



CHARTERED ACCOUNTANTS™
AUSTRALIA • NEW ZEALAND

7 February 2020

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

Via email: practitioners@companies.govt.nz

Dear Anna

Implementation of the Insolvency Practitioners Regulation Act 2019: Proposed standards, conditions & policies for accredited bodies

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: Proposed standards, conditions & policies for accredited bodies discussion paper*. We have provided our feedback on the questions raised within the submission form 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 or phone (+644) 462 0266.

Yours sincerely

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Gillian Hawkesby CA
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Appendix A

Submission on the *Implementation of the Insolvency Practitioners Regulation Act 2019: Proposed standards, conditions & policies for accredited bodies*

Your name, Email address, phone number and organisation

Name	Gillian Hawkesby
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Organisation	Chartered Accountants Australia and New Zealand

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.

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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 proposals

Proposed minimum standards

1	<p>The Registrar considers that the minimum standards for accreditation of bodies under the insolvency practitioners' regulation scheme should closely match the minimum standards set by the Auditor Regulation Act 2011 and Auditor Regulation Act (Prescribed Minimum Standards for Accredited Bodies) Notice 2012 (the Auditor Regulation Notice). Changes should only be made where clearly justified by differences between the auditor regulatory regime and practice, and the insolvency practitioners' regulatory regime and practice.</p> <p>If you believe that other changes should be made to reflect differences between the audit and insolvency regimes, or between audit and insolvency professional practice, please provide details as to that nature of such differences and why a different approach may be necessary or desirable.</p> <p><i>We agree that the minimum standards for accreditation of bodies under the insolvency practitioners' regulation scheme should be consistent with the audit regulation regime where appropriate and practical. This will assist accredited bodies performing the role of frontline regulator in both regimes to obtain some efficiencies, thereby potentially reducing the costs of frontline regulation. To the extent that we recommend that changes be made to proposals set out in the Discussion paper, these are set out in our responses below.</i></p>
2	<p>Governance and organisational structures</p> <p>The Registrar proposes that an applicant for accreditation must have adequate and effective organisational structures and governance arrangements to support the performance of the regulatory functions of an accredited body. This includes matters such as constitutional and other governing documents, organisational mandate and objectives, governing bodies and committees, and other internal structures and arrangements. The role of an accredited body as a front-line regulator must be clearly established and not (for example) secondary to the body's other roles as a membership or representative organisation.</p> <p><i>We agree that an applicant for accreditation must have adequate and effective organisational structures and governance arrangements to support the performance of the regulatory functions of the accredited body. However, we note that the example provided could be misinterpreted. Applicants for accreditation are likely to perform multiple functions e.g. as an education provider and membership organisation. Applicants should have a core and well-established regulatory function (which in some circumstances may be prescribed under legislation). While not 'secondary', the regulatory function may be proportionally smaller in size and funding as compared to the applicant's other functions.</i></p>
3	<p>Conflicts of interest</p> <p>The Registrar proposes that applicants for accreditation must have effective policies and mechanisms to identify and manage potential conflicts of interest.</p> <p><i>We agree with the proposal.</i></p>
4	<p>Personnel</p> <p>The Registrar proposes that an applicant's personnel must have the skills, knowledge and experience to enable the body to effectively discharge its functions as an accredited body. Accredited bodies should also have a process for identifying the skills, knowledge and experience required by a role or within a team, and for ensuring the person appointed to that role has, or the people appointed into that team collectively have the skills, knowledge and experience required.</p> <p><i>We agree with the proposal.</i></p>

5	<p>Resources to perform regulatory functions</p> <p>The Registrar proposes that accredited bodies must have the financial and other resources needed to perform their regulatory functions effectively and in a manner consistent with the purposes of the Act. In order to do this, an accredited body must be financially stable. Applicants will need to demonstrate that their income can cover their routine expenditure on an ongoing basis.</p> <p><i>We agree with the proposal that accredited bodies must be appropriately resourced to perform their regulatory functions under the Act.</i></p> <p><i>The resourcing of the regulatory function needs to reflect the size of the industry being regulated (in this case, the number of licensed insolvency practitioners operating in NZ) and the existing experience and systems of the accredited body.</i></p>
6	<p>Standing with other regulators</p> <p>The Registrar anticipates that most applicants for accreditation will have some oversight role in respect of other professional services. The Registrar proposes to have regard to the applicant's standing with other regulators in both New Zealand and overseas.</p> <p>Note that these proposals do have some differences to the Auditor Regulation Notice. The Registrar believes these changes better reflect the New Zealand regulatory environment, and will not impose any additional compliance costs on applicants for accreditation.</p> <p><i>We agree with the proposal and the variations from the Auditor Regulation Notice. We do not consider that requiring information in respect of an applicant's standing with other regulators will impose any additional compliance costs on applicants for accreditation.</i></p>
7	<p>Internal compliance systems and processes</p> <p>The Registrar proposes to review applicants for accreditation's internal compliance systems and processes of applicants for accreditation, including discharge of functions, rectifying issues, and continuous self improvement.</p> <p><i>We agree with the proposal. We note that the requirement for accredited bodies to report to the Registrar on a regular basis under section 37 of the Act provides an appropriate mechanism for undertaking this on an ongoing basis.</i></p> <p><i>We recommend that the Registrar exercises some flexibility throughout the initial accreditation process (e.g. reviewing draft documentation) to reflect the tight timeframes for implementing the regime. For example; we understand that the prescribed minimum standards for licensing (PMS) are likely to be released in March and the legislation is effective from 17 June 2020. The Discussion paper indicates that the Registrar will take six to eight weeks to approve an accreditation application. Applicants will need time to develop and refine their policies and processes based on the finalised PMS and obtain the necessary internal approvals for these prior to finalising their accreditation applications.</i></p>
8	<p>Membership and licensing regulatory systems</p> <p>The Registrar proposes to review applicants for accreditation's regulatory systems for membership and licensing.</p>

	<p><i>Please refer to our comments to point 7 above as they also apply to the licensing process. We consider that the Registrar's focus should be on the licensing criteria rather than the membership criteria. We note that where accredited bodies represent a profession broader than insolvency practitioners, their membership criteria will be designed to reflect the needs of the entire membership base and potentially to meet criteria set by international bodies of which it is a member e.g. the International Federation of Accountants. As such, we consider that the Registrar's focus should be on the licensing criteria rather than the membership criteria.</i></p>
9	<p>Monitoring and oversight regulatory systems</p> <p>The Registrar proposes to review applicants for accreditation's regulatory systems for monitoring and oversight.</p> <p>Note that these proposals do have some differences to the Auditor Regulation Notice, particularly removing references that are inapplicable to the insolvency profession.</p> <p><i>We agree with the proposal but also refer to our comments in point 7.</i></p>
10	<p>Complaints, enquiries, investigations and discipline regulatory systems</p> <p>The Registrar proposes to review applicants for accreditation's regulatory systems for dealing with complaints, enquiries, investigations and discipline.</p> <p><i>We agree with the proposal.</i></p>
11	<p>Other minimum standards</p> <p>In your view, are there any other minimum standards that should apply to applicants for accreditation?</p> <p><i>We do not consider that there are any additional minimum standards that should apply to applicants for accreditation.</i></p>

Conditions of accreditation

12	<p>As for minimum standards, the Registrar considers that the insolvency practitioner conditions of accreditation should closely match the auditor conditions. Changes should only be made where clearly justified by differences between the auditor regulatory regime and practice, and the insolvency practitioners' regulatory regime and practice.</p> <p>If you believe that other changes should be made to reflect differences between the audit and insolvency regimes, or between audit and insolvency professional practice, please provide details as to that nature of such differences and why a different approach may be necessary or desirable.</p> <p><i>With the exception of our comments made on the points below, we agree with the proposed approach of being consistent with the auditor regulatory regime where appropriate and practical.</i></p>
13	<p>Continuing compliance with minimum standards</p> <p>The Registrar proposes an ongoing condition of accreditation that accredited bodies continue to comply with the minimum standards for accreditation.</p> <p>The equivalent conditions for auditor accreditation include some additional conditions that could fit within a continuing obligation to comply with the minimum standards. The Registrar invites</p>

	<p>submitters' thoughts on whether a single overarching condition is sufficient or whether additional more detailed conditions are helpful.</p> <p><i>We consider that a single overarching condition that accredited bodies must comply, on an ongoing basis, with the minimum standards of accreditation is sufficient.</i></p>
14	<p>Informing the Registrar of accreditation matters and regulatory functions</p> <p>The Registrar proposes conditions to ensure that accredited bodies keep the Registrar informed on matters affecting, or potentially affecting, the body's accredited status or performance of its regulatory functions.</p> <p>Note that the auditor standard conditions refer only to notification of actions by overseas regulatory bodies. The Registrar proposes that all regulatory actions be notified.</p> <p>In addition, the auditor standard conditions require the FMA to be involved in the appointment of members to accredited bodies' disciplinary and appeals bodies. The Registrar does not propose including this requirement.</p> <p>The Registrar invites comments on these proposed differences.</p> <p><i>We consider that it is appropriate for accredited bodies keep the Registrar informed of matters affecting, or potentially affecting, the body's accredited status or performance of its regulatory functions. However, similar to the audit regulation standard conditions for accreditation, we consider that this should only be to the extent that it is relevant to the accredited body's performance of its regulatory function under the Act. As such (5) on page 49 of the Discussion paper should be amended to read: "The accredited body must promptly notify the Registrar of any events, circumstances or actions by any party that may prevent or impede the accredited body's performance of its regulatory functions under the Act (bold font is the respondent's own)"</i></p> <p><i>We agree with the Registrar's proposal that the accredited body must promptly notify the Registrar of any action taken by another regulatory body (regardless of jurisdiction) against the accredited body. This is because this information is likely to be indicative of substantive issues at the accredited body.</i></p> <p><i>We are supportive of the Registrar not being involved in the appointment of members to the accredited bodies' disciplinary bodies and appeals bodies. We consider that the prescribed minimum standards for accredited bodies contain appropriate safeguards for ensuring that these bodies are appropriately constituted.</i></p> <p><i>We note that the Registrar may wish to include a condition similar to the following which is a standard condition of accreditation for accredited bodies under the Auditor Regulation Act 2011:</i></p> <p><i>"The accredited body must promptly, on becoming aware of the matter, notify the Registrar of any action taken by a regulatory body against a member of its governing body, a member of a relevant committee, a senior manager, or any other key personnel".</i></p>
15	<p>Informing the Registrar of monitoring and enforcement matters</p> <p>The Registrar proposes conditions to ensure that accredited bodies keep the Registrar informed of significant events in relation to licensed insolvency practitioners and compliance with the Act and wider regulatory regime.</p> <p>There are some substantive differences to the proposed conditions and the equivalent auditor standard conditions. In particular, the auditor conditions require notification of detected breaches of audit standards; there are no equivalent insolvency practice standards. Instead, the Registrar proposes that the accredited bodies be obliged to notify the Registrar of any detected material breaches of relevant insolvency statutes.</p> <p>The Registrar invites comments on these proposals.</p>

*We agree with the proposed condition in principle. We consider that the wording of the condition needs to be amended as set out below in **bold**. This wording is consistent with the equivalent auditor standard condition:*

*“The accredited body must promptly notify the Registrar **if it becomes aware, or has reasonable grounds to suspect, any material breach....**” ((9), page 49, Discussion paper).*

Standard conditions and modifying conditions

The Registrar proposes a standard set of conditions that are likely to be of general application, but may be modified:

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- At the request of an applicant for accreditation/accredited body
- In response to regulatory concerns
- In response to changes in law

We agree with the proposal for setting conditions as set out above.

Adequate and effective regulatory systems

The Registrar proposes to generally take a risk-based approach when determining applications for accreditation and whether an applicant for accreditation will implement and maintain regulatory systems that are adequate and effective. The Registrar considers it is appropriate that adequacy and effectiveness must be assessed in light of the size, scope and role of the accredited body. This may include consideration of:

- the potential number of insolvency practitioners affected;
- the potential number and type of debtors affected;
- the potential number and type of creditors affected;
- the size and scale of the potential insolvencies; and
- the potential impact if a matter is or is not done.

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The Registrar invites comments on these proposals. In particular, whether there are any other factors that may be appropriate to consider.

We agree with the proposal for the Registrar to take a risk-based approach when considering applications for accreditation.

We note that the consideration ‘may’ include the items listed above. We consider that the key issues to consider are the number of insolvency practitioners an accredited body is likely to issue a licence to and the types of insolvency engagements an accredited body will issue licences for. As part of ongoing monitoring activities, accredited bodies should undertake monitoring in respect of the environment in which licensed insolvency practitioners are operating and significant appointments. However, we do not consider that it is the role of accredited bodies to obtain detailed information in respect of “live” engagements on an ongoing basis e.g. the number of creditors impacted by a particular insolvency engagement.

Fit and proper

18	<p>The Registrar proposes to consider both whether the applicant body, and certain of its key personnel, are fit and proper to perform regulatory functions. As the applicant body will act under the direction of its key personnel in discharging its regulatory functions, the Registrar considers that it is appropriate to take this broad approach to considering the fit and proper requirement.</p> <p>The Registrar proposes that the presence of such a matter should not automatically disqualify an applicant from becoming an accredited body. However, applicants must disclose such matters and the circumstances that led to the matter.</p>
	<p><i>We agree with the proposal.</i></p>
19	<p>Applicant body</p> <p>The Registrar proposes a range of matters that may be relevant to determining whether an applicant body is fit and proper to be accredited, including previous crimes of dishonesty, crimes or disciplinary actions involving insolvency, corporate or financial markets legislation, adverse court rulings and previous insolvencies.</p> <p>The Registrar invites comments on these proposals. In particular, whether there are any other factors that may be appropriate to consider.</p>
	<p><i>We agree with the proposal.</i></p>
20	<p>Key personnel</p> <p>The Registrar proposes that the following are “key” personnel in respect of an applicant for accreditation:</p> <ul style="list-style-type: none"> • members of its governing board (e.g. board of directors); and • its senior executives with responsibility for or oversight of the regulatory functions of the applicant. <p>The Registrar proposes a range of matters that may be relevant to determining whether an applicant body is fit and proper to be accredited, including previous crimes of dishonesty, crimes or disciplinary actions involving insolvency, corporate or financial markets legislation, adverse court rulings and previous insolvencies.</p> <p>The Registrar invites comments on these proposals. In particular, whether there are any other factors that may be appropriate to consider, and whether any other staff are likely to be key personnel.</p>
	<p><i>We agree with the proposal and the definition of “key personnel” as set out above.</i></p>

Annual confirmations and reports

21	<p>Annual confirmations</p> <p>Accredited bodies must submit annual confirmations, either confirming insolvency practitioner licence information on the Register is correct, or updating it as required. The Registrar proposes adopting a similar process as is used for the equivalent annual confirmation process under the Auditor Regulation Act involving annual review and confirmation prior to 30 June each year. The Registrar does not propose prescribing forms.</p> <p>Note that annual confirmation fees are not included in this discussion document and will be set by regulation.</p>
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	<p><i>We recommend that the annual confirmation process for licensed insolvency practitioners mirrors the process followed for licensed auditors. Under the audit regulation regime, accredited bodies are required to confirm the information held on the Auditors Register with the Registrar by 30 June each year. However, annual confirmation fees are not required to be paid to the Registrar until 30 September. This process is preferable to the proposal set out in the Discussion paper which provides that “The Registrar expects that this annual confirmation fee will be passed to the Registrar at the same time the accredited bodies confirm that the insolvency data is correct”. A deferred payment arrangement would enable the accredited body time to reconcile confirmation fees and follow up on any outstanding payments. By way of example; annual membership fees for CA ANZ/NZICA members are due on 30 June. It would be our preference to collect the annual confirmation fees from insolvency practitioners licensed by NZICA as part of wider annual membership subscription process to minimise the administrative burden of collecting the levy on behalf of the Registrar. A requirement to pay the levy on 30 June each year would prohibit this.</i></p>
22	<p>Reports – content</p> <p>Accredited bodies must submit reports as directed by the Registrar. The Registrar proposes that reports include:</p> <ul style="list-style-type: none"> • membership and licensing data • monitoring and oversight summary • education and training summary • complaints, enquiries, investigations and discipline data • confirmation of legal obligations <p>Very similar requirements are set out under the comparable provisions of the Auditor Regulation Act.</p> <p><i>We agree with the proposal and note that the proposed reports are aligned with the provisions of the auditor regulation regime.</i></p>
23	<p>Reports – timing</p> <p>Reports must be supplied in accordance with the Registrar’s direction as to timing. This may be up to every four years. The Registrar invites submitters’ views as to the appropriate frequency of accredited body reports.</p> <p><i>We acknowledge that under the audit regulation regime, accredited bodies are required to report to FMA on an annual basis. This in part reflects the cyclical nature of audits which are required to be undertaken on an annual basis.</i></p> <p><i>In comparison, given the nature of the insolvency industry and number of insolvency engagements completed each year (smaller volume and irregular), the cost and resource required by the accredited body and the Registrar of reporting annually may outweigh the benefit to the Registrar, other regulators, the licensed insolvency practitioner population and the public.</i></p> <p><i>We recommend that accredited bodies be required to provide their first report to the Registrar for the period ended 30 June 2022 (being just over twelve months after the transitional licensing period ends) and thereafter biennially. This could be reviewed after 30 June 2024 to evaluate whether this is an appropriate time frame.</i></p>

24	Other
	Please provide any other comments or responses regarding annual confirmations and reports by accredited bodies.
	<i>We have no further comments to make.</i>

Recognised bodies

25	Accredited bodies may licence insolvency practitioners that are not members of that accredited body in certain circumstances:
	<ul style="list-style-type: none"> • Overseas insolvency practitioners • Members of “recognised bodies” • Members of certain religious societies or orders
	The Registrar proposes a flexible approach to the process for considering applications for recognition. No formal application form will be prescribed, and there is no fee for applying to be a recognised body.
	<i>We support the proposal for a flexible approach to the process for considering applications for recognition as a “recognised body”, particularly given the timeframes involved in implementing the regime and the requirement that applicants for recognised bodies need to be approved prior to the commencement date to ensure that existing accredited insolvency practitioners are eligible for a transitional licence.</i>
	<i>The Registrar may also wish to consider the membership criteria for recognised bodies and the process for assessing membership applications and the fit and proper status of the recognised body and its key personnel.</i>

Other

26	Do you have any other feedback on the proposals in the discussion paper?
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Transitional licensing

Page 41 sets out the transitional licensing requirements for recognised body members.

We note that there is an error on page 41 of the Discussion paper and the “and” between the bullet points needs to be replaced with “or”. Schedule 1 of the Act specifies that “accredited insolvency practitioners” must have been accredited by an accredited body on the commencement date and be **either** a member of the accredited body **or** a person to whom section 57 of the Act applies.

NZICA intends to apply to become an accredited body under the Act. This is consistent with NZICA’s role as an accredited body under the Auditor Regulation Act 2011 and its role as the statutory body responsible for regulating New Zealand members of Chartered Accountants Australia and New Zealand (CA ANZ).

Under the voluntary accreditation regime established by CA ANZ, NZICA and RITANZ, accredited insolvency practitioners who are members or non-member principals of NZICA (being non members who are approved as being appropriately qualified to be partnership with members) are subject to the NZICA Rules, NZICA Code of Ethics, and NZICA Professional Standards.

Accredited insolvency practitioners who are RITANZ only members (and are not also members of CA ANZ/NZICA) have entered into an agreement with CA ANZ whereby they have agreed to be regulated in a manner equivalent to NZICA members as far as practicable. This means that they are subject to replica NZICA Rules, the NZICA Code of Ethics, and NZICA Professional Standards relevant to insolvency engagements.

When setting the transitional requirements, we request that the Registrar applies the transitional provisions such that all accredited insolvency practitioners under a voluntary regime that are subject to the rules, ethics and standards of the accredited body be treated as licensed insolvency practitioners under the transitional provisions in the Act. In our view this is what is contemplated under the Act. We recognise that this requires NZICA to be approved as an accredited body and RITANZ to be approved as a recognised body prior to commencement date.

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.