

MBIE

Submissions on Insolvency Law Reform, submitted by Iain Shephard

Questions for submitters on Report No. 1 Please provide reasons in support of your views for agreeing or disagreeing with the Working Group.	
Insolvency Practitioner regulation	
1	<p>Do you agree with the Working Group’s views on the problems with the status quo? (see paragraphs 39-77) What is the scale of harm being caused by these problems? If applicable, please describe the impact of the current insolvency practitioner regulation regime on your business.</p> <p>Yes I agree that there is a problem with the status-quo on the basis that unqualified or improper persons are conducting formal insolvency engagements which is likely to result in worse outcomes for creditors.</p> <p>In respect of the scale of the problem, I have undertaken an analysis of the liquidation advertisements in the Gazette Publication as between 1 January 2016 and 22 September 2016 to provide some context around the scale of the appointments.</p> <p>This analysis is attached to my submission and is accurate to the best of our abilities (we are aware that one or two Gazette Publications were missing).</p> <p>It shows that during this time there were 1,055 liquidation appointments in total and of this 312 were Court Appointed and 743 were voluntary. I have then cross referenced the appointees with the RITANZ accreditation records which shows that 346 liquidation were undertaken by liquidators that are not members of RITANZ (and therefore not able to be accredited).</p> <p>I have not excluded solvent liquidations and it will be likely that some of the 346 appointments undertaken by accountancy practices relate to solvent entities.</p> <p>170 liquidations (across 10 parties) were undertaken by firms or persons that hold themselves out to be insolvency practitioners yet are not members of RITANZ and are therefore not accredited.</p> <p>The majority of these 170 liquidations will be insolvent entities and should be undertaken by accredited members who are accountable to RITANZ.</p> <p>As we are all aware and has been proven, the industry is unable to self-regulate. The removal of a liquidator that has been appointed by a shareholder (regardless of their abilities or conflict) is difficult and costly.</p>
2	Do you agree with the listed objectives? (see paragraphs 78-81)

	<p>Yes</p>
3	<p>Do you generally agree that changes proposed in the Insolvency Practitioners Bill that do not relate to the registration regime proposed in that Bill along with the additional related changes proposed by the Working Group should be progressed? Please include any comments you have on one, some or all of the proposals detailed in Annex 3.</p> <p>Yes, with the following comments:</p> <p>Item 10</p> <p>I consider that an obligation to retain records for a period of 6 years as against the current one year obligation is cumbersome on liquidators. Section 256 states that the liquidator must “retain the accounts and records of the liquidation and the company for not less than 1 year after completion of the liquidation”. The proposed amendment is silent on company records however makes reference to s256 so I can only assume that it would intend that the wording of the section remains the same save for the time reference.</p> <p>I am appointed to, on average, 120 formal insolvency appointments per calendar year. If the amendment was to be adopted as proposed this would require that I store records for some 720 liquidated companies at any one time. Given that this could range from one or two boxes to several hundred boxes per liquidation the costs of storage will be prohibitive and monies will have to be retained rather than distributed to meet these costs.</p> <p>In my experience, very few queries arise post the 12 month retention period and if they do they are generally able to be answered by access to our electronic records (which we do retain for at least a 6 year period).</p> <p>If there is to be a middle ground then perhaps the section could be amended to require that company records are retained for 1 year post completion and liquidators records are retained for a further 6 years. This would still be costly for practitioners but on a much more manageable scale.</p> <p>Item 27</p> <p>I agree that more transparency is required in receipts and payments however this needs to be balanced with practicalities. It is not practical to provide a list of all payee and payer transactions as this would, in some liquidations, be pages and pages of information.</p>
4	<p>Do you agree with the proposed changes to the High Court supervision of liquidators? (see paragraphs 154-156)</p> <p>Yes</p>
5	<p>What are your views on the four occupational regulation options proposed by the Working Group? (see paragraphs 116-146)</p> <p>Agree with Co-Regulation</p>

6	<p>Do you agree with the details of the co-regulation system recommended by the Working Group? (see Recommendations 3-8 on pages 3 and 4)</p> <p>Yes</p>
7	<p>Are there are other feasible options to address the problems identified by the Working Group with the provision of insolvency services?</p> <p>It would be helpful if there was a way to search for current liquidation petitions. We are reliant upon directors to notify us of whether or not they have been served with proceedings. Perhaps there could be a way of lodging a notice of liquidation proceedings (including the date of service and hearing date) on a register (Companies Office could assist). Of course there is the ability to search the Gazette however there is a lag time there with advertising the applications which may mean that the 10 day window has expired before the application features on their website or publication.</p> <p>Enforcement of practitioners in respect of appointment as liquidators would be easy in that only accredited members can have a REAL ME Logon with the ability to register their appointment. To this extent the enforcement of regulation is cost effective and the professional body is left to manage conduct of the practitioners.</p>
8	<p>An alternative option for regulating insolvency practice would be to only require the practitioner to be a member of a professional body, such as CAANZ or RITANZ, without any oversight from an independent government regulator. Would this option provide a more cost effective model for regulating insolvency practitioners?</p> <p>I don't see a problem with this option. Given the industry is relatively small it is important to keep costs as low as possible as these will primarily be borne by the members.</p>
9	<p>Should insolvency services be restricted to only certain members of an accredited professional body, as opposed to all members of the accredited professional body? If so, what criteria should be applied to determine which members of the accredited professional body would be permitted to provide insolvency services?</p> <p>Yes appointments should be restricted. I believe that the RITANZ model would be an effective way to regulate the industry ie; all practitioners must be members of RITANZ and must be accredited by RITANZ in order to accept a liquidation appointment.</p> <p>I am happy with the current criteria that RITANZ use for the assessment of accredited memebbers.</p>
10	<p>How might the different options impact on competition within the insolvency services sector? How would the different options impact on the availability of insolvency services to businesses and creditors outside the main centres of New Zealand?</p> <p>Given that the accreditation system is based primarily on experience in the insolvency field I do not consider that it would or should impact on competition. Many parties that undertake appointments but are not currently accredited would,</p>

	<p>I imagine, have sufficient experience to gain accreditation however elect not to. In my opinion their election to not become accredited is to avoid conduct compliance.</p> <p>All cities in New Zealand currently have access to RITANZ accredited practitioners. The nature of the industry is that it involves travel to the locality of the business and on this basis I do not see that it would alter the current practice. I would suggest that at the present time the majority of people undertaking insolvent liquidations reside in the main centres.</p>
<p>Voluntary liquidations</p>	
11	<p>Do you agree that introducing a licensing regime for insolvency practitioners would reduce much of the harm raised by aspects of the voluntary liquidation process? (see paragraphs 174-178, 201)</p> <p>Yes</p>
12	<p>Do you agree that the latent defect problems in the building and construction sector are issues best solved by building and construction sector law and should not be directly addressed by changing insolvency law? (see paragraphs 179-186) If not, what would you suggest?</p> <p>Yes</p>
13	<p>Do you agree that one, some or all of the three measures proposed by the Working Group will address the harm of some voluntary liquidations? (see paragraphs 187-200)</p> <p>Measure 1</p> <p>I believe that it is integral that the shareholders retain the ability to appoint a liquidator by way of shareholder resolution within the 10 working day period. My reasons are:</p> <ol style="list-style-type: none"> 1. On the basis that the industry becomes regulated then all appointed liquidators would be accredited and therefore bound by the accreditation regime and code of conduct. 2. If the shareholders are unable to appoint a liquidator immediately following service of a proceeding to liquidate their company then this leaves them with a period of limbo in which there may well be 6 weeks or longer until a liquidator is appointed. During this period they may have insufficient working capital and may continue to incur liabilities that they are unable to meet. If they are cognisant of their directorial duties then they may be forced to cease trading which, depending on the nature of the business, could jeopardise the value of the assets and erode distributions to creditors. It may well see an increase in receivership appointments. 3. Rightly or wrongly statutory demands are often used as a debt collection tool and expired demands are not always followed up with an application to liquidate. A director certainly has obligations to seek advice in respect of insolvency matters however this unfortunately is at times left until the matter is inevitable. This should not mean that shareholders are immediately rendered powerless. 4. Given that certain petitioning creditors use only certain practitioners the removal of the 10 day window would reduce competition in the market.

	<p>For the same reasons as referred to above approval out not be required by the petitioning creditor.</p> <p>Specifically (again) will all practitioners becoming regulated the rogue elements that these measures are designed to prevent simply would not exist.</p> <p>Similarly, I do not believe that shareholders should have to seek court approval for the appointment of their nominated liquidator, for the same reasons. There is also the cost element to an otherwise insolvent entity. Moreover, if the industry is regulated it would seem an inefficient use of court time.</p> <p>Measure 2 Agree</p>
14	<p>Do you agree with the benefits of a unique identification number for directors?</p> <p>Yes</p>
15	<p>Do you have any other comments on Report No. 1?</p>

Analysis of Gazette records – 1 January 2016 to 22 September 2016

Liquidation appointments – Court by region and total voluntary

Appointments made by Court	
Auckland HC	105
Christchurch HC	49
Wellington HC	34
Unknown Courts	25
Hamilton HC	13
Napier HC	12
Invercargill HC	7
Timaru HC	11
Gisborne HC	6
Rotorua HC	8
Tauranga HC	12
Dunedin HC	6
Whangarei HC	7
New Plymouth HC	6
Palmerston North HC	3
Masterton HC	3
Nelson HC	1
Blenheim HC	2
Greymouth HC	2
Total by Court	312
Total by Resolutions	743
Total Appointments	1055

Analysis of Gazette records – 1 January 2016 to 22 September 2016

Liquidation appointments – By Practitioner

Firm Appointments					
	Total	Court	Resolutions	Status	Non-Accrd
PwC	125	117	8	Accredited	
KPMG	62	60	2	Accredited	
Shephard Dunphy	58	2	56	Accredited	
Meltzer Mason	45	2	43	Accredited	
Deloitte	57	53	4	Accredited	
Reynolds and Associates Ltd	51	11	40	Accredited	
Rodgers Reidy (NZ) Ltd	54	8	46	Accredited	
Insolvency Management Ltd	39	0	39	Accredited	
Profit Co	24	2	22	Not accredited	24
Waterstone Insolvency	24	9	15	Not accredited	24
Corporate Restructuring Ltd	28	2	26	Accredited	
McDonald Vague Ltd	26	6	20	Accredited	
Kim S Thompson	19	0	19	Not accredited	19
Gerry Rea Partners	23	5	18	Accredited	
Chris Horton Associates Ltd	18	5	13	Not accredited	18
EY	27	17	10	Accredited	
Imram Khan	14	0	14	Not accredited	14
BDO	17	0	17	Accredited	
Tax Matters	15	0	15	Not accredited	15
Ecovis KGA Ltd	15	1	14	Accredited	
C&C Strategic Ltd	13	1	12	Not accredited	13
Whittfield Associates	13	0	13	Not accredited	13
D K Fisher	11	0	11	Not accredited	11
Greenlane CA	10	0	10	Not accredited	10
Liquidation Management Ltd	9	0	9	Not accredited	9
RES Corporate Services Ltd	8	1	7	Accredited	
Restructuring Services	10	0	10	Accredited	
BWA Insolvency Ltd	7	0	7	Accredited	
CS Insolvency	11	0	11	Accredited	
KordaMentha	5	0	5	Accredited	
Moore Stephens Markhams	5	0	5	Not registered	5
PKF Corporate Recovery & Insolvency	8	2	6	Accredited	
Pritesh R Patel	8	0	8	Not registered	8
Staples Rodway	7	0	7	Accredited	
Alliot NZ CA	4	0	4	Not accredited	4
Biz Rescue	5	1	4	Not accredited	5
David Thomas Ltd	8	1	7	Not accredited	8
Grant Thornton	8	1	7	Accredited	

John Managh	11	1	10	Not accredited	11
Kelman & Co	5	0	5	Accredited	
RSM New Zealand	4	0	4	Not accredited	4
ABA Chartered Accountants	4	0	4	Not accredited	4
Accru Smith Chilcott	4	0	4	Not accredited	4
Blacklock Rose Ltd	5	0	5	Not accredited	5
Menon	5	0	5	Not accredited	5
Nexia Chch	6	1	5	Not accredited	6
Polson Higgs	5	0	5	Not accredited	5
Robert Walker	4	0	4	Not accredited	4
Anthony Harris Ltd	3	0	3	Not accredited	3
Apollo Consulting	2	0	2	Not accredited	2
Corporate Salvage	3	1	2	Not accredited	3
Hall & Parsons CA	2	0	2	Not accredited	2
I-Business Recovery Ltd	3	0	3	Not accredited	3
Kevin Whitley	3	0	3	Not accredited	3
Kooiman	2	0	2	Not accredited	2
McGrath Nicol Ltd	2	0	2	Not accredited	2
Nesti & Associates	2	0	2	Not accredited	2
PBB Advisory	2	0	2	Accredited	
J M Scutter	2	2	0	Accredited	
The Law Connection	2	0	2	Not accredited	2
Walthall Ward	2	0	2	Not accredited	2
Accountants Hawjes Bay Ltd	1	0	1	Not accredited	1
Accounting North Ltd	1	0	1	Not accredited	1
Accountants on Elliott	1	0	1	Not accredited	1
Alexander & Associates Ltd	2	0	2	Not accredited	2
Allan McNeill	2	0	2	Not accredited	2
Ashton Wheelens	1	0	1	Accredited	
Bailey Ingham	3	0	3	Not accredited	3
Richardson Bennett Ltd	3	0	3	Not accredited	3
Blackmore Virtue & Owens	1	0	1	Not accredited	1
Stuart Brauninger	2	0	2	Not accredited	2
Monteck Carter	1	0	1	Not accredited	1
Castle/Brown	1	0	1	Not accredited	1
Chapman Atkins	2	0	2	Accredited	
Chatfield & Co	1	0	1	Not accredited	1
Commercial Business Services	2	0	2	Not accredited	2
Compass Business Partners	1	0	1	Not accredited	1
Crowe Horwath	1	0	1	Not accredited	1
Elder Accounting Services Ltd	1	0	1	Not accredited	1
Ernst Boudewijn Hammelburg	3	0	3	Not accredited	3
Fervor Ltd	1	0	1	Accredited	1
Flashpoint Accounting	1	0	1	Not accredited	1
Grant Murray Thomas Wills	1	0	1	Not accredited	1

R A Gardenbroek	1	0	1	Not accredited	1
HFK Ltd	4	0	4	Not accredited	4
HLB Mann Judd	1	0	1	Not accredited	1
Initiom Ltd	1	0	1	Not accredited	1
JACAL	1	0	1	Not accredited	1
Iain Jefferis	3	0	3	Not accredited	3
CA Johnson	1	0	1	Not accredited	1
Jollands Callander	2	0	2	Not accredited	2
Suzanne Lane	1	0	1	Not accredited	1
Kendons Scott Macdonald Ltd	2	0	2	Not accredited	2
Merenti Ltd	1	0	1	Not accredited	1
Morrison Kent	2	0	2	Not accredited	2
K Nayacakalou	2	0	2	Not accredited	2
Navigator Accounting	1	0	1	Not accredited	1
Northside Insolvency Ltd	1	0	1	Not accredited	1
Nyree Mullinder Accounting	1	0	1	Not accredited	1
PKF Goldsmith Fox	1	0	1	Accredited	
J A Price	1	0	1	Not accredited	1
Joel Ram	1	0	1	Not accredited	1
Rodewald Consulting Ltd	5	0	5	Accredited	
Gilligan Sheppard	1	0	1	Not accredited	1
Sawden & Associates	1	0	1	Not accredited	1
SME Financial Ltd	3	0	3	Not accredited	3
Smith & McCoy Alford	1	0	1	Not accredited	1
Sterling Business Consultants	1	0	1	Not accredited	1
TFS Chartered Accountants	1	0	1	Not accredited	1
Toni Walker Ltd	1	0	1	Not accredited	1
Trevor Laing & Associates	2	0	2	Not accredited	2
TVR Chartered Accountants	1	0	1	Not accredited	1
Noel Walton	1	0	1	Not accredited	1
C Whitelaw	2	0	2	Not accredited	2
Liquidations by non-accredited members		346			
Total liquidations		1055			
Percentage by non-accredited members		32.79621			