

Exposure Draft 04/18 relating to proposed revisions to APES 330 *Insolvency Services*

Review of Submissions – Specific Comments Table
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Note: General comments relating to APES 330 are addressed in a separate table. This table excludes minor editorial changes.

Item No.	Paragraph No. in ED	Respondent	Respondents' Comments	Change made to Standard?
1	1.2	Stakeholder 1	[Confidential]	Yes Para 1.2, Definitions (Code), Paras 3.1, 3.2, 3.5, 3.17, 3.18, 5.2, 8.1
2	Definition – Independence; 4.4; 4.15	Stakeholder 1	[Confidential]	Yes (Definitions) Independence; Paras 4.3, 4.10, 4.15 and 4.24; and proposed Appendix 3 (new)
3	Definition – Trustee	Stakeholder 1	[Confidential]	Yes Definitions (Trustee)
4	3.13	Stakeholder 1	[Confidential]	Yes Para 3.13 and new proposed 3.14
5	3.22 [Now 3.24]	Stakeholder 1	[Confidential]	Yes Para 3.24
6	3.23	CPAA	Paragraph 3.23 of the Exposure Draft defines what is excluded from being considered an 'Inducement'. It is suggested that to provide further guidance and context to members with regards to documentation, this section refer to section 340 of APES 110. Section 340 of APES 110 provides requirements and guidance for identifying, managing and documenting inducements.	Yes Proposed new Para 3.22
7	3.23 [Now 3.25]	Stakeholder 1	[Confidential]	Yes Proposed new paragraph 3.22 and amend 3.25
8	4.6(c)	Stakeholder 1	[Confidential]	Yes Para 4.6(c)
9	4.6(c)	CPAA	Clause 4.6 (c) – is unclear as to whom the Declaration of Independence, Relevant Relationships and Indemnities (DIRRI) is to be provided. For example, is the DIRRI to be given only to the extant Insolvency Practitioner; is it to be tabled at the meeting of creditors; or is it to be mailed to all creditors?	Yes Para 4.6(c)
10	4.6(e)	CPAA	Clause 4.6 (e) – in addition to advising the basis on which the member proposes to charge their fees (time based, fixed fee etc.) should the member also advise the rates of the Insolvency Practitioner and the rates attracted by their respective staff?	Yes Para 4.6(e)

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11	4.8(b)	CA ANZ	Paragraph 4.8(b) requires the Member to <i>notify</i> the court of any threats in addition to <i>applying</i> to the court to continue the appointment in paragraph (c). some of our members have questioned why they need to separately <i>notify</i> the court under paragraph 4.8(b) and suggest that the requirement to <i>apply</i> under paragraph 4.8(c) would be sufficient for informing the court.	Yes Paras 4.8(b) & (c) & proposed new 4.8(b)(viii)
12	4.9 – 4.15	CPAA	Some of our members have observed that, increasingly, insolvency practices are forming relationships with financiers, with some practices forming their own finance companies. This is due to a softening insolvency market with current low numbers of formal insolvencies and a contraction in the availability of finance from traditional financiers. Anecdotally, observations include insolvency practitioners accepting appointments from financiers where the relationship is not at arm's length. While clauses 4.9 to 4.15 address where the member, member's firm or partners have a relationship with the insolvent entity, it is not clear that these clauses extend to a situation where, for example, shares are held in the financier by a close family member of the insolvency practitioner or a close family member of the insolvency practitioner's partners.	Proposed new paras 4.12(a)(iv) & 4.12(c)(iv)
13	4.10	CPAA	To assist members to understand the guidance offered in paragraph 4.10(a), it is suggested that this paragraph be further clarified by using subsections as follows: <i>4.10 The following circumstances and relationships are not considered to create a threat to the Independence of a Member in Public Practice, who is considering acceptance or continuance of an Appointment:</i> <i>(a) a third party who is not an Associate or Related Entity of an insolvent Entity engaging the Member, the Member's Firm or a Network Firm to investigate, monitor or advice on the affairs of the insolvent Entity on behalf of the third party</i> <i>i. where the scope of the Engagement will not compromise the Member's Independence and;</i> <i>ii. will not be subject to review or challenge in a subsequent Administration; and</i> <i>iii. any Professional Fees received for the Engagements would not be a preferential payment in a subsequent Administration; or</i> <i>(a) the transition of an Appointment...</i>	Yes Para 4.10(a)
14	4.10(a)	CA ANZ	Paragraph 4.10(a) could be reworded from 'a third party who is not an Associate or Related Entity of the insolvent Entity engaging the Member, the Member's Firm or a Network Firm to investigate...' to 'engagement of the Member, the Member's Firm or a Network Firm, by a third party, who is not an Associate or Related Entity of the insolvent Entity, to investigate...' as we feel this follows more closely from the previous statement and is easier to understand.	Yes Para 4.10(a)
15	4.10(a)	CPA Australia	Clause 4.10 (a) – the reference to preferential payment perhaps should be replaced with voidable transaction. The latter is a wider definition as a preferential payment is a subset of a voidable transaction.	Yes Para 4.10(a)(iii)
16	4.10(a)	CPA Australia	Further to the structural changes to paragraph 4.10(a), it is suggested that the term 'preferential payment' be either included in Section 2: Definitions or cross-referenced to relevant legislation.	Yes Para 4.10(a)(iii)

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17	4.10(c)	Stakeholder 1	[Confidential]	Yes Para 4.10(c)
18	4.11	CPAA	Paragraph 4.11 includes the term 'bar' with respect to a reason for acceptance or retention of an Appointment. The term 'bar' appears to be often referred to in context as a minimum level of acceptable behaviour. Therefore, it is suggested that this paragraph may be better expressed by the term 'barrier'.	Yes Para 4.11
19	4.17(a)	CA ANZ	The APES Board may wish to consider incorporating guidance to assist the Member in determining limited scope, limited time and limited fees in accordance with paragraph 4.17(a). for example, that a Member should take into account matters which would include the size of the Member's Firm, the size of the Insolvent Entity and the nature of the Professional Service performed.	Yes Paras 4.16 and 4.17
20	5.2	CPAA	Non-compliance with laws and regulations (NOCLAR) is a mandatory requirement in paragraph 5.2 of the Exposure Draft. For consistency with Standards which have recently been amended (such as APES 220), we suggest that the paragraph 5.2 reflect the mandatory requirement in paragraph 7.8 of APES 220 which includes the reference to NOCLAR for members in business and members in practice.	No
21	Section 6	CPA Australia	Paragraph 6 is headed 'Dealings with property and other assets'. To align terminology with other standards, particularly APES 310 Client Monies, it is suggested that the term 'Dealings with' be removed resulting in the heading 'Property and other assets'.	Yes Section 6 heading
22	Section 8; Appendix 2	Stakeholder 1	[Confidential]	Yes Paras 8.7 & 8.15
23	8.2	Stakeholder 1	[Confidential]	Yes Proposed new para 1.6
24	8.10	CPA Australia	When examining minimum behavioural expectations of a member when reflecting on commercial judgement applied to the execution of an insolvency engagement, paragraph 8.10 uses a 'reasonable person' as the appropriate test. It is suggested that the 'reasonable person' test be strengthened to that of a reasonable person in the position of a member providing similar professional insolvency services.	No
25	8.13 [Now 8.15]	CPA Australia	To address concerns about members' responsibilities with respect to record keeping, it is suggested that paragraph 8.13 include the term 'verifiable' in the requirements. <i>8.13... the Member, in addition to any statutory requirements, shall provide sufficient and verifiable information so as to allow the Approving Body to make an informed assessment as to whether the remuneration is reasonable, and shall...</i>	No
26	8.21 [Now 8.23]	CPA Australia	To align APES 330 Insolvency Services to APES 310 Client Monies it is suggested that paragraph 8.21 cross reference to APES 310. This is particularly important with respect to 'Pre-Appointment Services' where the member is not acting in the capacity of Liquidator or External Administrator for the Entity. Any monies collected at this point should be considered Client Monies to which APES 310 would apply.	Yes Para 8.23(a)
27	8.21 [Now 8.23]	CA ANZ	In addition to paragraph 8.21, we suggest that member's obligations under APES 310: Dealing with Client Monies are included within this paragraph	Yes Para 8.23(a)
28	9.2	Stakeholder 1	[Confidential]	No

Exposure Draft 04/18 relating to proposed revisions to APES 330 *Insolvency Services***RESPONDENTS**

1	Stakeholder 1	[CONFIDENTIAL]
2	CA ANZ	Chartered Accountants Australia and New Zealand
3	CPAA	CPA Australia (original submission)
4	CPAA	CPA Australia (additional submission)