

ACCOUNTING PROFESSIONAL & ETHICAL STANDARDS BOARD LIMITED

**APES 330 Insolvency Services
2nd Taskforce Meeting**

MINUTES

**6 May 2019, Monday
2.30 p.m. – 3.45 p.m.**

Teleconference

1. Present and Apologies

Present:

Mr Channa Wijesinghe (Chairman), Ms Robyn Erskine, Ms Julie Williams, Ms Kim Arnold, Ms Karen McWilliams and Dr John Purcell.

In Attendance:

Mr. John Cahill (Board Member), Ms Jacinta Hanrahan, Mr Jon Reid, Ms Thea Eszenyi (ASIC) and Mr Adrian Furby (ASIC).

Apologies:

Mr Stephen Longley and Ms Natasha McHattan

2. Proposed revisions to APES 330

The Chairman thanked everyone for their attendance, consideration of and feedback on the proposed revisions to APES 330 *Insolvency Services* (APES 330). The Taskforce considered the proposed amendments to APES 330 including the following key items:

(a) Definition of Independence and new Appendix 3

Taskforce members were supportive of the approach proposed in the circulated version of the proposed APES 330, where the definition of Independence aligns to APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)*, with the inclusion of additional guidance material to legal precedents established by Australian courts to clarify the additional independence matters that Members need to comply with in relation to Insolvency Services.

The Taskforce Members supported the inclusion of additional guidance in proposed Appendix 3 on the key considerations of the courts when assessing an Appointee's independence. However, the Taskforce suggested that the guidance in relation to special purpose Appointees be removed as this dealt with issues with Independence that arise after appointment, rather than forming part of the initial assessment of independence performed by the Member.

(b) Determining the appropriate bodies to report threats to Independence in Paragraph 4.8(b)

The Taskforce discussed Paragraphs 4.8(b) and (c) in the proposed APES 330 in relation to who should be notified where threats to Independence are identified after the commencement of an Administration which would have precluded the Member from accepting the Appointment.

The Taskforce agreed that creditors and regulators should be notified in all instances (whether continuing the Appointment or resigning). In relation to the notification of the courts, the Taskforce agreed that requirements in the extant paragraph 4.8(c) would include notification as the Appointee must apply to the court to continue the Appointment or for the Appointment of a special purpose Appointee. The Taskforce agreed that paragraph 4.8(b) should be amended as follows:

“(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 ~~the court~~, all creditors and/or the appropriate regulatory authority of the following:”

In addition, another sub-point is to be included at paragraph 4.8(b)(viii) requiring notification as to how the threat will be managed.

(c) Inclusion of point on investigating accountant engagement in paragraph 4.10(d)

The Taskforce agreed with the inclusion of investigating accountant engagement in Paragraph 4.10(d) of the proposed APES 330, as it addresses appointments by different parties to parties listed in other subparagraphs in paragraph 4.10.

ARITA advised that their Working Group is currently reviewing the wording in paragraph 4.10(e). ARITA will liaise with Technical Staff regarding any proposed amendments, and Technical Staff will update the Taskforce accordingly.

(d) Does paragraph 4.12 capture the financier’s arrangements (described in Specific Comment 12)

The Taskforce discussed whether paragraph 4.12 captures financier’s arrangements and agreed that an additional point at 4.12(c)(iv) should be included to address where an Entity has provided finance to the insolvent Entity. Technical Staff are to draft the proposed amendment and circulate to the Taskforce for their consideration.

(e) Handling of upfront payments in line with APES 310 *Client Monies* (Paragraph 8.23)

The Taskforce discussed the proposed requirement for Members to hold Upfront Payments on trust and comply with APES 310 *Client Monies*. The Taskforce were generally supportive of the proposal, however, ARITA will not be requiring this in their Code of Professional Practice.

3. **Other matters for consideration**

Does there need to be clarification about how APES 330 applies to members voluntary liquidations?

The Taskforce agreed that further clarification could be provided in relation to the application of APES 330 to members voluntary liquidation. The Taskforce agreed with the Technical Staff’s suggestion to include the following paragraph in the Scope and Application of the standard:

This Standard is directed towards Professional Services provided to Insolvent Debtors or Entities. However, the Standard should also be applied to the extent practicable for Appointments such as members voluntary liquidation.

Is clarification needed on the terms ‘limited scope, time and fees’ in Paragraph 4.17(a)?

The Taskforce discussed the meaning of immaterial and the reference to limited scope, time and fees in Paragraph 4.17(a). ARITA mentioned their ARITA Working Group had discussed this issue and they were proposing to remove these matters from their equivalent paragraph to paragraph 4.17 and include these words in the equivalent paragraph to paragraph 4.16.

Technical Staff are to draft the amendments to these paragraphs and circulate to the Taskforce for their further consideration.

Does the change to Paragraph 8.2 capture all the appropriate parties? Should secured creditors be included?

The Taskforce discussed paragraph 8.2 of the proposed APES 330. The Taskforce agreed that the proposed paragraph did not require amendments to include secured creditors as its purpose is to require information to be provided to the director(s) of the Insolvent Entity or Insolvent Debtor.

Disclosure of referrers in DIRRI (update from ARITA)

ARITA is still in the process of considering this for their Code of Professional Practice. ARITA will advise of any developments in due course.

Any other matters

ARITA noted a couple of minor matters to be discussed with APESB Technical Staff subsequent to this meeting.

4. Way forward

Technical Staff will:

- circulate an updated version of the proposed APES 330, including amendments discussed at the Taskforce meeting, for members review, further comments and editorials;
- present the proposed APES 330 at the June 2019 Board Meeting for the Board's review; and
- seek the Board's approval to finalise and publish the proposed APES 330.

5. Close of Meeting

The meeting was closed at 3.45 p.m.