointment** of a special purpose **Appointee**, or resigning from the **Appointment**; and

(c) **in the circumstances described in paragraph 4.8(b)**, apply to the court to continue the **Appointment** or for the **Appointment** of a special purpose **Appointee**, or resign from the **Appointment**.

**Interests and relationships**

4.9 **For the purpose of this Standard, when seeking to identify relationships with an insolvent Entity, a Member in Public Practice** shall take reasonable steps to identify and evaluate any threats the **Member** has reason to believe are created by the Firm’s or Network Firms’ interests and relationships with the insolvent Entity, its Related Entities or Associates. The **Member** shall consider the following matters when identifying relevant Network Firms:

(a) the geographical regions or countries in which the insolvent Entity, its Related Entities or Associates operate; and

(b) relationships with the directors or officers of the insolvent Entity, its Related Entities or Associates.
4.10 The following circumstances and relationships are not generally considered to create a threat to the Independence of a Member in Public Practice who is considering accepting or continuing an Appointment:

(a) engagement of the Member, the Member’s Firm or a Network Firm, by a third party who is not an Associate or Related Entity, to investigate, monitor or advise 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 Engagement would not be a voidable transaction in a subsequent Administration; or

(b) the transition of an Appointment from one type of insolvency Administration to another under the relevant legislation, subject to the terms of that legislation, for example from an Appointment as administrator to voluntary liquidator under the Corporations Act 2001; or

(c) Pre-appointment Advice provided by the Member, the Member’s Firm or the Network Firm to the insolvent Entity, which will not be subject to review or challenge in a subsequent Administration and was limited to:
   (i) the financial situation of the Entity;
   (ii) the solvency of the Entity;
   (iii) the consequences of insolvency for the Entity; or
   (iv) alternative courses of action available to the Entity; or

(d) an investigating accountant Engagement for the insolvent Entity, its Associates or Related Entities, subject to the same limitations in paragraph 4.10(c); or

(e) planning or preparation for a prospective Appointment that does not include:
   (i) providing advice to the insolvent Entity, its Associates, Related Entities or creditors; or
   (ii) the negotiation or conclusion of outcomes in advance of a planned Appointment of the Member in Public Practice.

4.11 Trivial or inconsequential relationships are not a barrier to acceptance or retention of an Appointment by a Member in Public Practice. The Member is not required to list trivial or inconsequential relationships in the Declaration of Independence, Relevant Relationships and Indemnities (DIRRI) referred to in paragraph 4.24. A relationship is trivial or inconsequential if it is remote, coincidental or insignificant.

4.12 A Member in Public Practice shall not accept an Appointment, where the Member, the Member’s Firm, a Network Firm or their Partners or those Managerial Employees in the Office in which the Member practises have, or have had, any of the following relationships:

(a) an Immediate or Close Family relationship with:
   (i) the insolvent Entity;
   (ii) an Associate or Related Entity of the insolvent Entity;
   (iii) an employee of, or adviser, to the insolvent Entity who is in a position to exert direct and significant influence over the insolvent Entity; or

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4 Australian courts have established legal precedents in respect of independence in the context of Insolvency Services. Members should refer to the definition of Independence and Appendix 1.

5 Including transactions described in Part 5.7B, Division 2 of the Corporations Act 2001 and Part VI, Division 3, Subdivision A of the Bankruptcy Act 1966.
(iv) an Entity or an Associate or Related Entity of that Entity that has provided finance to the insolvent Entity.

(b) a close personal relationship with:
   (i) the insolvent Entity;
   (ii) an Associate or Related Entity of the insolvent Entity; or
   (iii) an employee of, or adviser to, the insolvent Entity who is in a position to exert direct and significant influence over the insolvent Entity.

(c) a material business relationship, including the holding of a material Financial Interest, whether directly or indirectly in or jointly in the previous two years with:
   (i) the insolvent Entity;
   (ii) an Associate or Related Entity of the insolvent Entity;
   (iii) an employee of, or adviser to, the insolvent Entity who is in a position to exert direct and significant influence over the insolvent Entity; or
   (iv) an Entity that has provided finance to the insolvent Entity.

(d) a material loan or material guarantee, in the previous two years, to or from:
   (i) the insolvent Entity;
   (ii) an Associate or Related Entity of the insolvent Entity;
   (iii) an employee of, or adviser to, the insolvent Entity who is in a position to exert direct and significant influence over the insolvent Entity.

(e) employment with the insolvent Entity in the preceding two years, in a position to exert direct and significant influence over the insolvent Entity.

4.13 A business relationship includes the provision of goods or services by the insolvent Entity to the Member, the Member’s Firm, a Network Firm or their Partners or those Managerial Employees in the Office in which the Member practices.

4.14 In respect of prior relationships of the nature referred to in paragraphs 4.12(c), 4.12(d) and 4.12(e), notwithstanding that the relationship occurred more than two years prior to the proposed Appointment, a Member in Public Practice should evaluate any threats a prior relationship is likely to create to the Member’s Independence. In performing this assessment, the Member should determine whether a reasonable person considering all of the facts and circumstances would conclude that there are significant threats to the Member’s Independence posed by a prior relationship. Factors to consider include the nature of the prior relationship and the reasons for it being terminated.

4.15 Where a Member in Public Practice, in a capacity other than as an Appointee, has a controlling interest in or the ability to influence a business operating in the same, or principally the same, market as the insolvent Entity, the Member shall evaluate the significance of any threats to Independence and, when necessary, apply safeguards to eliminate the threats or reduce them to an Acceptable Level. Where there are no safeguards that can eliminate the threats or reduce them to an Acceptable Level, the Member shall decline the Appointment.

6 Australian courts have established legal precedents in respect of independence in the context of Insolvency Services. Members should refer to the definition of Independence and Appendix 1.
Prior Professional Services (including those provided at different Firms)

4.16 A Member in Public Practice shall not accept an Appointment where the Member, the Member’s Firm or a Network Firm has during the prior two years provided a Professional Service to the insolvent Entity, unless the Professional Service:

(a) will not affect the Member’s ability to comply with the statutory and fiduciary obligations associated with the Administration;

(b) does not create threats to the Member’s ability to comply with the fundamental principles of the Code and Independence when performing the duties of the Administration; and

(c) will not be subject to review by the Member during the course of the Administration.

4.17 Where a Member in Public Practice is considering accepting an Appointment and two or more Firms or Network Firms have merged in the preceding two years, the Member shall evaluate any relationships that the Member is aware of, or ought reasonably to be aware of, which the insolvent Entity had with the Firm, previous Firm(s) or Network Firm(s) in accordance with the requirements of this Standard.

4.18 Where a Member in Public Practice is considering accepting an Appointment and has moved Firms in the preceding two years, the Member shall evaluate any relationships that the Member is aware of, or ought reasonably to be aware of, which the insolvent Entity had with the previous Firm or its Network Firms during the time that the Member was a Partner or Managerial Employee. Where there were prior relationships, the Member shall disclose the relationships in the Declaration of Independence, Relevant Relationships and Indemnities (DIRRI). Where the prior relationships pose significant threats to Independence and there are no safeguards that can eliminate the threats or reduce them to an Acceptable Level, the Member shall decline the Appointment.

Pre-appointment Advice

4.19 If the insolvent Entity is a company, a Member in Public Practice shall not provide Pre-appointment Advice to both the company and its directors in their personal capacity, as the threat to Independence created would be so significant that no safeguard could reduce the threat to an Acceptable Level.

4.20 If the insolvent Entity is an individual, and a Member in Public Practice provides Pre-appointment Advice to that individual, the Member shall not provide Pre-appointment Advice to any company controlled by that individual or of which the individual serves as a director or an officer.

4.21 The requirements of paragraphs 4.19 and 4.20 do not prohibit a Member in Public Practice from providing general information on the insolvency process and the consequences of insolvency to both the company and its directors in their personal capacity, or the individual and related companies, as the case may be. General information is limited to information which is not specific to the insolvent Entity’s particular facts and circumstances.

Declaration of Independence, Relevant Relationships and Indemnities

4.22 A Member in Public Practice shall provide a Declaration of Independence, Relevant Relationships and Indemnities (DIRRI) in respect of an Insolvency Service, other than an Appointment as a Controller or a liquidator in a members’ voluntary liquidation. The Member shall provide the DIRRI in the first communication to the creditors and table it at the first meeting of the creditors.
4.23 A Member in Public Practice shall include all relevant relationships in the Declaration of Independence, Relevant Relationships and Indemnities (DIRRI) that may be relevant to a creditor in assessing the Member’s Independence.

4.24 A Member in Public Practice shall include the following in the Declaration of Independence, Relevant Relationships and Indemnities (DIRRI):

(a) a statement about the purpose of the DIRRI;

(b) a statement as to whom the DIRRI is being made in respect of;

(c) a declaration that the Member has undertaken an evaluation of the significance of any threats to Independence\(^7\) and that the Member determined that the Member is independent for the purpose of accepting the Appointment in accordance with the requirements of the relevant legislation and this Standard;

(d) where there is a Referring Entity and disclosure of the Referring Entity is:

- required by law\(^8\); or
- not required by law and the Referring Entity is not an individual; or
- not required by law and the Referring Entity is an individual and the Member has obtained consent in writing from that individual;

(i) the name of the Referring Entity;

(ii) the connection to the insolvent Entity (if applicable) of the Referring Entity;

(iii) the Member’s reasons for believing the relationship with the Referring Entity does not result in the Member having a conflict of interest or duty; and

(iv) a statement that there is no expectation, agreement or understanding with the Referring Entity regarding the conduct of the Administration;

(e) a declaration setting out the circumstances of the Appointment including the number of meetings with the insolvent Entity or its advisors and the period over which Pre-appointment Advice was provided, a summary of the nature of the issues discussed, the amount of any Professional Fees received for the Pre-appointment Advice and the Member’s reasons for believing why such Pre-appointment Advice does not result in a conflict of interest or duty;

(f) a declaration that no other information or advice beyond that outlined in the DIRRI was provided to the insolvent Entity, directors of the insolvent Entity (if the insolvent Entity is a company) or their advisors;

(g) a declaration setting out all relationships the Member, the Member’s Firm, a Network Firm or their Partners or those Managerial Employees in the Office in which the Member practises have had in the preceding two years with:

(i) the insolvent Entity;

(ii) if the insolvent Entity is a company – an Associate of the company;

(iii) if the insolvent Entity is an individual:

• an Immediate or Close Family member of the individual;

• a spouse or dependant of an Immediate or Close Family member of the individual; or

• any Entity with which the individual or any of the persons noted above are associated;

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7 Australian courts have established legal precedents in respect of independence in the context of Insolvency Services. Members should refer to the definition of Independence and Appendix 1.

8 Members should refer to section 60 and other relevant provisions of the Corporations Act 2001 or relevant provisions of the Bankruptcy Act 1966 to determine their obligations under the law.
(iv) a former Appointee of the insolvent Entity; and
(v) a person who has a security over the whole, or substantially the whole, of the insolvent Entity’s property and other assets;

and the Member's reasons for believing why these relationships, if any, do not result in a conflict of interest or duty;

(h) a declaration of prior Professional Services provided in the preceding two years to the insolvent Entity by the Member, the Members’ Firm, a Network Firm or their Partners, including:
(i) the nature of the Professional Services;
(ii) when the Professional Service was provided;
(iii) the period over which the Professional Service was provided;
(iv) the Professional Fees paid; and
(v) the Member’s reasons for believing why the Professional Service does not result in a conflict of interest or duty;

(i) a declaration of any other relevant relationships the Member has had in the preceding two years that may be relevant to the creditors in assessing the Independence of the Member;

(j) a declaration that there are no other known prior Professional Services or other relationships that require disclosure; and

(k) a declaration of indemnities (other than statutory indemnities) and Upfront Payments, including:
(i) the identity of each indemnifier or provider of an Upfront Payment (name and relationship with the insolvent Entity);
(ii) the extent and nature of each indemnity or Upfront Payment;
(iii) a statement as to where the funds are being held;
(iv) when and how the funds will be applied;
(v) whether there are any conditions imposed on the use of funds; and
(vi) that there are no other indemnities or Upfront Payments to be disclosed.

4.25 In addition to the requirements contained in paragraph 4.24, a Member in Public Practice should consider including in the Declaration of Independence, Relevant Relationships and Indemnities (DIRRI) a declaration setting out all relationships the Member, the Member’s Firm, a Network Firm or their Partners or those Managerial Employees in the Office in which the Member practises have had more than two years prior to the Appointment with:

(a) the insolvent Entity;

(b) if the insolvent Entity is a company – an Associate of the company;

(c) if the insolvent Entity is an individual:
(i) an Immediate or Close Family member of the individual;
(ii) a spouse or dependant of an Immediate or Close Family member of the individual; or
(iii) any Entity with which the individual or any of the persons listed above are associated; or

(d) any other Entity that may be relevant to the creditors in assessing the Independence of the Member.

When determining whether to make additional disclosures, the Member should take into consideration the nature of the prior relationship, the reasons for termination of the relationship
and the relevance that additional information may have for creditors in assessing the Member’s Independence.

4.26 Where more than one Member in Public Practice is appointed to an insolvent Entity, all Appointees shall sign the Declaration of Independence, Relevant Relationships and Indemnities (DIRRI) prior to its issue. Where this is not possible and a DIRRI is issued before all Appointees sign it, the Members shall:

(a) provide an explanation in the DIRRI as to why all Appointees were not able to sign it; and

(b) sign a replacement DIRRI as soon as possible and provide it to creditors in the next communication.

4.27 Where a Member in Public Practice becomes aware that the Declaration of Independence, Relevant Relationships and Indemnities (DIRRI) is out of date or inaccurate, the Member shall update the DIRRI and provide it to the creditors and the Committee with the next communication and table it at the next meeting of the creditors or the Committee.

4.28 A Member in Public Practice should be aware that disclosure of matters in a Declaration of Independence, Relevant Relationships and Indemnities (DIRRI), and the tabling of such DIRRI at a meeting of creditors, will not prevent a finding by a court, regulator or a professional body that a Member has breached the requirements of this Standard or the relevant law.

A template of a Declaration of Independence, Relevant Relationships and Indemnities (DIRRI) is set out in Appendix 2.

5. Professional Engagement matters

5.1 A Member in Public Practice who has accepted an Appointment is not required to provide an Engagement document in accordance with APES 305 Terms of Engagement.

5.2 A Member in Public Practice who becomes aware of instances of non-compliance with laws and regulations when providing Insolvency Services shall comply with Section 360 Responding to Non-Compliance with Laws and Regulations of the Code.

5.3 A Member in Public Practice should consider the guidance in APES GN 30 Outsourced Services if the Member engages or outsources to a third party, either components or all aspects of, the Insolvency Services provided. If work in an Appointment is outsourced, the Member’s obligations under this Standard remain the same as if the Member or the Member’s staff had performed the work.

6. Dealing with property and other assets

6.1 A Member in Public Practice shall not derive a profit or advantage from an Administration, including through the sale or purchase of property or other assets of an Administration, unless permitted by law, regulations or with prior approval of the court.

6.2 A Firm which provides Insolvency Services shall establish policies and procedures which prohibit the Firm, a Network Firm, their Partners and employees, and the Immediate and Close Families, controlled and associated Entities of the Firm’s and Network Firms’ Partners and employees from purchasing assets or deriving a benefit from dealing with any assets, including property, which comes under the control of a Partner or employee due to an Appointment, unless permitted by law, regulations or with prior approval of the court.
6.3 A Member in Public Practice shall take all reasonable steps to ensure that the Member does not knowingly sell property or other assets of an Administration to the Member’s Firm, a Network Firm, their Partners or employees, or to the Immediate and Close Families, controlled or associated Entities of the Member, the Firm’s or Network Firms’ Partners and employees, unless permitted by law, regulations or with prior approval of the court.

6.4 Paragraphs 6.1 and 6.3 do not apply where the Member has accepted an Appointment in respect of a retail operation under Administration and the assets are available for sale to the general public and no special treatment or preference over and above that granted to the general public is offered.

7. Expert Witness obligations

7.1 A Member in Public Practice who during the course of an Administration acts as an Expert Witness shall comply with APES 215 Forensic Accounting Services as if an Appointment is an Engagement.

8. Professional Fees and Expenses

8.1 A Member in Public Practice performing an Administration shall be remunerated for such service by way of Professional Fees in accordance with Section 330 Fees and Other Types of Remuneration of the Code, subject to the limitations in paragraph 3.26.

8.2 When requested to consent to an Appointment, in the case of a company where the Appointment is made by the director(s) or members (other than a members’ voluntary liquidation) or in the case of an Insolvent Debtor, by the Insolvent Debtor, a Member in Public Practice shall provide to the director(s) of the insolvent Entity or the Insolvent Debtor the following information prior to Appointment:

(a) The basis of calculating Professional Fees the Member proposes to use in the Administration;

(b) If the Member proposes to use a time basis, the scale of hourly rates that will be used;

(c) An explanation that:

(i) Professional Fees drawn in the Administration will be those approved by the Approving Body;

(ii) creditors will be advised of the basis of calculating Professional Fees proposed to the director(s) of the insolvent Entity or the Insolvent Debtor; and

(iii) where the director(s) of the insolvent Entity, Insolvent Debtor or other Entity have made an Upfront Payment, the amount paid may not satisfy the full costs of the Administration. Professional Fees are subject to approval by the Approving Body and if an amount above the Upfront Payment is approved, it may be paid from the assets of the Administration;

(d) If the Member provides an estimate of the cost of the Appointment to the director(s) of the insolvent Entity or the Insolvent Debtor:

(i) it shall be in writing clearly detailing any variables which may affect the estimate; and

(ii) the director(s) of the insolvent Entity or the Insolvent Debtor shall be informed that creditors will be advised of the estimate and that the actual Professional Fees drawn in the Administration may exceed that estimate and this higher amount can be approved by the Approving Body.
8.3 Where a Member in Public Practice provides an estimate of the cost of the Appointment to the creditors, or claims an amount of Professional Fees, which is different to the estimate provided to the director(s) of the insolvent Entity or the Insolvent Debtor, the Member shall provide an explanation of the reason for the variance to the creditors.

8.4 Where a Member in Public Practice provides a fixed fee or unconditional quote to the director(s) of the insolvent Entity or the Insolvent Debtor, the Member shall not ask the Approving Body for approval of Professional Fees greater than the fixed fee or unconditional quote.

8.5 Members in Public Practice should exercise care in providing a fixed fee or unconditional quote to the director(s) of the insolvent Entity or Insolvent Debtor prior to accepting an Appointment as this may be perceived to restrict the proper conduct of the Administration.

8.6 Members in Public Practice should obtain acknowledgement from the director(s) of the insolvent Entity or Insolvent Debtor of the receipt of the information provided under paragraphs 8.2 and 8.4 prior to accepting the Appointment.

8.7 A Member in Public Practice shall only claim reasonable Professional Fees and Expenses in respect of Professional Services performed or to be performed for an Administration which are necessary and proper.

8.8 The term ‘necessary’ in paragraph 8.7 means professional work that is:
(a) directly connected with the Administration; and
(b) performed in accordance with the duties of the Appointment and professional standards.

8.9 The term ‘proper’ in paragraph 8.7 means professional work that is performed in an effective and efficient manner in an Administration.

Guidance on matters to consider when determining necessary and proper Professional Fees and Expenses is provided in Appendix 3.

8.10 A Member in Public Practice shall claim as Professional Fees, and not as Expenses, any fees for Insolvency Services provided by the Member, the Member’s Firm, a Network Firm or a third party to an Administration. Where the Member, the Member’s Firm or a Network Firm provides Professional Services, other than Insolvency Services, the fees in respect of those services shall be claimed as Professional Fees.

8.11 A Member in Public Practice shall use the Member’s commercial judgement, adopting the perspective of, and acting with the same care as, a reasonable person when incurring Expenses for the Administration.

8.12 A Member in Public Practice who has accepted an Appointment, other than as a Controller or a Trustee, shall obtain court approval when the Member makes a claim in respect of Professional Fees for any pre-appointment work performed in respect of an Appointment.

8.13 A Member in Public Practice who has accepted an Appointment, other than as a Controller or Trustee, shall not claim as an Expense any disbursements that were incurred prior to the date of Appointment.

8.14 A Member in Public Practice who has accepted an Appointment as a Trustee, may claim Professional Fees and Expenses for Pre-appointment Advice performed in respect of the Appointment in accordance with the Bankruptcy Act 1966.
Where a Member in Public Practice has accepted an Appointment, other than as a Controller, and is seeking approval for Professional Fees from the Approving Body, the Member, in addition to any statutory requirements, shall provide sufficient information so as to allow the Approving Body to make an informed assessment as to whether the Professional Fees are reasonable, and shall:

(a) provide details of how the Professional Fees are computed;
(b) state the terms of the approval sought from the Approving Body;
(c) compare the Professional Fees sought to be approved to any estimate previously provided to the Approving Body and if it differs provide an explanation of the reason for the variance;
(d) advise the total of Professional Fees previously determined and whether the Member may be seeking approval for additional Professional Fees in the future;
(e) provide details of Expenses paid from the Administration, including:
   (i) where Expenses are paid for Professional Services that have not been provided by the Firm, who the Expenses were paid to;
   (ii) what the Expenses were for;
   (iii) for Expenses charged directly by the Firm, the basis of calculation of those Expenses including any profit or advantage; and
   (iv) the amount paid and to be paid;
(f) provide a summary of receipts and payments to and from the Administration bank account; and
(g) provide a reconciliation to any prior prospective Professional Fee approvals, including actual Professional Fees to estimated Professional Fees, tasks undertaken and tasks that remain to be completed.

Contingent Fees

A Member in Public Practice shall not enter into an arrangement to receive a Contingent Fee for Insolvency Services if that arrangement:

(a) impairs the Member’s Independence;
(b) results in the receipt of a Contingent Fee for performing professional work that the Member is required to complete under the relevant legislation governing an Appointment;
(c) is inconsistent with the fiduciary obligations of the Member; or
(d) results in the perception that the Member is acting in the Member’s interests, rather than in the best interests of the creditors.

When considering whether a proposed Contingent Fee arrangement in a particular Administration meets the requirements of paragraph 8.16, a Member in Public Practice shall consider the following:

(a) funds available to the Administration;
(b) funding from alternative sources such as creditors or a litigation funder;
(c) the costs of the alternative sources of funds in comparison to the Contingent Fee arrangement;
(d) the risk associated with the tasks to be undertaken for the Contingent Fee; and

When making or reviewing a remuneration determination, the Court must have regard to whether remuneration is reasonable, taking in to account any or all of the matters set out in section 60-12 of Corporations Act 2001 – Schedule 2 or section 90-21 of Bankruptcy Act 1966 – Schedule 2.
8.18 Where a Member in Public Practice enters into an arrangement to receive a Contingent Fee for Insolvency Services, the Member shall obtain approval from the Approving Body prior to commencement of Professional Services after having disclosed the following information:

(a) details of the arrangement including the nature of the contingency and how achievement of the contingency will be assessed;
(b) the Member’s Professional Fees in the event the contingency is or is not achieved;
(c) when the Member’s Professional Fees are expected to be drawn; and
(d) except in the case of an Appointment as a Controller, why the arrangement to receive a Contingent Fee is in the best interest of the creditors.

Drawing of Professional Fees and Expenses

8.19 A Member in Public Practice shall only draw Professional Fees once the proper resolution, order, or authority has been obtained from the Approving Body and in accordance with the terms of approval.

8.20 Where a Member in Public Practice has entered into a fixed fee arrangement in respect of Professional Fees, the Member shall draw the fixed fee at the conclusion of the Administration or in amounts and at milestones specified by the Approving Body.

8.21 Where a Member in Public Practice seeks approval from the Approving Body for the payment of prospective Professional Fees and Expenses charged directly by the Firm which include a profit or advantage for the Firm, the Member shall specify the maximum amount of the Professional Fees and relevant Expenses that may be drawn before requiring further approval from the Approving Body. The Member shall draw on these prospective Professional Fees and Expenses progressively as the work is completed.

8.22 Where a Member in Public Practice has prospective Professional Fees approved in accordance with paragraph 8.21, the scale of rates used to draw Professional Fees shall be the scale of rates provided by the Member to the Approving Body at the time of the approval, unless a specific formula to increase the scale of rates was incorporated into the resolution passed by the Approving Body. If a specific formula was not incorporated into the resolution, then the Member shall only change the scale of rates by obtaining further approval from the Approving Body.

Receipt of monies

8.23 Where a Member in Public Practice receives an Upfront Payment in respect of a proposed Administration, the Member shall ensure:

(a) the monies are held in trust and they comply with the relevant requirements of APES 310 Client Monies as if the Appointment related to a client;
(b) there are no conditions on the conduct or outcome of the Administration attached to the monies;
(c) full disclosure is made to creditors in the Declaration of Independence, Relevant Relationships and Indemnities (DIRRI);
(d) approval of Professional Fees is obtained prior to them being paid to the Appointee; and
(e) the monies are accounted for as funds of the Administration.
8.24 Where a Member in Public Practice has accepted an Appointment, other than as a Controller, and receives money from an Entity, other than from the assets of the insolvent Entity, to meet the costs of the Administration, the Member shall disclose the receipt of this money to the Approving Body and shall obtain approval to apply the money to Professional Fees from the Approving Body in accordance with paragraph 8.19.

8.25 Approval of the Approving Body under paragraph 8.24 is not required if the Corporations Act 2001, Bankruptcy Act 1966 or guidance issued by the Australian Securities and Investments Commission or Australian Financial Security Authority stipulates that approval is not required.

9. Documentation and quality control

9.1 A Member in Public Practice shall comply with the requirements of APES 320 Quality Control for Firms as if an Appointment is an Engagement.

9.2 A Member in Public Practice shall prepare working papers in accordance with this Standard that appropriately document the work performed, including aspects of the Insolvency Service that have been provided, in writing. The documentation prepared by the Member shall:

(a) provide a sufficient and appropriate record of the procedures performed for the Insolvency Service;

(b) identify threats to Independence, and how they have been evaluated and addressed; and

(c) demonstrate that the Insolvency Service was carried out in accordance with this Standard and other applicable professional standards, including policies and procedures established in accordance with APES 320 Quality Control for Firms, and any applicable ethical, legal and regulatory requirements.

9.3 A Member in Public Practice may destroy the working papers referred to in paragraph 9.2 in accordance with the requirements of the Corporations Act 2001 or Bankruptcy Act 1966.

9.4 A Member in Public Practice shall establish and adhere to documented procedures for each type of Administration that the Member undertakes to guard against not complying with statutory timeframes.

Conformity with International Pronouncements

The International Ethics Standard Board for Accountants (IESBA) has not issued a pronouncement equivalent to APES 330.
Appendix 1
Appointee’s Independence

This Appendix includes considerations for Members in Public Practice when assessing independence in the provision of Insolvency Services. Members shall maintain Independence in the provision of Insolvency Services as required by Section 4 of this Standard. However, Members providing Insolvency Services are also required to consider legal precedents set by Australian courts in respect of independence obligations, some of which are summarised below.

The information in this Appendix is not intended to be a comprehensive and/or definitive list and Members are cautioned that whether any of these principles apply to a particular Appointment is a matter of professional judgement, based on the particular facts and circumstances of the Appointment. The cases referred to in this Appendix must be read in full to be understood in their entirety.

Independence is fundamental for Members in Public Practice when providing Insolvency Services. Members are required to comply with the independence requirements in the Code, APES 330 and relevant laws and regulations.

Accordingly, Members must be cognisant of legal precedence in relation to the duties of independence, impartiality, and avoidance of conflict when providing Insolvency Services. The legal precedence sets out a requirement for independence which may be perceived to be stricter than the Code. It focuses on whether a fair-minded lay observer might reasonably apprehend that the practitioner might not bring an impartial mind to their duties compared to the reasonable and informed third party test in the Code.

Decisions from cases in the Australian courts confirm that Members who provide Insolvency Services can be removed from their Appointment if there is an actual or apprehended (perceived) conflict of interest or bias. Note that the conflict of interest must be real and cannot be theoretical.

Members should consider the following matters when evaluating independence, including the perceived lack of impartiality:

- whether Pre-appointment Advice has been provided to a director(s) regarding their personal position and affairs;
- whether they have a full understanding of the interests and relationships of all relevant parties, including their own employees, subcontractors and consultants;
- whether a referral relationship creates threats to independence; and
- whether it is better for the conduct of the Administration if the Member is removed (taking into consideration the stage of the Administration and the remaining functions to be performed).

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10 Australian Securities and Investments Commission v Franklin (liquidator), in the matter of Walton Constructions Pty Ltd [2014] FCAFC 85.
11 Queensland Mining Corporation Ltd v Butmall Pty Ltd, in the matter of Butmall Pty Ltd (in liq) [2016] FCA 16.
14 Australian Securities and Investments Commission v Franklin (liquidator), in the matter of Walton Constructions Pty Ltd [2014] FCAFC 85.
Appendix 2

Declaration of Independence, Relevant Relationships and Indemnities

This Appendix contains a template of a Declaration of Independence, Relevant Relationships and Indemnities (DIRRI) that a Member in Public Practice is required to provide to creditors in accordance with the requirements of this Standard.

Declaration of Independence, Relevant Relationships and Indemnities

[CompanyName] ([Appointment suffix]) / [Appointment prefix] [Insolvent Debtor’s Name]

[ACN] / [Estate Number]

[Members in Public Practice appointed to an insolvent Entity/Insolvent Debtor are required to make declarations as to:

A. the Member’s and/or Firm’s independence;
B. relationships, including:
   i. the circumstances of the Appointment;
   ii. any relationships with the [insolvent Entity/Insolvent Debtor] and others within the previous 24 months;
   iii. any prior Professional Services for the [insolvent Entity/Insolvent Debtor] within the previous 24 months; and
   iv. that there are no other relevant relationships to declare; and
C. any indemnities given, or Upfront Payments made, to the Member in Public Practice].

The purpose of this document is to assist creditors with understanding any relevant relationships of the [Appointee type] and any indemnities or upfront payments that have been provided to the [Appointee type]. None of the relationships disclosed in this document are such that the independence of the [Appointee type] is affected.

This declaration is made in respect of myself/ourselves, my/our partners, [Firm name] and [list any entities covered by the extended definition of Firm].

A. Independence

I/We, [Appointee name(s)] of [Firm name] have undertaken a proper assessment of the threats to my/our independence prior to accepting the appointment as [Appointee type] of [insolvent Entity/Insolvent Debtor] in accordance with the law and applicable professional standards. This assessment identified no real or potential threats to my/our independence. I am/We are not aware of any reasons that would prevent me/us from accepting this appointment.

B. Declaration of Relationships

i. Circumstances of appointment

This appointment was referred to me/us by [Referring Entity and connection to insolvent Entity/Insolvent Debtor including an explanation of the nature of Appointments or Engagements that the Referring Entity has previously referred to the Member]. I/We believe that this referral does not result in a conflict of interest or duty because:
• [Explain here why, in your opinion, the referral does not result in a conflict of interest or duty].

• [Include a declaration that there is no expectation, agreement or understanding between the Member and Referring Entity regarding the conduct of the Administration].

I had/We have [include details of number of meetings, who they were with (director(s) of the insolvent Entity/Insolvent Debtor/advisors) and the period of time] for the purposes of:

[Explain relevant issues discussed having regards to Section 4 of this Standard in respect of Pre-appointment Advice].

I/We received [amount of Professional Fees received] for this advice.

In my/our opinion, this/these meeting(s) does/do not affect my/our independence for the following reasons:

[Provide here the Appointee’s/Appointees’ reasons for believing that the relationship does not result in a conflict of interest or duty].

I/We have provided no other information or advice to [insolvent Entity name and/or its director(s) and/or advisors/Insolvent Debtor name and/or advisors] prior to my/our appointment beyond that outlined in this DIRRI.

ii. Relevant Relationships (excluding Professional Services to the Insolvent)

Neither I/of us, nor my/our firm/network firm/partners/managerial employees have, or have had within the preceding 24 months, any relationships with [insolvent Entity name/Insolvent Debtor name/an Associate of the insolvent Entity/Immediate or Close Family member of the Insolvent Debtor/a spouse or dependent of an Immediate or Close Family member of the Insolvent Debtor/an Entity associated with the Insolvent Debtor], a former insolvency practitioner appointed to [insolvent Entity name/Insolvent Debtor name] or any person or entity that has security over the whole or substantially whole of [insolvent Entity name/Insolvent Debtor name]’s property and other assets.

[Note that if you have been requested by a creditor to consent to act as a replacement external administrator, you are required to disclose any relationship in the preceding 24 months with the creditor who nominated you for the appointment in accordance with rule 75-265 in the Insolvency Practice Rules (Corporations) 2016 and the Insolvency Practice Rules (Bankruptcy) 2016 (IPR 75-265)].

OR

I/we or a member of my/our firm/network firm/our partners/managerial employees have, or have had within the preceding 24 months, a relationship with:

<table>
<thead>
<tr>
<th>Name</th>
<th>Nature of relationship</th>
<th>Reasons</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>I/We believe that this relationship does not result in a conflict of interest or duty because:</td>
</tr>
</tbody>
</table>


iii. **Prior Professional Services to the Insolvent**

Neither I/of us, nor my/our firm/network firm/partners have provided any professional services to [insolvent Entity name/Insolvent Debtor name] in the previous 24 months.

OR

I/We, or a member of my/our firm/network firm/partners have provided the following professional services to [insolvent Entity name/Insolvent Debtor name] in the 24 months prior to the acceptance of this appointment:

<table>
<thead>
<tr>
<th>Nature of Professional Services</th>
<th>Reasons</th>
</tr>
</thead>
<tbody>
<tr>
<td>[Including when, period over which, and Professional Fees paid for Professional Services provided]</td>
<td>I/We believe that this relationship does not result in a conflict of interest or duty because:</td>
</tr>
</tbody>
</table>

iv. **No other relevant relationships to disclose**

There are no other known relevant relationships, including personal, business and professional relationships, from the previous 24 months including with [insolvent Entity name/Insolvent Debtor name], an associate/related entity of [insolvent Entity name/Insolvent Debtor name], a former insolvency practitioner appointed to [insolvent Entity name/Insolvent Debtor name] or any person or entity that has security over the whole or substantially whole of [insolvent Entity name/Insolvent Debtor name]’s property and other assets that should be disclosed.

C. **Indemnities and up-front payments**

I/We have been provided with the following indemnities and/or upfront payments for professional fees for the conduct of this [Appointment type]:

<table>
<thead>
<tr>
<th>Name</th>
<th>Relationship with [insolvent Entity name/Insolvent Debtor name]</th>
<th>Nature of indemnity or upfront payment</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>[Including extent and nature of indemnity or Upfront Payment, where funds being held, when and how funds will be applied and whether there are any conditions on the use of the funds]</td>
<td></td>
</tr>
</tbody>
</table>

This does not include statutory indemnities. I/We have not received any other indemnities or upfront payments that should be disclosed.

OR

I/We have not been indemnified in relation to this administration, other than any indemnities that I/we may be entitled to under statute and I/we have not received any up-front payments in respect of my/our professional fees or expenses.

Dated:

.........................................................................................................................
.........................................................................................................................

[Appointee name] [Appointee name]
Notes:

1. If circumstances change, or new information is identified, I am/we are required under the Corporations Act 2001/Bankruptcy Act 1966 and APES 330 Insolvency Services to update this Declaration and provide a copy to creditors with my/our next communication as well as table a copy of any replacement declaration at the next meeting of the insolvent entity’s creditors. For creditors’ voluntary liquidations and voluntary administrations, this document and any updated versions of this document are required to be lodged with ASIC.

2. Any relationships, indemnities or up-front payments disclosed in the DIRRI must not be such that the insolvency practitioner(s) is/are no longer independent. The purpose of components B and C of the DIRRI is to disclose relationships that, while they do not result in the practitioner(s) having a conflict of interest or duty, ensure that creditors are aware of those relationships and understand why the practitioner(s) nevertheless remains independent.
Appendix 3

Necessary and proper Professional Fees and Expenses

This Appendix contains additional information on matters to consider when determining what Professional Fees and Expenses are necessary and proper in accordance with paragraphs 8.7 to 8.9 of this Standard.

A key aspect of ensuring that the necessary and proper Professional Fees and Expenses are claimed for Professional Services performed for an Administration is to ensure any work is completed in the most efficient and effective manner.

In determining how to perform the Administration in the most efficient and effective manner the Member in Public Practice should use their commercial and professional judgement and may consider:

(a) the complexity of the Administration;
(b) the level of expertise required to complete the necessary tasks in the Administration;
(c) the availability of sufficient staff to complete the Administration;
(d) the remuneration rates for staff that apply to the Administration (including, where relevant, consideration of different rates applicable in different locations);
(e) the resources required to complete the Administration and each relevant task;
(f) the urgency for tasks to be completed;
(g) the location of the Administration (including travel requirements);
(h) the specialised nature of the Administration (if any); and
(i) whether the allocation of tasks is cost effective.

In addition, the Member in Public Practice should conduct regular reviews of any work-in-progress to ensure that all time charged to the Administration is for necessary work, properly performed.

Costs of claiming Professional Fees and Expenses

A Member in Public Practice may claim the necessary and proper costs of record keeping and seeking approval or determination of their claim for Professional Fees and Expenses.

Costs of communicating with Regulators or professional bodies

A Member in Public Practice may not claim Professional Fees and Expenses for time spent communicating with regulators or professional bodies in relation to:

- complaints about the Member or the conduct of a particular Administration;
- regulator surveillance, professional audits or inspection of files, or on peer reviews; or
- unsuccessfully defending a breach of the law or applicable professional and ethical standards, subject to any order of the court.
Appendix 4

Summary of revisions to the previous APES 330 (Issued September 2014)

APES 330 Insolvency Services was originally issued in September 2009 and revised in November 2011 and September 2014 (extant APES 330). APES 330 has been revised by APESB in August 2019. A summary of the revisions is given in the table below.

Table of revisions*

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