



## COVERSHEET

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| <b>Minister</b>               | Hon Phil Twyford  | <b>Portfolio</b>            | Economic Development |
| <b>Title of Cabinet paper</b> | Regulatory Systems (Economic Development) Amendment (No 2) Bill – Approval to table a Supplementary Order Paper | <b>Date to be published</b> | 5 November 2019      |

### List of documents that have been proactively released

| <b>Date</b>                                | <b>Title</b>  | <b>Author</b>                                  |
|--|---|--|
| Considered by Cabinet on 23 September 2019 | Regulatory Systems (Economic Development) Amendment (No 2) Bill – Approval to table a Supplementary Order Paper | Office of the Minister of Economic Development |
| 3 April 2019                               | CAB-19-MIN-0493   | Cabinet Office                                 |

### Information redacted

**NO**

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

In Confidence

Office of the Minister of Economic Development  
Chair, Cabinet Legislation Committee

## **Regulatory Systems (Economic Development) Amendment (No 2) Bill: Approval to table a Supplementary Order Paper**

### **Proposal**

1. I am seeking approval to table the attached Supplementary Order Paper (SOP) to the Regulatory Systems (Economic Development) Amendment (No 2) Bill (the Bill) at the committee of the whole House stage of that Bill.

### **Policy**

2. The Bill was introduced in December 2018 and was reported back by the Economic Development, Science and Innovation Committee in August 2019. On 30 August, at the time of writing, it had not had its second reading and was number four on the Order Paper.
3. The Business Committee has approved the progression of the Bill, along with the Regulatory Systems (Housing) Amendment Bill (No 2) and the Regulatory Systems (Workforce) Amendment Bill (No 2), as cognate.

### *Issues identified with the Bill*

4. Officials have identified technical issues with two provisions in Part 8 of the Bill that need to be addressed before the Bill is enacted. Part 8 includes the proposed amendments to the Insolvency Act 2006.

### *Issue one: Clauses 55 and 56*

5. The first issue identified relates to clauses 55 and 56, and a related provision in Schedule 3 of the Bill. Clause 56 introduces two new sections to the Insolvency Act. These new sections make changes to the way that creditors who submit a late claim form during a bankruptcy (late creditors) are treated. Clause 55 and clause 16 of Schedule 3 make consequential amendments in line with the changes in clause 56.
6. The Insolvency Act requires the creditors of a bankrupt person to submit a creditor's claim form to the Official Assignee within a time specified by the Official Assignee. This entitles the creditor to receive a share of any distributions made from the bankrupt's assets. Ordinarily, the Official Assignee will make a first distribution to creditors from the bankrupt's assets, which may be followed by further distributions if any assets remain for distribution.
7. The Insolvency Act does not provide any discretion for the Official Assignee to accept claim forms submitted after the specified time. This can be problematic, as late creditors cannot receive any distributions that they would otherwise be entitled

to. Furthermore, distributions typically take place much later than the deadline by which a claim form must be submitted.

8. As currently drafted, clause 56 of the Bill would enable late creditors to receive a share of distributions from a bankrupt's assets. It provides that the Official Assignee may include a late creditor in the first distribution if their claim is made before the first distribution. If a late creditor makes a claim after the first distribution, it provides that they are entitled to receive a distribution of any assets that remain available.
9. I am seeking agreement to remove the changes made by clauses 55 and 56 as outlined above, because they have implications for the existing rules in the Insolvency Act, the extent of which were not previously appreciated. There are concerns about the potential for distributions to be made in ways that are inconsistent with the *pari passu* principle of insolvency law. That principle provides for creditors of the same class to share equally in any available assets of the bankrupt in proportion to the debts due to each creditor.
10. Further work is required on the drafting of these clauses to identify and address any inconsistencies with existing rules, or any unintended consequences. Once this has been completed, the intention is to include any revised provisions in a future regulatory systems bill.

#### *Issue two: Clause 78*

11. The second technical issue relates to clause 78 of the Bill. This clause introduces new sections, which clarify the consequences of a debtor's discharge at the end of a debt repayment order (DRO). The new sections provide that when discharged from a DRO, a debtor is not released from any debts or liabilities that they incurred through fraud.
12. Officials have identified an inconsistency between the new provisions in clause 78, and similar provisions in the Insolvency Act that apply to the other insolvency processes (such as bankruptcy). The provisions for these other insolvency processes make it clear that related parties are not released from their debts or liabilities when a debtor is discharged from the relevant insolvency process. Examples of related parties are business partners, co-trustees, guarantors, or persons jointly holding debts or contracts with the discharged debtor. I consider that it is desirable for clause 78 to be amended to clarify that the release of a debtor from a DRO does not release related parties from their debts or liabilities.

#### *The SOP to the Bill*

13. The issues described above need to be addressed before the Bill is enacted. I am therefore seeking agreement for the attached SOP to be introduced at the committee of the whole House stage.
14. The SOP makes two sets of changes to address these issues. The first is to remove clauses 55 and 56, and clause 16 in Schedule 3 of the Bill. The reason for this is that there is insufficient time to identify any inconsistencies or unintended consequences caused by the new provisions ahead of the Bill's committee of the whole House stage. I am seeking agreement for these clauses to be removed.

15. The second is to introduce a new section 358C in clause 78 of the Bill. This new section provides that the discharge of a person from a debt repayment order does not release business partners, co-trustees, guarantors or persons jointly bound or in contract with the debtor (related parties).

### **Impact analysis**

16. The Regulatory Quality Team at the Treasury has determined that the regulatory decisions sought in this paper are exempt from the requirement to provide further regulatory impact analysis as they have no or minor impacts on businesses, individuals or not for profit entities.
17. The original regulatory impact analysis accompanying the Bill does not need to be amended, as it did not make reference to the provisions to be amended by the proposed SOP (EGI-16-SUB-0357 refers).

### **Compliance**

18. The proposed SOP complies with:
  - 18.1. the principles of the Treaty of Waitangi;
  - 18.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
  - 18.3. the disclosure statement requirements – no disclosure statement is needed as the proposed SOP does not fall within the criteria of a “substantive” government SOP as set out in the Treasury’s Technical Guide for Departments;
  - 18.4. the principles and guidelines set out in the Privacy Act 1993;
  - 18.5. relevant international standards and obligations;
  - 18.6. the [Legislation Guidelines](#) (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

### **Consultation**

19. MBIE has worked with PCO in identifying the issues described above and developing the attached SOP. The Treasury has also been notified of the proposed SOP.

### **Binding on the Crown**

20. The amendments to the Insolvency Act in the proposed SOP bind the Crown, insofar as the Act binds the Crown.

### **Allocation of decision making powers**

21. The proposed SOP does not involve the allocation of decision making powers between the executive, the courts, and tribunals.

## **Associated regulations**

22. No regulations are needed to implement the changes in the proposed SOP.

## **Other instruments**

23. The proposed SOP does not include any provision empowering the making of other instruments that are deemed to be legislative instruments or disallowable instruments.

## **Definition of Minister/department**

24. The proposed SOP does not contain a definition of Minister, department or chief executive of a department.

## **Commencement of legislation**

25. The proposed SOP amends the Regulatory Systems (Economic Development) Amendment (No 2) Bill. That Act would come into force two months after the date of Royal assent.

## **Parliamentary stages**

26. I am seeking agreement for the proposed SOP to be tabled at the committee of the whole House stage of the Regulatory Systems (Economic Development) Amendment (No 2) Bill.

## **Proactive Release**

27. I intend to proactively release this paper, with any appropriate redactions, within the 30 business day deadline.

## **Recommendations**

The Minister of Economic Development recommends that the Committee:

1. Agree that the attached Supplementary Order Paper to the Regulatory Systems (Economic Development) Amendment (No 2) Bill be tabled for the Committee of the Whole House stage;
2. Note that the attached Supplementary Order Paper removes clauses 55 and 56, and clause 16 in Schedule 3, and amends clause 78 of the Bill.

Authorised for lodgement

Hon Phil Twyford  
Minister of Economic Development