

AGENDA PAPER

Item Number: 8
Date of Meeting: 17 November 2023
Subject: Post-implementation review of APES 330 *Insolvency Services*

Action required **For discussion** **For noting** **For information**

Purpose

To update the Board on the post-implementation review of the revised APES 330 *Insolvency Services* issued in December 2021.

Background

[APES 330 *Insolvency Services* \(2021\)](#) (APES 330) was last revised in December 2021 and effective on 1 April 2022. APES 330 was revised to primarily address small business insolvency reforms and the creation of the restructuring practitioner's role.

Due to the COVID-19 pandemic, the Government's insolvency reforms for small businesses came into effect on 1 January 2021. The reform aimed to enable small businesses (less than \$1m liabilities and which met other eligibility criteria) that are or are likely to become insolvent to reach an agreement with its creditors and be assisted by a restructuring practitioner to restructure and settle the liabilities.

At the November 2021 Board Meeting, the Board approved the issue of revised APES 330. The Board also approved APESB undertaking a post-implementation review (PIR) 12 months after the effective date of 1 April 2022 ([Agenda Item 7](#)).

In October 2023, APESB conducted the PIR of APES 330 by seeking views from ARITA, APES 330 Taskforce members and the professional bodies.

Matters for Consideration

Engagement with ARITA

As part of the PIR, Technical Staff met with the Australian Restructuring Insolvency and Turnaround Association (ARITA) on 17 October 2023 and discussed whether any revisions to APES 330 are necessary to reflect revisions to the small business insolvency reforms or other developments in the industry.

ARITA advised that no revisions have been made to the ARITA Code of Professional Practice since APES 330 was last revised in December 2021. In addition, they were not aware of any matters that would require revision in APES 330 at this point.

Technical Staff also discussed with ARITA regarding the Parliamentary Joint Committee Inquiry into Corporate Insolvency in Australia. The Committee released the [report](#) in July 2023. However, the Government has not yet responded. The report includes the Committee's recommendations and highlights areas of insolvency law that require attention. It is anticipated that the Government will respond by early 2024.

Both ARITA and APESB will monitor any developments from this inquiry that may have an impact on ARITA's Code and APES 330.

Technical Staff initially intended to prepare an Exposure Draft of APES 330 for the quality management conforming amendments and present it at the November 2023 Board Meeting. However, Technical Staff concurred with ARITA's view to wait for the Government's response to the insolvency inquiry. If the review identifies that further changes are required to APES 330, Technical Staff will incorporate these amendments into the Exposure Draft for the February 2024 Board Meeting.

APES 330 Taskforce and Professional Bodies

Technical Staff provided an update on the discussion with ARITA to the APES 330 Taskforce members and the three professional bodies on 17 October 2023. Technical Staff also requested feedback or comments on matters that APESB should consider in its PIR of APES 330 by 27 October 2023.

APESB received feedback from Chartered Accountants Australia and New Zealand (CA ANZ), CPA Australia, and taskforce members

Two respondents are not aware of any matters or specific issues that need consideration for the review. They believe no revisions are required to APES 330 at this time.

One professional body noted that they had not received any member feedback in relation to APES 330 and its operation in practice. However, following a review of Section 10, they suggested some revisions relating to restructuring practitioner's professional fees and contingent fees. The comments received from the professional body are outlined in Agenda Item 8(a).

Technical Staff raised these matters with the Taskforce members on 31 October 2023 and requested comments by 6 November 2023.

Technical Staff also discussed these items with ARITA Technical Staff on 2 November 2023. ARITA support retaining the extant paragraphs (refer to Agenda Item 8(a) for Technical Staff analysis of the professional body's comments and suggestions.

Accordingly, Technical Staff do not recommend any changes to APES 330 in relation to the above matters at this stage.

Recommendations

The Board note the update on the post-implementation review of the revised APES 330.

Materials presented

Agenda Item 8(a) Comments received from a Professional Body

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Date 6 November 2023