



COVERSHEET

Minister	Hon Kris Faafoi	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Proposed Insolvency Practitioners Regulations: Policy Approval	Date to be published	15 April 2020

List of documents that have been proactively released

Date	Title	Author
12 February 2020	Proposed Insolvency Practitioners Regulations: Policy Approval	Office of the Minister of Commerce and Consumer Affairs
12 February 2020	Appendix 1 – Regulatory Impact Assessment: Insolvency Practitioners Regulations	MBIE
12 February 2020	Appendix 2 – Regulatory Impact Assessment: Insolvency Practitioners Reporting Requirements	MBIE
12 February 2020	Appendix 3 – Cost Recovery Impact Statement: Regulations to Introduce Insolvency Practitioners Scheme Fees and Levy	MBIE
12 February 2020	Appendix 4 – Tables Relating to the Proposed Fees And Levy	Office of the Minister of Commerce and Consumer Affairs
12 February 2020	Appendix 5 – Memorandum Account Impact for Proposed Costs, Fees and Levy	Office of the Minister of Commerce and Consumer Affairs
12 February 2020	DEV-20-MIN-0002	Cabinet Office – Cabinet Economic Development Committee

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.

Coversheet: Insolvency Practitioners Regulations

Advising agencies	Ministry of Business Innovation and Employment (MBIE)
Decision sought	Approve the proposal to implement the Insolvency Practitioners Regulation Act 2019 through regulations
Proposing Ministers	Hon Kris Faafoi

Summary: Problem and Proposed Approach

<p>Problem Definition</p> <p>What problem or opportunity does this proposal seek to address? Why is Government intervention required?</p> <p>There is evidence that some practitioners do not meet acceptable standards of competence or professionalism. The problems with the status quo can be broadly described as:</p> <ul style="list-style-type: none"> • dishonesty, debtor-friendliness and incompetence in connection with SME company liquidations; and • sub-standard performance in relation to the full range of insolvency administrations. <p>The Insolvency Practitioners Regulation Act 2019 (the Act), passed in June 2019, introduces a co-regulatory licensing scheme with frontline regulation of insolvency practitioners by accredited bodies and oversight of accredited bodies by the Registrar of Companies (Registrar). The Registrar will also maintain a register of insolvency practitioners, which will be publicly searchable. The new scheme aims to promote quality, expertise and integrity in the profession of insolvency practitioners.</p> <p>The statutory provisions in the Act have been set out at a high level. For the implementation of the new regime, regulations need to be made.</p> <p>The annual cost to the Registrar to maintain the insolvency practitioner regulation scheme has been estimated at \$622,167. The assessment of the proposals to meet this cost can be found in the Cost Recovery Impact Statement prepared by MBIE.</p>

<p>Proposed Approach</p> <p>How will Government intervention work to bring about the desired change? How is this the best option?</p> <p>Under section 80 of the Act, regulations can be made to implement the new scheme. No practical options exist to the proposal of passing regulations; however, there may be options regarding the form and scope of the regulations.</p> <p><i>Registrar's ability to set conditions for accreditation</i></p> <p>MBIE proposes that the Registrar be able to set conditions relating to:</p> <ul style="list-style-type: none"> • an accredited body's ongoing compliance with minimum standards for accreditation prescribed by the Registrar • an accredited body's resources, financial position, and financial stability • the adequacy and effectiveness of an accredited body's governance and organisational

structure

The conditions will provide more certainty to accredited bodies and licensed insolvency practitioners about what is expected of them. They will allow the Registrar to better monitor whether accredited bodies are meeting their responsibilities under the Act.

Details necessary for accredited bodies' annual reports to the Registrar

Section 37 requires an accredited body to provide an annual report and annual confirmation to the Registrar in the form specified by the Registrar. MBIE proposes that the annual reports include information relating to the body's organisational structure, governance systems, regulatory systems and financial stability. This will provide the Registrar with more information about the accredited body's systems so that the Registrar can remain satisfied that the accredited body maintains the ability to discharge its responsibilities as a frontline regulator.

MBIE also proposes that annual reports include information relating to the number and nature of licence applications, complaints and disciplinary actions. It will be important for the Registrar to gather such information so it can assess the insolvency practice sector and monitor the effectiveness of an accredited body's systems over time.

Information that the Registrar may specify

MBIE proposes that a regulation be made authorising the Registrar to specify the information that accredited bodies and practitioners must provide to him.

The Registrar will be able to specify certain requirements for the information in relation to:

- what information is to be supplied or made available
- the format and medium of the information
- requirements with which information must comply (for example, that a document be signed by a specified person), and
- requirements on information or documents supplied for the register.

This will enable the Registrar to require that information is provided in a certain manner for operational efficiency reasons or for compliance reasons.

Electronic submission of documents

MBIE proposes that the Registrar be able to refuse to accept documents not submitted electronically via the internet site on which the register is kept. This approach will improve the operational efficiency of the register and help reduce the costs to practitioners of registration.

Information to appear on the register

MBIE proposes that the register include the practitioner's business (or firm's) email address and business website address (if any). This approach is of benefit because it will provide ready access for users of the register (e.g. creditors of a company that has been placed in liquidation, administration or receivership) to contact practitioners. Section 30(4) provides for the Registrar to omit information about a practitioner from the publicly available register due to privacy or safety concerns.

MBIE also proposes that the register include a firm's New Zealand Business Number (NZBN). This will ensure that the register of insolvency practitioners is consistent with the information appearing on other registers that the Companies Office and other government agencies maintain.

Finally, MBIE proposes that the register include details of the practitioner's home jurisdiction. Australian insolvency practitioners will be eligible to carry out insolvency work in accordance with the Act under the Trans-Tasman Mutual Recognition Act 1997. The Act also includes provision for practitioners from other jurisdictions to be recognised in the future. This information will allow users of the register to know if a particular practitioner is regulated in an overseas jurisdiction.

Searchability of the register

MBIE proposes that the register be searchable by a firm's NZBN, by firm or by home jurisdiction. This will allow the register to be searchable by the new information proposed to be added to the

register by regulation.

Information that the accredited bodies need to notify to the Registrar

MBIE proposes that there be a requirement, under the regulations, for accredited bodies to notify the Registrar within 10 working days of the following:

- any change to the legal name of any insolvency practitioner
- any change to a practitioner's business address, email address and business website address (if any)
- any change in the firm that a practitioner works for
- any change in the conditions placed on a licence
- practitioners' licences that will continue after the expiry date (under section 13(4) of the Act)
- any disciplinary action (other than suspension or cancellation of a licence).

This approach will benefit users because it ensures that the register is as up-to-date as can reasonably be expected. Members of the public treat information on the website as true and correct and the Registrar must take all precautions to ensure that published information remains up to date and correct to protect the register's integrity.

Section B: Summary Impacts: Benefits and costs

Who are the main expected beneficiaries and what is the nature of the expected benefit?

The services offered by the scheme will have benefits for companies, creditors and insolvency practitioners. They will all (directly or indirectly) benefit from a regime where insolvency practitioners are upheld to minimum standards of professional and ethical conduct, through licensing, monitoring and enforcement.

Many companies are creditors of other companies and so would benefit from improved practices in the way businesses are liquidated and the way creditors are paid.

Public registration will make it easier for insolvency practitioners to find insolvency engagements. Additionally, having a licence and its verifiability through registration builds confidence in practitioners' services as they will be recognised as having a certain level of expertise.

Accredited bodies will benefit from regulations that clarify the conditions for accreditation and what detail will be provided to the Registrar in annual reports.

Where do the costs fall?

The regulations will have a cost on accredited bodies because they will have to collect and provide information for annual reports and for the register additional to what was provided for in the Act.

The regulations will also have a cost on accredited bodies because more conditions will be set out for their accreditation.

The impact of both costs is likely to be minor, because the proposals add to requirements that are already in the Act. Note that the impact of the requirements in the Act was assessed in the regulatory impact assessment for introduction of the scheme.

What are the likely risks and unintended impacts, how significant are they and how will they be minimised or mitigated?

MBIE are unaware of potential unintended impacts.

The risk of unintended impacts is low because:

- (a) these regulations are modelled on the Auditor Regulations 2012;
- (b) the stakeholders that will most be affected by the regulations (Chartered Accountants Australia and New Zealand (CAANZ) and the Recovery, Insolvency and Turnaround Association of New Zealand (RITANZ)) have been consulted; and
- (c) it will be relatively easy to amend the regulations in the unlikely event that changes are needed.

Identify any significant incompatibility with the Government’s ‘Expectations for the design of regulatory systems’.

N/A

In developing the proposed regulations, MBIE has been mindful of the wider regulatory environment and has taken into account the considerations outlined in the Treasury’s ‘Government Expectations for Good Regulatory Practice’.

Section C: Evidence certainty and quality assurance

Agency rating of evidence certainty?

The new scheme is based on a similar co-regulatory licensing regime for auditors under the Auditor Regulation Act 2011. It will also leverage off a self-regulation system for insolvency practitioners operated jointly by RITANZ and CAANZ to which the majority of practising insolvency practitioners belong. In respect of the register, MBIE has drawn on its experience in operating a number of other registers.

MBIE is confident of the evidence collected in the context of those regimes and used to estimate costs and develop requirements to implement the co-regulatory licensing scheme.

To be completed by quality assurers:

Quality Assurance Reviewing Agency:

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Quality Assurance Assessment:

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Reviewer Comments and Recommendations:

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Impact Statement: Insolvency Practitioners Regulations

Section 1: General information

Purpose

MBIE is solely responsible for the analysis and advice set out in this Regulatory Impact Statement, except as otherwise explicitly indicated.

This analysis and advice has been produced for the purpose of informing final decisions to proceed with a policy change to be approved by Cabinet.

The proposals will implement a co-regulatory licensing scheme that will come into force in June 2020. The costs and benefits of introducing the new scheme were addressed in an earlier regulatory impact analysis.

This regulatory impact assessment only relates to the costs and benefits associated with implementing regulations relating to the Registrar’s functions. Cost recovery proposals are not part of this assessment.

Key Limitations or Constraints on Analysis

It is difficult to quantify the benefits associated with the overall objective of increasing public confidence in insolvency practitioners in a meaningful way, or how much returns to creditors will increase through better decision making by insolvency practitioners.

Responsible Manager (signature and date):

Ross Van Der Schyff, General Manager
Business Integrity Services
Market Services
MBIE

Section 2: Problem definition and objectives

2.1 What is the context within which action is proposed?

The new scheme leverages off an existing voluntary non-statutory occupational regulatory regime that is jointly operated by CAANZ and RITANZ. The RITANZ/CAANZ regime has around 110 ‘accredited’ insolvency practitioners. MBIE understands that this is the majority of insolvency practitioners practising in New Zealand.

The new scheme is based on a similar co-regulatory licensing regime for auditors under the Auditor Regulation Act 2011. In respect of the register, MBIE has drawn on its experience in operating a number of other registers.

MBIE is guided by consistency and compliance with best practice in relation to the other registers maintained by the Companies Office and specifically the auditors register given the similarity between the schemes’ legislative frameworks.

2.2 What regulatory system, or systems, are already in place?

Status Quo

The Act already lists conditions for accreditation, matters to be included in the report, content of the register and changes to registered information. The items that MBIE is proposing to add through regulations are more detailed and aim to provide the Registrar with the tools needed to effectively perform the registration and monitoring roles set out in the Act.

The non-statutory occupational regulation regime currently run by RITANZ/CAANZ is voluntary so it only applied to those who choose to join. Incompetent and dishonest practitioners could continue to be engaged by choosing not to join the voluntary regime.

The Act introduces a compulsory co-regulatory regime that has the capacity to improve standards of insolvency practice through fit and proper person tests, professional and ethical minimum standards and a readily accessible complaints, investigation and disciplinary system.

The auditors scheme provides similar features and comparable functions to the ones being introduced for insolvency practitioners. MBIE understand that CAANZ and CPA Australia, which are the accredited bodies under the auditors scheme will apply to become accredited bodies under the insolvency practitioners regime, and therefore will be able to leverage off their regulatory systems and processes in place for the auditors regime, as well as those bodies’ roles in respect to regulating chartered accountants.

2.3 What is the policy problem or opportunity?

The Act, passed in June 2019, introduces a co-regulatory licensing scheme with frontline regulation of insolvency practitioners by accredited bodies and oversight of accredited bodies by the Registrar.

The Registrar will also maintain a register of insolvency practitioners, which will be publicly searchable. The new scheme aims to promote quality, expertise and integrity in the profession of insolvency practitioners.

The statutory provisions have been set out at a high level. For the implementation of the new scheme, some of the operational detail needs to be prescribed in regulations in order to ensure the effective and efficient operation of the register, and the effective oversight of accredited bodies.

2.4 Are there any constraints on the scope for decision making?

N/A

2.5 What do stakeholders think?

Stakeholders are:

- the approximately 110 insolvency practitioners currently accredited under the RITANZ/CAANZ scheme
- CAANZ, New Zealand Institute of Chartered Accountants (NZICA), RITANZ, and other professional bodies
- all registered companies

Insolvency practitioners include liquidators, administrators and deed administrators appointed under the Companies Act 1993, receivers governed under the Receiverships Act 1993 and trustees appointed under Part 5 of the Insolvency Act 2006. Insolvency practitioners also administer compromises under Part 14 of the Companies Act.

RITANZ is a professional industry body with over 450 members in New Zealand. Its membership includes Accredited Insolvency Practitioners under the RITANZ/CAANZ licensing regime and their staff, lawyers, bankers, academics, and other individuals who work in or have an interest in the insolvency profession.

CAANZ is a professional body in New Zealand and Australia comprised of over 120,000 members. Its regulatory arm in New Zealand is the NZICA.

The RITANZ/CAANZ scheme was established by CAANZ, NZICA and RITANZ.

NZICA is an interested party because it will apply to be an accredited body. RITANZ is expected to become a recognised body under the Act so that its members who are not CAANZ members (i.e. chartered accountants) can become licensed. CAANZ and RITANZ's members will be impacted by the regulations as insolvency practitioners.

Views were also sought from CPA Australia, another professional body which is expected to apply to become an accredited body.

All registered companies are also stakeholders because they will benefit from the oversight provided by the scheme. Many businesses are creditors of other businesses and so would benefit from improved practices in the way businesses are liquidated and the way creditors are paid.

Consultation

Consultation on proposals for regulations to implement the Act took place between 18 September 2019 and 15 October 2019. The discussion paper was published on MBIE's website during that period, and stakeholders were notified of the consultation.

Five submissions were received. Submitters broadly agreed with the proposed regulations relating to the Registrar's functions. Feedback has been incorporated in the current proposals (see 3.1 below).

Section 3: Options identification

3.1 What options are available to address the problem?

No practical non-regulatory measures exist that would be capable of achieving the objectives stated below at 3.2; however, there may be options regarding the form and scope of the regulations.

The Act already lists conditions for accreditation, matters to be included in the report, content of the register and changes to registered information.

An option could be to only use the provisions in the Act without adding more of these details in regulations. MBIE does not recommend this option because the items that MBIE is proposing to add through regulations aim to provide the Registrar with the tools needed to effectively perform the registration and monitoring roles set out in the Act.

Submitters broadly agreed with the proposed regulations relating to the Registrar's functions. Some suggestions from submitters were: including the practitioner's city on the register and clarifying the meaning of changes in relation to the firm where a practitioner works (this relates to the changes that

need to be notified to the Registrar). One submitter also questioned the benefit of searching by NZBN due to the small number of insolvency practitioners.

MBIE notes that the Act provides that the practitioner's business address including city will be held on the register so the regulations do not need to be made in relation to this. MBIE clarifies that changes in relation to the firm means the circumstance of a person who has stopped working for one firm and has started working for another. MBIE considers that searching by NZBN helps identify businesses; therefore this proposal will not be changed as a result of the consultation feedback received.

3.2 What criteria, in addition to monetary costs and benefits, have been used to assess the likely impacts of the options under consideration?

Objectives

- Ensure that information on the register is as accurate and accessible as it can be
- Allow the Registrar to satisfy itself that accredited bodies are meeting their responsibilities under the Act

Criteria

- Ability to enforce requirements
- Capability to achieve the objectives

3.3 What other options have been ruled out of scope, or not considered, and why?

The non-statutory occupational regulation regime currently run by RITANZ/CAANZ is voluntary so it only applied to those who choose to join. Incompetent and dishonest practitioners could continue to be engaged by choosing not to join the voluntary regime. This is expected to be avoided through the compulsory co-regulatory scheme being introduced.

Guidelines or education tools would not be able to replace regulations to alert stakeholders about what accreditation process the Registrar will follow, what information the Registrar will need, the requirements to be met by the information and when the Registrar may refuse to accept a document. This would be a good complementary measure but it cannot replace the promulgation of regulations because, for the success of the new scheme, there need to be ways to enforce obligations imposed on regulated parties.

No practical non-regulatory measures exist that would be capable of achieving the objectives stated above (at 3.2).

Section 4: Impact Analysis

Marginal impact: How does each of the options identified at section 3.1 compare with the counterfactual, under each of the criteria set out in section 3.2?

	No action/Current text in the Act	Guidelines/Education	Regulations
Ability to ensure that information is accurate and accessible	0 The Act already lists matters to be included in the report, content of the register and changes to registered information.	+ Guidelines or education tools could be a good complementary measure regarding what information the Registrar will need, the requirements to be met by the information and when the Registrar may refuse to accept a document.	++ The new items proposed for regulations will provide the Registrar with the tools needed to effectively perform the registration role set out in the Act.
Ability to allow the Registrar to satisfy itself that accredited bodies are meeting their responsibilities	0 The Act already lists conditions for accreditation.	+ Guidelines or education tools could be a good complementary measure regarding what accreditation process the Registrar will follow.	++ The new items proposed for regulations will provide the Registrar with the tools needed to effectively perform the monitoring role set out in the Act.
Ability to enforce requirements	0	- Guidelines and education tools are not enforceable.	++ The regulations will include enforcement provisions.

Key:

- ++** much better than doing nothing/the status quo
- +** better than doing nothing/the status quo
- 0** about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

Section 5: Conclusions

5.1 What option, or combination of options, is likely best to address the problem, meet the policy objectives and deliver the highest net benefits?

The objective of the regulations is to ensure that all matters necessary for the effective administration of the register and to give full effect to the Act and its purposes are attended to.

No practical non-regulatory measures exist that would be capable of achieving this objective.

MBIE has completed a process considering the intent and anticipated operation of the Act and is satisfied that the proposed regulations constitute the minimum necessary to meet its requirements.

MBIE therefore recommends the promulgation of the proposed regulations.

5.2 Summary table of costs and benefits of the preferred approach

Affected parties (identify)	Comment: nature of cost or benefit (e.g. ongoing, one-off), evidence and assumption (e.g. compliance rates), risks	Impact \$m present value, for monetised impacts; high, medium or low for non-monetised impacts	Evidence certainty (High, medium or low)
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Additional costs of proposed approach, compared to taking no action

Regulated parties	The regulations will have a cost on accredited bodies because they will have to collect and provide information for annual reports and for the register additional to what was provided for in the Act.	The impact is likely minor, because the proposal includes small additions to the requirements in the Act.	Medium
Regulated parties	The regulations will have a cost on accredited bodies because more conditions will be set out for their accreditation.	The impact is likely minor, because the proposal includes small additions to the conditions in the Act.	Medium
Total Monetised Cost		N/A	
Non-monetised costs		Low	

Expected benefits of proposed approach, compared to taking no action

Regulated parties	Accredited bodies will benefit from regulations that clarify: <ul style="list-style-type: none"> what information they are required to collect and what detail will have to be provided to the Registrar in annual reports. 	Medium benefit	High
Regulated parties	Accredited bodies will benefit from regulations that clarify the conditions for accreditation.	Medium benefit	High

Wider government	Including the firm's NZBN in the register will facilitate updates of the register of insolvency practitioners when changes are made to other registers that the Companies Office maintains.	Medium benefit	High
Other	<i>Users</i> Regulations about the information that the accredited bodies need to provide to the Registrar within 10 working days will benefit register users because this will ensure that the information that users are treating as true and correct is up-to-date.	Medium benefit	High
Total Monetised Benefit		N/A	
Non-monetised benefits		Medium benefit	

5.3 What other impacts is this approach likely to have?

N/A

5.4 Is the preferred option compatible with the Government's 'Expectations for the design of regulatory systems'?

Yes, it is compatible.

In developing the proposed regulations, MBIE has been mindful of the wider regulatory environment and has taken into account the considerations outlined in the Treasury's 'Expectations for the design of regulatory systems'.

Section 6: Implementation and operation

6.1 How will the new arrangements work in practice?

The proposals will be given effect to by way of regulations made under the Act. The regulations are intended to commence 28 days after they have been gazetted (commencement is planned to occur in 2020). A transition period is not required.

Once the regulations are approved, all practitioners accredited under the voluntary scheme (run by CAANZ and RITANZ) will be contacted to inform them of the fees and regulations.

Communications will be coordinated alongside announcements about implementation of the scheme.

MBIE will establish the register on the basis of the additional content and search criteria prescribed under the regulations.

Accredited bodies will need to prepare for the regulations and Act coming into force by setting up systems to provide registration information to the Registrar, and for collecting and passing fees on to the Registrar.

6.2 What are the implementation risks?

The regulations form part of the wider implementation of the Act. The primary implementation risk relates to timing. The obligation to comply with the Act applies from 17 June 2020. Consequently, regulations relating to implementation must be promulgated before 17 June 2020.

Policy decisions are needed in early 2020 to allow insolvency practitioners and regulators to see in advance what their obligations will be and to allow for drafting by PCO before the Act comes into force.

In order to mitigate this risk, MBIE will liaise with industry and work with PCO to ensure that satisfactory regulations are developed in a timely manner.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

The Registrar is required by the Act (section 38) to publish a plan relating to his intentions in relation to insolvency practitioner regulation and oversight under the Act at least every four years (see section 7.2 below). The publication of each plan will be expected to require the Registrar to assess the current state of the scheme and insolvency system. The plan will include how MBIE expects to monitor the insolvency services market and information that will be collected to do so.

The Registrar is required under section 40 to monitor accredited bodies' regulatory systems in order to determine the extent to which those systems are adequate and effective.

MBIE will also monitor complaints it receives about the performance of insolvency practitioners.

7.2 When and how will the new arrangements be reviewed?

The Registrar is required to publish a plan relating to his intentions in relation to insolvency practitioner regulation and oversight under the Act at least every four years, which must describe:

- the specific effects, outcomes, or objectives that the Registrar seeks to achieve or contribute to
- the ways in which the Registrar expects accredited bodies to contribute to those effects, outcomes, or objectives, and
- how the Registrar proposes to monitor accredited bodies under section 40.

This is expected to require the Registrar to assess the current state of the scheme and insolvency system, including the operation and effectiveness of the legislation and regulations before publishing each plan.