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**Comments to APESB
on the
proposed revisions
to APES 330
Insolvency Services:
ED 04/21**

November 2021

01 November 2021

Mr Jon Reid
Project Lead
Accounting Professional & Ethical Standards Board
Level 11, 99 William Street
Melbourne Vic 3000

Dear Jon

Proposed revisions to APES 330 Insolvency Services: ED 04/21

The Institute of Public Accountants (IPA) welcomes the opportunity to comment on the proposed revisions to *APES 330 Insolvency Services*.

IPA position

Overall, the IPA supports the proposed revisions to APES 330 to align with the recently introduced changes to Australia's insolvency regime, including the new Restructuring Practitioner (RP). One of our main concerns is to ensure that the proposed revisions do not act as an unnecessary barrier to accountants who wish to take up registration as an RP.

Whilst there was some early interest amongst IPA members in the RP opportunity, we are not aware of any members who have become registered (our database of members holding statutory registrations will be updated in February 2022). We understand that the profession-wide take up has been limited for various reasons.

Too early to make an assessment

Given the limited number of RP registrations, the ongoing insolvency reforms, and the 50%-60% reduction in insolvencies over the COVID-19 period (up to July 2021), the IPA believes that it is still too early to assess the effectiveness of the new insolvency regime and its impact on the survival of small businesses.

Even though the new regime commenced 10 months ago, the reforms are continuing. We note during the last few months and going forward, that further reforms are being proposed and subject to consultation, including:

- how trusts, which are commonly used by small businesses, are treated under insolvency law (consultation open until 10 December 2021);
- review of whether the insolvent trading safe-harbour provisions, which were introduced in 2017 and designed to promote a culture of entrepreneurship and innovation by providing breathing space for distressed businesses, remain fit for purpose;
- improving schemes of arrangement processes to better support businesses, including by introducing a moratorium on creditor enforcement while schemes are being negotiated; and

- consequential amendments to regulations supporting small business insolvency reforms (submissions due 1 November 2021 and ongoing).

It may well be that APES 330 needs further revisions to keep pace with the legislative and regulatory changes and practical implications; whilst ensuring that the Government's COVID-19 recovery related policy objectives are being enhanced and not compromised.

Effective date and timing

The IPA notes the proposed start date of 01 April 2022 (or earlier adoption) and suggests that this be delayed so that any further changes resulting from the above consultations can be considered and incorporated if needed (subject to further consultation by APESB). For instance, there may be significant changes to trusts law. Alternatively, a delay until say 01 July 2022 may be warranted. However, we are also mindful that a federal election must be held by no later than 21 May 2022 and this may impact the legislative priorities and timetable. Whilst we appreciate that APESB must continue with its own agenda and priorities, we believe that APESB should either delay the proposed revisions or be mindful of the need for further consultation if more revisions are needed.

Policy objectives of insolvency reforms

The IPA believes that the policy objectives of the insolvency reforms, as part of our post-COVID economic recovery are paramount, and that barriers should not be constructed which may compromise these objectives. In the words of the Treasurer, Josh Frydenberg (03 May 2021),

“These measures will play an integral part in Australia’s economic comeback. The Government remains committed to further simplifying and streamlining insolvency law so that viable businesses that do encounter economic challenges have the opportunity to restructure and go on trading.”

The IPA fully supports the policy objective of,

Supporting small businesses by creating a new simplified restructuring and liquidation process that has given directors the control and flexibility they need to either restructure or wind down operations, whilst reducing the time and costs of external administration *and the compliance burden for insolvency practitioners* [IPA italics].

Alignment between revised APES 330 and insolvency reforms

The IPA’s assessment of the proposed revisions to APES 330 indicates that they are aligned with the insolvency reforms introduced (so far) by the Government. In particular, we note that section 10 of APES 330 contains new requirements relating to the RP; and that the independence requirements in section 10 of APES 330 align with the requirements in section 456C of the *Corporations Act 2001*. We note further that the requirements relating to professional fees and expenses in section 10 are consistent with the *Insolvency Practice Rules (Corporations) 2016*, effective from 01 January 2021.

Our understanding of the legislative and regulatory provisions relating to the fees and remuneration to be paid to an RP are based on Rules 60-1B *Remuneration for Restructuring Practitioners for Companies* and 60-1C *Remuneration for Restructuring Practitioners for Restructuring Plans* and we note that Appendix 4 to the proposed revised Standard provides sufficient referencing to the requirements.

Post-implementation review

Whether there is a delay or not in the commencement of the revised APES 330, the IPA believes that a post-implementation review should be undertaken in due course to ensure that APES 330 is working as intended in practice; and that the policy objectives underlining our post-COVID recovery are being enhanced.

If you have any queries with respect to our comments, please don't hesitate to contact Vicki Stylianou at vicki.stylianou@publicaccountants.org.au or on mobile 0419 942 733.



Vicki Stylianou
Group Executive Advocacy & Policy
Institute of Public Accountants