

Constituents' Submissions – Specific Comments Table
Exposure Draft 01/11: APES 330 Insolvency Services

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

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
1	2	IPA	<p>Definition of Pre-appointment Advice in section 2</p> <p>The definition should be expanded to include professional advice provided to an insolvent Entity's advisers. This will cover situations where the insolvent Entity does not necessarily attend the meeting in person but obtains the benefit of advice provided to their advisers.</p>
2	3.9	IPA	<p>Paragraph should be changed to read:</p> <p>"Relevant reports are those reports that <u>include a reference</u> to the subject matter ..."</p>
3	4.5	JAB	<p>We note that the references in this paragraph to "the Member or the Member's Firm" have not been expanded to include references to a Network Firm. By introducing references to a Network Firm in other provisions of the standard, the matters that a member must consider in determining whether they can accept an appointment have been expanded. The omission of references to Network Firm in paragraph 4.5 do not similarly expand the matters that are not considered to impact the independence of a member. We would ask the APESB to indicate whether this is a deliberate omission from this paragraph, and if so to provide an explanation for the basis of this omission in the Basis for Conclusions ultimately issued for this standard. Alternatively, if this has not been a deliberate omission, we request that the APESB consider whether paragraph 4.5 should be expanded to include references to a Network Firm in this context.</p>
4	4.6	IPA	<p>Paragraph (e) needs to be limited to employment within the previous 2 year period. This is in alignment with the requirements of the IPA Code of Professional Practice.</p>
5	4.6	Deloitte	<p>Whilst we acknowledge and agree with the intention to promote consistency as outlined above, we also believe that the APESB should independently assess each requirement of the COPP on its merits and evaluate whether it should be replicated in the APES's.</p> <p>Specifically, we consider that the addition of the words 'Network Firms or their Partners' to certain requirements, such as those in paragraph 4.6, will make compliance with APES 330 virtually unattainable for Australian firms that belong to large international networks of firms.</p> <p>For example, the proposed wording of paragraph 4.6 means that an Australia firm belonging to an international network would contravene APES 330 if it accepted an appointment and any one out of thousands of partners in other network firms across the world has (or "has had"</p>

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			<p>anytime in the past) a personal relationship with an officer of the insolvent entity. It is unclear how such information could be obtained by the Member in Public Practice, nor how such a relationship would necessarily impair the independence of the Member in Public Practice.</p> <p>As such we strongly recommend the requirements relating to Network Firms extend only to prior professional services.</p>
6	4.6	McN	<p>Similarly, clause 4.6 does not include any time limitation. Again, we are of the view that limiting the prohibition in this clause to relationships existing in the prior two years is adequate and does not derogate from the overarching obligation to maintain independence as required by clauses 4.1 and 4.3.</p> <p>We note that the IPA CoPP limits the prohibition on Appointments in respect of both professional service relationships and disclosure of other relationships (refer section 6.8 and 6.10.3 of the IPA CoPP) to relationships arising during the previous two years.</p> <p>Breadth of restrictions on Managerial Employees</p> <p>Without in any way objecting to the substance or principles espoused in APES 330, we raise our concern with the independence restrictions applying to <u>all</u> Managerial Employees of a firm, including a network firm. In small practices we can appreciate that these rules may be readily complied with, but we think this would not be the case for example for a big 4 accounting firm which may have tens of thousands of Managerial Employees around the world. In such circumstances we believe it would be near on impossible to comply with the requirements to identify and declare all relationships between these people and the insolvent company, the associates of the company, and the other parties identified as relevant in clause 4.18 bullet point 3. In our view this requirement entails cost and a high likelihood of non compliance.</p> <p>We understand that the requirements of APES 330 in this regard are far more onerous than those of the APES 110 and Corporations Act requirements for audit staff where the restrictions are limited to the members of the audit team and Managerial staff who provide services to the audit client. We suggest that restrictions applying to Managerial staff in either the project team or the home office of the appointee, or the home state of the insolvent company head office would strike a reasonable balance between adequately safeguarding against threats to independence and ensuring high levels of compliance are achievable.</p>
7	4.7	GT	<p>Grant Thornton note the additional requirement for insolvency practitioners who have an interest in, or an ability to influence a business in the same market as the insolvent company, to eliminate this conflict of interest or decline the appointment. This requirement appears to be very broad in its application and we suggest needs further clarification and less subjective interpretation.</p>
8	4.7	IPA	<p>Paragraph should be changed to read:</p>

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			"... shall evaluate the significance of any threats <u>to independence</u> and, when necessary, apply ..."
9	4.9	IPA	First bullet point of paragraph should be changed to read: "was of limited scope and limited time and/or limited fees"
10	4.10	IPA	Paragraph should be reworded to make it easier to read (no change to meaning): "Where a Member in Public Practice is or has been a Partner of a Firm that has merged with another Firm in the preceding two years, and the Member is considering accepting an Appointment, the Member shall evaluate any relationships that the insolvent Entity had with the Firm, previous Firm(s) or Network Firms in the preceding two years in accordance with the requirements of this standard".
11	4.10	JAB	As identified above under General Comments, insolvency practitioners have limited timeframes available to identify and evaluate any relationships that may have existed over the previous two years. The Joint Accounting Bodies believe that the standard should recognize this limitation. Paragraph 4.10 currently states: 'Where a Member in Public Practice is considering accepting an Appointment and two or more Firms have merged in the preceding two years, the Member shall evaluate any relationships that the insolvent Entity had with the Firm, previous Firm(s) or Network Firms in the preceding two years in accordance with the requirements of this standard'. A requirement 'to evaluate any relationship the Member is aware of or is reasonably expected to be aware of' may be more appropriate than 'shall evaluate any relationship'.
12	4.11	JAB	This paragraph states that: '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, that the insolvent Entity had with the previous Firm or Network Firms during the time that the Member was a Partner'. The Joint Accounting Bodies believe that the requirement suggested in paragraph 4.10 for a Member to 'evaluate any relationships that the Member is aware of or is reasonably expected to be aware of' be included in this paragraph as well.
13	4.11	IPA	Paragraph should be changed to remove the comma on line three between of and that. Paragraph should be changed to read: "...Where the prior relationships pose significant threats <u>to independence</u> and there ..."
14	4.18	IPA	Second bullet point should be changed to read: "...including the number of meetings with the Insolvent Entity, if the Insolvent Entity is a company, its directors, and/or the insolvent Entity's advisers and period over ..." Fifth bullet point should be changed to read:

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
			<p>“...a declaration of any Professional Services provided to the insolvent Entity <u>in the preceding two years</u> by the Member ...” There should be a two year limit imposed on this requirement.</p> <p>Sixth bullet point should be changed to read: “... and the extent <u>(dollar caps and/or other limitations)</u> and nature of each indemnity ...” Clarify exactly what is meant by the term “extent”.</p>
15	4.18	McN	<p>Inconsistent periods for relationship disclosure purposes</p> <p>Clause 4.18 (at the third bullet point) limits the period for prior provision of Professional Services which would prohibit the acceptance of an Appointment to two years.</p> <p>The clause dealing with the disclosure of relationships in the DIRRI (clause 4.18 fourth bullet point) does not include the same time period limitation. In our view it should.</p>
16	4.19	IPA	<p>Second bullet point should be changed to read:</p> <p><u>“sign a replacement Declaration of Independence, Relevant Relationships and Indemnities as soon as possible and ensure that it is provided to creditors.”</u></p> <p>Aligns requirement with the IPA Code of Professional Practice which established this standard.</p>
17	8.8	JAB	<p>This paragraph states that members in Public Practice appointed as Trustees shall not draw Professional Fees for Pre-appointment Advice unless those fees are approved in accordance with the Bankruptcy Act 1966. We understand that the driver behind this amendment was to acknowledge a provision in the <i>Bankruptcy Act</i> which permits a trustee to have pre-appointment fees approved by creditors. It is not clear why this issue should be addressed in this standard as it is adequately covered by the law. In addition, by expressing the issue in the negative, it suggests that there is some matter here which is subject to abuse, and that the standard is seeking to curtail that abuse. As we understand it, this is not the case. The sense of the issue was to acknowledge an instance in which a trustee in bankruptcy could draw fees for pre-appointment work when otherwise they would not be able to.</p>

Staff Instructions

- Comments of a “general” nature should be dealt with first, followed by paragraph specific comments.
- Respondents' comments must be copied verbatim into this table.
- Comments should be dealt with in paragraph order, not respondent order.
- Use acronyms only for respondents. Update the attached table with details of additional respondents.

RESPONDENTS

1	JAB	The Joint Accounting Bodies
2	Deloitte	Deloitte
3	GT	Grant Thornton
4	IPA	Insolvency Practitioners Association of Australia
5	McN	McGrathNicol