



CHARTERED ACCOUNTANTS™  
AUSTRALIA + NEW ZEALAND

18 December 2019

Anna Gibb  
Service Design Policy  
Ministry of Business, Innovation and Employment  
PO Box 1473  
Wellington 6140

Via email: [practitioners@companies.govt.nz](mailto:practitioners@companies.govt.nz)

Dear Anna

## Implementation of the Insolvency Practitioners Regulation Act 2019: Proposed minimum standards and conditions for the licensing of insolvency practitioners

We welcome the opportunity to provide feedback to the Ministry of Business, Innovation and Employment on the Implementation of the Insolvency Practitioners Regulation Act 2019: minimum standards and conditions for the licensing of insolvency practitioners Discussion Paper. We have provided our feedback on the questions raised within the discussion paper below. Appendix A includes our response using the specified submission form and Appendix B provides more information about Chartered Accountants Australia and New Zealand (CA ANZ).

Should you have any questions or wish to discuss our submission, please contact Gillian Hawkesby via email at [Gillian.Hawkesby.NZICA@charteredaccountantsanz.com](mailto:Gillian.Hawkesby.NZICA@charteredaccountantsanz.com) or phone (+644) 462 0266.

Yours sincerely

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## Appendix A

### Submission on the *Implementation of the Insolvency Practitioners Regulation Act 2019: Proposed minimum standards and conditions for the licensing of insolvency practitioners*

Your name, Email address, phone number and organisation

<b>Name</b>	Gillian Hawkesby
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Is this an individual submission or on behalf of a group or organization?

- Individual  
 Organisation

The Privacy Act 1993 applies to submissions. Please tick the box if you do not wish your name or other personal information to be included in any information about submissions that the Companies Office may publish.

The Companies Office may upload submissions or a summary of submissions received to the Companies Office website at [companiesoffice.govt.nz](http://companiesoffice.govt.nz) and/or MBIE's website at [www.mbie.govt.nz](http://www.mbie.govt.nz). If you do not want your submission or a summary of your submission to be placed on our website, please tick the box and type an explanation below.

I do not want my submission placed on the Companies Office and/or MBIE's website because... *[Insert text]*

Please check if your submission contains confidential information:

I would like my submission (or identified parts of my submission) to be kept confidential, and **have stated** my reasons and grounds under the Official Information Act that I believe apply, for consideration by the Companies Office.

## Responses to discussion paper questions

### Proposed minimum standards

1	<p>In respect of experience, we propose that:</p> <ol style="list-style-type: none"> <li>1) a) The person:             <ol style="list-style-type: none"> <li>i) who holds a Certificate of Public Practice (CPP) (or equivalent) must have completed at least 1,000 hours of work on insolvency engagements at a senior level within the five years immediately prior to applying for a licence; or</li> <li>ii) who does not hold such a certificate must have completed at least 2,000 hours of work on insolvency engagements at a senior level within the five years immediately prior to applying for a licence; and</li> </ol> </li> <li>b) In both cases, the person must have at least five years' insolvency experience (including the senior experience above); or</li> </ol> <ol style="list-style-type: none"> <li>2) The accredited body is satisfied that the person is otherwise competent to act as an insolvency practitioner.</li> </ol> <p><b>Number of hours</b></p> <p>Do you agree that non-CPP holders should be required to have a higher amount of insolvency experience than CPP holders?</p>
	<p><i>Yes, we agree. CPP holders must meet specific criteria to become a member of the accredited body and then meet additional requirements (including further technical training and practical experience) to obtain a CPP. This may not be the case for non-CPP holders. As such, it is important that these individuals can demonstrate they have obtained a similar level of experience, albeit through different means.</i></p>
2	<p>Do you agree with the proposed 1,000 hours of experience over 5 years for CPP-holders?</p> <p><i>We believe that it is important to maintain a sufficiently high threshold for individuals offering these specialist services in the market and therefore recommend that the current standard required in the voluntary regime is maintained (being 1,000 hours over the 3 year period immediately prior to application). However, it is important that the standards provide accredited bodies with discretion to issue a licence where an applicant does not meet the hours requirement but can demonstrate they are "otherwise competent".</i></p>
3	<p>Do you agree with the proposed 2,000 hours of experience over 5 years for non-CPP-holders?</p> <p><i>As noted above, we consider that the experience should be obtained in the 3 year period immediately prior to application. However, accredited bodies must have some discretion to issue a licence where competence can be demonstrated in alternative ways.</i></p>
4	<p><b>Work on insolvency engagements</b></p> <p>We are seeking feedback on what types of work relating to insolvency practice should be included in the calculation of required hours.</p> <p>Do you think the calculation of required hours should be limited to work on "insolvency engagements" as defined in the Act?</p> <p>Or, do you think the calculation should include other types of insolvency-related work? If so, what types of work should be included?</p>

*Our response directly relates to our response to questions 2 and 3.*

*If the period for measuring experience remains at five years as proposed, we consider it appropriate to limit the work experience to 'insolvency engagements' as defined in the Act. However, to the extent the period is shortened to three years, we consider that there should be more scope for flexibility around what constitutes appropriate work experience (although noting that 'other types of insolvency-related work' should still be limited in some way to ensure that a significant amount of experience is gained from 'insolvency engagements' as defined in the Act ).*

*Additionally, we note that this experience should be considered when determining whether it is appropriate to place any restrictions on a licence as referred to in question 21. For example, if a practitioner's work experience is limited to the area of personal insolvency then their licence should be restricted accordingly.*

### **Senior experience**

5 Should the minimum standards require a practitioner's experience to be at a senior level?

*Yes, we agree.*

What are your views on the matters which the Registrar considers are likely to be relevant in deciding whether experience is at a senior level? Should other matters be considered?

*The experience expectations in the current voluntary regime require a person to be a manager, director or partner carrying out work at a senior level. The role of managers, directors and other roles of similar titles can vary significantly across the industry and therefore we agree with moving away from this requirement and focussing on the substance of the work being carried out.*

*As such, we believe the matters set out in the discussion document are appropriate for consideration. Other matters that could be considered could include whether the individual has:*

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- *Prepared and provided evidence in any legal proceedings relevant to insolvency engagement;*
- *Prepared and filed complaints in respect of breaches of duties of directors of failed companies;*
- *Provided evidence in legal proceedings as an insolvency practitioner or on behalf of an insolvency engagement;*
- *Responsibility for undertaking quality control monitoring of insolvency engagements; and / or*
- *Undertaken instruction and oversight of experts as required as part of the management of an insolvency engagement (e.g. valuation, forensic, marketing and procedural experts).*

### **General experience**

7

Do you agree the minimum standards should require a practitioner to have at least five years of general insolvency experience?

*Yes. We consider that it is appropriate for licensed insolvency practitioners to have a minimum of five years broader insolvency experience. We consider that this should apply even if the minimum hour requirements are considered over a 3 year period.*

8	<p><b>Alternative pathway</b></p> <p>Do you agree that accredited bodies should have the discretion to waive some or all of the minimum standards in relation to experience to recognise the special circumstances of particular applicants?</p>
	<p><i>Similar to our earlier responses, we agree that accredited bodies should have discretion to consider applicants who are able to demonstrate competence other than via the standard minimum hour requirements. We note that 20% of the current insolvency practitioners in the voluntary regime were granted accreditation through the “otherwise competent” pathway.</i></p>
	<p><b>Qualifications</b></p> <p>Do you agree that the minimum standards should not require any formal qualifications or completion of specific courses?</p>
9	<p><i>We understand that some practitioners accredited under the voluntary regime may not hold any formal qualifications or have completed a specific course. Introduction of a requirement to hold a formal qualification as a prerequisite to obtaining a licence would reduce the number of insolvency practitioners in the market once the legislation takes effect. This would have an adverse effect on the market and mean that some suitably experienced individuals would be prevented from accepting appointments. For this reason, we consider that it is inappropriate to require a formal qualification or completion of a specific course on introduction of the regime. However, this could be considered in the future.</i></p>
	<p><b>Insurance</b></p> <p>Should the minimum standards require licensed insolvency practitioners to hold professional indemnity insurance?</p>
10	<p><i>Yes, this is consistent with the existing voluntary regime and the requirements for existing CA ANZ/NZICA CPP holders who are required to hold appropriate professional indemnity insurance for the nature and scale of the services that are being offered to the public.</i></p>
	<p>Do you agree with the proposal to allow accredited bodies (and individual practitioners) to assess the amount of insurance that is required, or do you have feedback on another option, such as the Registrar setting the specific dollar amount of insurance?</p>
11	<p><i>Yes, we agree and note that this approach is consistent with the requirements for licensed auditors in New Zealand. The level of professional indemnity insurance should be appropriate to cover the nature and scale of insolvency engagements undertaken by the licence holder. We note that the requirements set by the accredited body should be considered as part of the accreditation process. For the avoidance of doubt, we recommend that the standards clearly state that licensed insolvency practitioners must hold adequate professional indemnity insurance to cover all engagements undertaken in New Zealand. We are not in favour of the Registrar setting the quantum of insurance.</i></p>
12	<p><b>Overseas practitioners</b></p> <p>Should the minimum standards require Australian applicants to be registered liquidators and provide evidence of continuing experience?</p>

*Yes. It should also only enable them to continue to be licensed in New Zealand whilst they remain registered in Australia.*

*For Australian registered liquidators, the Australian Securities and Investments Commission's (ASIC) regulatory guide 258, fit and proper eligibility requirement includes providing details of membership of professional bodies.*

*Similarly, it is preferable for licensed insolvency practitioners to be a member of a professional body (or equivalent) that requires its members to comply with a Code of Ethics or similar ethical standard. If they are not subject to a Code of Ethics through any existing membership, we would recommend that overseas practitioners are required to undertake appropriate ethical training prior to obtaining a licence (e.g. training in the Code of Ethics set by the accredited body). Furthermore, it ensures that overseas licensed insolvency practitioners are required to adhere to consistent ethical standards and thus provide services of the same high quality.*

### *Proposed conditions to which a licence must be subject*

#### **Rules and code of ethics**

Do you agree that all licensed insolvency practitioners should be required to comply with their accredited body's rules, code of ethics and applicable standards?

*Yes, we agree.*

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*All insolvency practitioners licensed by an accredited body should be required to comply with the Rules, Code of Ethics, Quality Control and Insolvency Engagement standards and any other related standards and regulations as set by the accredited body to the extent that they are relevant.*

*We consider it critical that if accredited bodies are required under the Act to recognise non-members, the non-members should be required to comply with these rules to ensure that licensed insolvency practitioners deliver consistent quality and are ultimately subject to the same standards.*

#### **Practice review**

Should licensed insolvency practitioners be subject to practice review requirements set by accredited bodies?

*Yes, licensed insolvency practitioners should be subject to practice review requirements.*

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*We note that the objective of the NZICA Practice Review process is to engage with members in practice and assist them in achieving and maintaining quality and ensuring compliance with the NZICA Code of Ethics, NZICA Rules and all other relevant professional and ethical standards. NZICA has a statutory obligation to monitor members in NZ and to protect the public interest and trust in the profession. Therefore, should NZICA become an accredited body, all licensed insolvency practitioners who are our members would continue to be subject to practice review under the NZICA Rules, and we would expect to extend that requirement to non-members who are licensed by NZICA. This would leverage existing processes that we have in place and will ensure we meet any monitoring obligations that we may have, and in turn ensure consistency across the industry.*

Do you have comments on how practice reviews should be carried out?

15

*Practice reviews should follow the existing processes that the accredited bodies have in place with specific focus on insolvency service lines. This would ensure consistency and cost and process efficiencies. Reviews should be undertaken by suitably experienced reviewers either onsite or as a*

*desk review and should ensure compliance with applicable laws, regulations and the relevant professional and ethical standards.*

### **Reports and notifications**

Should licensed insolvency practitioners be obliged to provide reports and notifications to the accredited body?

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*Yes, in addition, NZICA members have a professional duty to report any unethical behaviour under paragraph NZ R100.6 of our Code of Ethics. On the assumption that NZICA becomes an accredited body, this requirement will also apply to all insolvency practitioners licensed by NZICA. All NZICA members have a responsibility to notify us of a disclosure event under Rule 13.4 and declare requested information under Rule 16 of the NZICA Rules. Provided that NZICA becomes an accredited body, we consider that these obligations should be extended to all licensed insolvency practitioners who are licensed by NZICA regardless of membership.*

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Do you agree with the matters we have identified which may be subject to reporting and notification conditions?

*Yes, we agree, but we also refer you to our response to question 16 which extends these conditions.*

### **Insurance**

Should licensed insolvency practitioners be subject to insurance conditions set by accredited bodies?

18

*With reference to our response to question 11, yes, we expect licensed insolvency practitioners should be subject to insurance conditions set by the accredited body. We note that the requirements of the accredited body should be considered as part of the accreditation process. We also recommend, for the avoidance of doubt, clearly stating that licensed insolvency practitioners must hold sufficient professional indemnity insurance to cover engagements undertaken in New Zealand.*

*For completeness, we note that NZICA has no set prescribed levels of cover for professional indemnity insurance for insolvency practitioners accredited under the voluntary regime. This approach is consistent with the broader approach applied to NZICA members who are in public practice where they are required to hold PI appropriate to the nature and scale of the services being offered. Levels of professional indemnity insurance are monitored as part of the process of assessing applications for certificates of public practice, licensing, and voluntary accreditation and is also reviewed as part of the practice review process. We would also recommend that licensed insolvency practitioners are required to confirm that they hold sufficient professional indemnity insurance annually.*

### **Other**

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Should we consider any other mandatory conditions?

*The mandatory conditions outlined in the discussion document should be sufficient, subject to the comments set out in questions 13 to 18.*

### Conditions to which a licence may be subject

20	<b>Solvent company liquidations</b>
	What (if any) special considerations apply to solvent company liquidations?  <i>We do not consider there are any special considerations that should apply to solvent liquidations specifically. However, please also consider our response to question 21 below.</i>
21	<b>Restricting engagements</b>
	In what circumstances (if any) would it be appropriate to limit the types of engagement a licensed insolvency practitioner could work on  <i>We consider restrictions may be appropriate in respect of certain types of engagements where individuals have only had experience in that specific area, however, we do not expect this would be a common occurrence. We also note that NZICA Rule 12.6(d) allows NZICA to limit a member's ability to undertake specific types of engagements except under the supervision of an approved mentor or having undertaken specified training following a practice review. Should NZICA become an accredited body, we would expect this Rule to extend to non-members that may be accredited by NZICA.</i>  <i>We note that it would also be appropriate to limit the types of engagement a licensed insolvency practitioner could work on to give effect to disciplinary decisions (e.g. under the NZICA Rules, the Disciplinary Tribunal may restrict a member from undertaking specified types of engagement).</i>
22	<b>Other</b>
	Should we consider any other discretionary conditions an accredited body may apply?  <i>We are not aware of any other conditions an accredited body should apply. We note that under the Prescribed Minimum Standards and Conditions for Licensed Auditors set out in the Auditor Regulation Act 2011, accredited bodies have the ability to place conditions on licensed auditors in respect of workload. We are not aware of this being applied in practice.</i>

### Ongoing competence

23	Do you agree with the proposed ongoing competence requirements?  <i>We agree that licensed insolvency practitioners should be required to comply with the ongoing competence requirements of the accredited body if that accredited body is a member of the International Federation of Accountants (IFAC). Should the accredited body not be a member of IFAC, then we agree with the proposed minimum requirements.</i>  <i>In both cases, the minimum ongoing competence requirements should specifically include a requirement for ongoing ethics training to maintain awareness of ethical requirements.</i>
	Do you agree that the minimum standards should set a minimum of verifiable training that must relate to insolvency practice? What should the minimum be per year?  <i>Yes. We agree with 20 hours per triennium proposed. We do not consider that there should be a minimum requirement per year (insolvency specific) as allowing a spread over three years ensures a level of flexibility for the individual, e.g. if they choose to undertake a residential course in a given year.</i>
24	



### Personal insolvency creditor proposal trustees

	<p>Should different minimum standards be introduced for trustees or provisional trustees appointed under subpart 2 of Part 5 of the Insolvency Act 2006? What should these minimum standards be?</p>
25	<p><i>We believe the same minimum standards should apply but if an applicant has only had experience providing personal insolvency trustee services then, assuming they meet all other requirements for a licence, their licence should be restricted to those specific types of engagements so that the public is aware of their specialisation. We note that members who are issued an unencumbered licence are subject to a broad ethical requirement to undertake only work within the scope of their competence.</i></p>
	<p>Is it appropriate to limit by way of conditions the type of insolvency engagement a licensed insolvency practitioner can undertake? For example, should an insolvency practitioner who meets the experience requirements in relation to corporate insolvencies only be licensed to carry out corporate insolvencies?</p>
26	<p><i>Yes, accredited bodies should have the ability to limit the type of engagements that are able to be undertaken where there is a clear gap in the experience of the applicant or to give effect to a disciplinary decision (see response to Question 21). However, as stated in our response to question 25 above, all licensed practitioners will be subject to an ethical requirement to undertake only engagements for which they are competent.</i></p>
	<p>Are there other types of insolvency engagement where different minimum standards should apply?</p>
27	<p><i>Not that we can identify. Given the size of the New Zealand market, we consider that having different minimum standards would increase complexity without any tangible or significant benefit to the profession or wider public.</i></p>

### Other

	<p>Do you have any other feedback on the proposals in the discussion paper?</p>
	<p><i>Yes – with respect to the fit and proper person test</i></p> <p><i>The proposed ‘fit and proper person’ test does not include certain matters, which we consider should be included as they are in the public interest. Inclusion of these matters would also be consistent with the existing licensed auditor requirements under the Auditor Regulation Act 2011 and the CA ANZ/NZICA membership requirements more generally. We recommend that the ‘fit and proper person’ test takes into account whether:</i></p> <ul style="list-style-type: none"> <li><i>• The person has served or been sentenced to a term of imprisonment</i></li> <li><i>• The person has been convicted of any offence under sections 130 to 141 of the Crimes Act 1961 (sexual offences)</i></li> </ul> <p><i>For avoidance of doubt, we consider that this test should also specify that these matters would extend to equivalent situations in any other jurisdictions outside New Zealand where the relevant practitioner operates.</i></p>

## Appendix B

### About Chartered Accountants Australia and New Zealand

Chartered Accountants Australia and New Zealand (CA ANZ) represents more than 125,000 financial professionals, supporting them to build value and make a difference to the businesses, organisations and communities in which they work and live.

Around the world, Chartered Accountants are known for their integrity, financial skills, adaptability and the rigour of their professional education and training.

CA ANZ promotes the Chartered Accountant (CA) designation and high ethical standards, delivers world-class services and life-long education to members and advocates for the public good. We protect the reputation of the designation by ensuring members continue to comply with a code of ethics, backed by a robust discipline process. We also monitor Chartered Accountants who offer services directly to the public.

Our flagship CA Program, the pathway to becoming a Chartered Accountant, combines rigorous education with practical experience. Ongoing professional development helps members shape business decisions and remain relevant in a changing world.

We actively engage with governments, regulators and standard-setters on behalf of members and the profession to advocate in the public interest. Our thought leadership promotes prosperity in Australia and New Zealand.

Our support of the profession extends to affiliations with international accounting organisations.

We are a member of the International Federation of Accountants and are connected globally through Chartered Accountants Worldwide and the Global Accounting Alliance. Chartered Accountants Worldwide brings together members of 13 chartered accounting institutes to create a community of more than 1.8 million Chartered Accountants and students in more than 190 countries. CA ANZ is a founding member of the Global Accounting Alliance which is made up of 10 leading accounting bodies that together promote quality services, share information and collaborate on important international issues.

We also have a strategic alliance with the Association of Chartered Certified Accountants. The alliance represents more than 870,000 current and next generation accounting professionals across 179 countries and is one of the largest accounting alliances in the world providing the full range of accounting qualifications.