

## AGENDA PAPER

**Item Number:** 7  
**Date of Meeting:** 4 September 2018  
**Subject:** Proposed revision of APES 330 *Insolvency Services*

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Action required     For discussion     For noting     For information

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### Purpose

To obtain the Board's approval to issue the Exposure Draft *Proposed Standard APES 330 Insolvency Services* (the ED), subject to the Board's review comments and editorials.

### Background

The APESB originally issued APES 330 *Insolvency Services* (APES 330) in September 2009. Since then APES 330 has been revised in November 2011 and September 2014.

In February 2016, the *Insolvency Law Reform Act 2016* (Cth) was issued which impacted practitioner registration and discipline provisions, and insolvency administration processes. The legislation became fully effective in September 2017.

In October 2016, the Australian Restructuring, Insolvency and Turnaround Association (ARITA) advised APESB Technical Staff that the Code of Professional Practice (the ARITA Code) would be updated for the legislative reforms once additional regulations were released.

In July 2018, ARITA advised of the commencement of a project to revise the ARITA Code. ARITA are planning to issue the revised ARITA Code by the end of 2018.

### Consideration of Issues

In completing the review of APES 330, Technical Staff have engaged with ARITA Technical Staff and have also consulted with the APES 330 Taskforce in August 2018. Refer to Agenda Item 7(c) for the draft minutes of the engagement with the taskforce.

Technical Staff have considered the following key matters in proposing revisions to APES 330:

## 1. Legislative reforms

In 2016 the *Insolvency Law Reform Act 2016* was issued that proposed amendments to streamline and ensure consistency across different legislative instruments<sup>1</sup> in relation to insolvency.

Technical Staff have considered the impact of the legislative reforms on APES 330 and noted that no substantive amendments are required to the standard as the legislation was in effect incorporating aspects which were already included in APES 330.

As some of the extant requirements in APES 330 are now covered in the new legislation, Technical Staff propose to remove these requirements from APES 330. The deletions are to extant paragraphs 8.16, 8.17 and select items in extant paragraph 8.18.

## 2. Disclosures in the DIRRI & current issues in practice

ARITA have raised concerns about whether the current requirements in relation to a *Declaration of Independence, Relevant Relationships and Indemnities* (DIRRI) in APES 330 adequately explain the purpose of a DIRRI and would require the disclosure of all relevant relationships.

This issue was noted when considering how relationships with certain parties, such as creditor activist groups, would be disclosed in a DIRRI.

Technical Staff have consulted with the APES 330 Taskforce and ARITA on this matter to clarify how to address this perceived gap in the standard and to address situations where strict compliance with APES 330 could result in the non-disclosure of relevant information.

The preferred approach was to include a new overarching requirement (proposed paragraph 4.24) for Members in Public Practice to include all relationships in a DIRRI that are relevant to a creditor's assessment of the Member's Independence.

In addition, a new declaration is to be included in the DIRRI (proposed paragraph 4.25(h)) that all relevant relationships to the creditors assessment of the Member's Independence must be included in the DIRRI.

## 3. APESB's project to restructure the Code

As part of the revision of APES 330, Technical Staff have considered the following impacts of APESB's current project to restructure APES 110 *Code of Ethics for Professional Accountants* (the Code).

### Inducements

A key impact is that the new APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* (the Restructured Code) includes a definition of Inducements. This definition is different to the extant definition in APES 330.

Technical Staff propose to include in APES 330 the new definition of Inducement from the Restructured Code and include the extant APES 330 definition as new application material (proposed paragraphs 3.22 and 3.23).

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<sup>1</sup> Reforms affect the *Bankruptcy Act 1966*, the *Corporations Act 2001* and the *Australian Securities and Investments Commission Act 2001*.

### Structure and cross-references to the Code

Technical Staff propose to reorder the extant material in Section 4 *Professional Independence* and Section 8 *Professional Fees and Expenses* to improve the navigation and readability of these sections.

In addition, to ensure APES 330 remains relevant throughout the changeover process to the new Code, all cross-references in APES 330 to the extant Code have been updated to refer to the Restructured Code. The extant references are being retained as footnotes to ensure that APES 330 can be used during the transition phase to the Restructured Code.

#### 4. Consistency with the ARITA Code

Technical Staff have engaged with ARITA in relation to the planned revisions to the ARITA Code and to consider the need to align content in APES 330 and the ARITA Code.

To align with the ARITA Code Technical Staff propose to include in APES 330 a requirement for Members in Public Practice to make reasonable enquiries about the identity of the parties involved in the Administration prior to accepting the engagement (proposed paragraph 3.13).

On specific content, such as remuneration and DIRRI, the ARITA Code is more prescriptive. Technical Staff do not believe it would be appropriate to include that level of detail in APES 330.

However, Technical Staff propose the following new guidance material for APES 330:

- a template for a DIRRI that is consistent with version in the ARITA Code (proposed Appendix 1 to APES 330); and
- additional information on matters to consider when determining what is necessary and proper remuneration (proposed Appendix 2 to APES 330).

### **Taskforce Views**

Technical Staff met with the APES 330 Taskforce in August 2018 to consider the proposed revisions to APES 330. The Taskforce were supportive of the proposed changes to APES 330, in particular the inclusion of a template for the DIRRI. Refer to Agenda Item 7(c) for the draft minutes of the APES 330 Taskforce Meetings.

### **Proposed Exposure Draft**

Technical Staff have drafted an Exposure Draft (refer to Agenda Item 7(a) for the marked-up version and Agenda Item 7(b) for the clean version) which contains the amendments listed in this paper, amendments included in the annual review presented at the November 2016 Board Meeting and other editorial amendments.

Comments have been added to the proposed Exposure draft to explain the nature of changes.

## **Recommendation**

Subject to the Board's review comments, the Board approve the draft Exposure Draft *Proposed Standard APES 330 Insolvency Services* for public comment.

## **Material Presented**

Agenda Item 7(a) Exposure Draft *Proposed Standard APES 330 Insolvency Services* (Marked-up version);  
Agenda Item 7(b) Exposure Draft *Proposed Standard APES 330 Insolvency Services* (Clean version); and  
Agenda Item 7(c) Draft Minutes of APES 330 Taskforce Meeting

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