MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

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.

Stage 2 Cost Recovery Impact Statement

Regulations to introduce insolvency practitioners scheme fees and levy

Agency Disclosure Statement

This Cost Recovery Impact Statement has been prepared by the Ministry of Business, Innovation and Employment (MBIE). It provides an analysis of options to recover the cost of implementing the co-regulatory insolvency practitioners scheme put in place by the Insolvency Practitioners Regulation Act 2019 (the Act). It complements the Regulatory Impact Assessment prepared by MBIE to analyse options that do not relate to cost recovery.

The new scheme is aimed at reducing the incidence of unsatisfactory and substandard performance and generally raising the quality of insolvency practice over time.

To recover the costs of implementing the new scheme put in place by the Act, MBIE proposes two fees to be charged to insolvency practitioners and a levy to be charged to all existing registered companies and companies that apply to be registered.

In developing the funding model, MBIE has been guided by principles set out in Treasury's Guidelines for Setting Charges in the Public Sector and the Auditor-General's Charging Fees for Public Sector Goods and Services. Consideration has been given to who will benefit and to what extent (i.e. equity across those who benefit) from the regulation of insolvency practitioners.

Although informed assumptions have been made about the effects of the charges on insolvency practitioners and companies, there is some uncertainty about the impacts of the proposals. This is because some costs and benefits are difficult to quantify.

MBIE's analysis has focused on the Registrar of Companies' (Registrar) costs and their recovery through fees and a levy. In addition, accredited bodies are likely to recover their licensing costs from practitioners but these figures are not known at this stage.

It is very difficult to predict how effective the new licensing regime will be (for example, how much the overall standards of the profession will be increased over time and how much returns to creditors will increase through better decision-making by insolvency practitioners).

Overall, the proposed fees and levy meet the cost recovery principles and objectives outlined in this document, are consistent with the authority to collect fees and levies set out in the Act and appear sufficient to recover the costs of the implementation of the co-regulatory licensing scheme. A review of these charges is scheduled for 2021/2022.

Ross Van Der Schyff, General Manager

Business Integrity Services, Market Services

[*Signature of person*] [*Date*]

Executive summary

1. The Insolvency Practitioners Regulation Act 2019 and Insolvency Practitioners Regulation (Amendments) Act 2019 introduce a compulsory licensing scheme aimed at reducing the incidence of unsatisfactory and substandard performance and generally raising the quality of insolvency practice over time.

2. Under the new co-regulatory scheme, accredited bodies will be responsible for carrying out the frontline regulation of insolvency practitioners. The Registrar will be responsible for the oversight of the accredited bodies and the register of insolvency practitioners.

3. The annual cost to the Registrar has been estimated at $622,167.

4. This cost cannot be met from existing baselines because there is a clearly attributable benefit to individual users or a defined group (insolvency practitioners and companies). Also, it cannot be absorbed within the existing appropriation and a solution like this would result in cross subsidisation with other registry functions.

5. Thus, MBIE proposes a licence registration fee of $165 and an annual licence confirmation fee of $105 to be charged to insolvency practitioners to recover the cost of maintaining the register and a levy of $1 to be charged to all companies to recover the oversight cost.

6. Consultation was undertaken between 18 September 2019 and 15 October 2019.

7. Five submissions were received on the cost recovery proposals. Two submitters agreed with the fees and all submitters agreed that the level at which the levy was set was appropriate. Three submissions considered the forecast oversight costs too high. Feedback has been considered and changes have been made to the options to incorporate submitters' views in the current proposals.

8. The new scheme comes into force from 17 June 2020 and regulations must be promulgated before that date.

9. MBIE will review the fees and levy in line with the next review of Companies Office fees, expected to commence in 2021/22.

Background

10. Insolvency practitioners are placed in a position of managing and protecting other people's money and property. This is why it is important that insolvency practitioners act honestly, fairly and impartially at all times.

11. 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:

    - dishonesty, debtor-friendliness and incompetence in connection with SME company liquidations; and
    - sub-standard performance in relation to the full range of insolvency administrations.

12. The Insolvency Practitioners Regulation Act 2019 and the Insolvency Practitioners Regulation (Amendments) Act 2019 introduce a co-regulatory scheme aimed at reducing the incidence of unsatisfactory and substandard performance and generally raising the quality of insolvency practice over time.

13. Prior to the new scheme, insolvency practitioners were not regulated as a specialist profession.

14. The legislation that introduces the new scheme received Royal Assent on 17 June 2019. Regulations are now required to implement it.

15. The new co-regulatory scheme is modelled on the co-regulatory scheme in the Auditor Regulation Act 2011, under which responsibility is split between Chartered Accountants Australia and New Zealand (CAANZ) and CPA Australia as the frontline regulators and the Financial Markets Authority (FMA) as the oversight body.

Status quo

16. The current voluntary non-statutory occupational regulation regime run by CAANZ and the Restructuring Insolvency and Turnaround Association of New Zealand (RITANZ) was also aimed at raising standards of competence and professionalism. It has been operating with around 110 'accredited' insolvency practitioners since 2012. We understand that the majority of insolvency practitioners practising in New Zealand are members of that regime.

17. The disadvantage of this regime was that it only applied to those who chose to join.

18. The new scheme comes into force in June 2020 and introduces a compulsory co-regulatory scheme that will include:

    - accredited bodies responsible for administering the functions to obtain and retain a licence to act as an insolvency practitioner; and
    - the Registrar providing oversight of accredited bodies and operating the register of insolvency practitioners.

Cost Recovery Principles and Objectives

19. Key principles (based on the guidance from the Treasury and Office of the Auditor General) guiding this cost recovery proposal are:

    - **Authority:** The proposed fees and levy are consistent with the authority to collect fees and levies set out in the Insolvency Practitioners Regulation Act 2019.
    - **Efficiency:** Costs will be charged so that maximum benefits can be delivered at minimum cost.
    - **Accountability:** MBIE has been transparent in the process of setting the fees and levy and has consulted on the proposals.

20. Key objectives/criteria that the options were assessed against are:

    - **Effectiveness:** The fees and levy are set at a level that will allow the Registrar to recover the costs of the implementation of the co-regulatory licensing scheme.
    - **Equity:** User charges will be paid by those who benefit from the scheme.
    - **Low impact on the market:** User charges will be set a level that does not adversely impact on the market providing the required services.

Policy Rationale

Why a user charge?

21. When policy decisions were made to introduce insolvency practitioner regulation, it was intended that the cost of operating the register would be met from existing baselines [EGI-16-MIN-0304 refers].

22. However, under the Treasury and Office of the Auditor-General principles for setting public sector charges[1], the Crown provides funding only where it is considered there is a general public benefit without a clearly attributable benefit to individual users or a defined group.

23. Although the benefits of the new scheme are wide, insolvency practitioners will be the primary direct beneficiaries of the register.

24. Public registration will make it easier for insolvency practitioners to find engagements. Having a licence and being able to verify this through registration builds confidence in their services as they will be recognised as having a certain level of expertise.

25. All companies will benefit from the oversight of the scheme. All businesses benefit from improving and maintaining the integrity of the insolvency scheme. Furthermore, 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.

26. Also, the costs of the new scheme cannot be absorbed within the existing appropriation and a solution like this would result in cross subsidisation with other registry functions.

27. Thus, the operation of the scheme should not be funded by the Crown but through full third-party cost recovery.

What type of charge is most appropriate and who pays?

28. In determining proposals for the Registrar's cost recovery, consideration was given to who will benefit and to what extent (i.e. equity across those who benefit) from the regulation of insolvency practitioners. The efficiency of the cost of collection of any charges was also considered – the costs of collection of revenue should be balanced against the other considerations and minimised where possible.

29. A fee is a charge that relates to specific goods or services provided to an individual. A levy is a charge to a certain group for a particular purpose or function.

30. We therefore propose that the Registrar's operational costs be fully recovered under the insolvency practitioner regulation scheme through:

    - a licence registration fee to be paid by practitioners issued with new licences,
    - an annual licence confirmation fee to be paid by all licensed practitioners to recover the cost of updating and maintaining the register with licence information, and

[1] See Treasury's Guidelines for Setting Charges in the Public Sector and the Auditor-General's Charging Fees for Public Sector Goods and Services

- a levy on all registered companies (payable alongside the new registration fee or the annual return fee as applicable) to cover the costs of oversight.

The level of the proposed fee and its cost components

Overview of costs

31. The ongoing costs undertaken by the Registrar include the following activities:

    - registration, including updating and maintaining the register of insolvency practitioners, both when licences are issued and an annual confirmation completed, and whenever information is to be updated; and
    - oversight of the scheme, including approval of accredited bodies, scheme compliance, and general management of the scheme.

32. Most insolvency engagements are accepted by practitioners within 10 to 12 firms comprising the 'Big 4' accounting firms, some mid-tier accounting firms and boutique practices that specialise in insolvency, recovery and turnaround services. There are also numerous small firms or sole practitioners, some of whom take large or moderate numbers of appointments, while others take the occasional liquidation appointment.

33. The annual cost to the Registrar to maintain the insolvency practitioner regulation scheme has been estimated at $622,167 made up of:

    - $16,930 to maintain the register; and
    - $605,237 to conduct oversight activities.

34. In calculating the costs of the scheme MBIE has drawn on the experience of the FMA in discharging its comparable functions under the auditor regulation scheme.

Maintaining the register

35. The annual cost of maintaining the register is estimated to be $16,930. This was determined from the time taken to complete the key activities of updating new licence information and annual confirmations multiplied by the forecast number of practitioners, 100.

36. Volumes multiplied by time taken per activity determined a requirement of 0.053 FTE. This was multiplied by the average FTE salary, with an allowance for superannuation and ACC, giving an annual personnel cost of $3,544. Additional costs include corporate support costs of $3,386 (25 per cent of total direct costs) and $10,000 for IT system support.

37. Insolvency practitioners will pay a licence registration fee of $165.00 and an annual licence confirmation fee of $105.00. This reflects that it takes more time and thus the cost is higher to register a licence than to register a licence renewal. We have estimated that it will take approximately 67 minutes to register each licence, and 43 minutes to register a licence renewal.

38. Through an annual licence confirmation process, practitioners will confirm that the information on the register is correct. This is so that the register contains up-to-date information.

Oversight of the scheme

39. The annual cost of conducting the oversight activities is estimated to be $605,237.

40. The scheme oversight costs will be recovered from the estimated number of company annual returns (560,000 current plus an annual growth of 55,000 new companies per annum).

41. After analysing the resources required in the first two years of the new scheme's implementation and drawing on the FMA's experience in discharging its comparable functions under the auditor regulation scheme, the staff requirements were determined to be: 0.5 FTE manager, 1.75 FTE for monitoring, analysis and enforcement, 0.05 FTE for accreditation activities and 0.15 FTE for education and awareness. This resulted in a total personnel cost of $318,940. Additional costs include professional services of $100,000, other expenses of $65,250 and corporate support costs of $121,047.

42. There will be a levy of $1.00 that all companies will pay with the fees for the registration of new companies and annual return fees for all companies. The current company annual return fee is $36 and the current fee for registration of a new company is $105.00 (both figures include levies of $9.00 for the FMA and $6.00 for the External Reporting Board). The addition of a levy of $1.00 on these fees would result in only a small increase in each overall fee paid by companies.

Establishment costs

43. The proposed fees and levy will not contribute to the recovery of costs to set up the scheme. This will be funded from existing Crown-funded baselines in the 2019/20 financial year.

Changes following consultation

44. Three submissions considered the forecast oversight costs too high. They considered that the low number of estimated licensed insolvency practitioners and the fact that accredited bodies would carry out the frontline regulatory role meant that the oversight cost would be lower than forecast.

45. Taking into account the submissions, officials reviewed the costs and, on balance, agreed that they could be reduced. However it is important to ensure that there are sufficient funds for the oversight function. Therefore the oversight costs originally forecast at $701,894 have been revised down to $605,237, as a result of reducing general management from 1.0 FTE (in the Discussion Paper) to 0.5 FTE and reduced overheads as a result of this change.

46. As a consequence, the levy of $1.15 has been reduced to $1.00. The licence registration fee that had been rounded up to $170.00 is now proposed to be rounded down to $165.00, all GST exclusive.

47. The annual licence confirmation fee remains the same at $105.00 (GST exclusive) as proposed in the Discussion Paper.

Impact analysis

48. Insolvency practitioners will pay a licence registration fee of $165.00 and an annual licence confirmation fee of $105.00. We have used a conservative forecast of 100 licensed practitioners being impacted by these fees.

49. These costs will not be a heavy burden on those who will need to pay them. However it is important to note that, additionally, accredited bodies will recover their licensing costs. Whether CAANZ would increase the fees it charges under the existing voluntary scheme to cover its new duties under the Act (for example, providing register information and reporting to the Registrar) is not known at this stage.

50. The levy to recover oversight costs will be paid by registered companies with their registration and annual return fee. The current number of registered companies is 635,000. Of these, it is estimated that 560,000 will file an annual return form in the 2020/21 financial year. An annual growth of 55,000 new companies per annum is forecasted. The addition of a levy of $1.00 would result in only a small increase on the current fees for registration of a new company ($105.00) and company annual return ($36.00).

51. At the time of the 2021/22 review, the fees and levy can be adjusted so that they recover the actual and ongoing costs of the scheme and are based on actual volumes.

Other options assessed against the objectives

Meeting costs from within existing baselines – does not meet the effectiveness or equity objectives

52. If regulations setting fees and a levy are not promulgated, there would be no way to recoup costs incurred in operating the regime. This could precipitate a shortfall in MBIE's budget with final losses accruing to the Crown.

53. Also, a solution like this would result in cross subsidisation with other registry functions. This would not be equitable.

Costs recovered only from companies – does not meet the equity objective

54. One submitter suggested that costs be met through a fee paid by the estate of a company in liquidation.

55. The fees, proposed to be charged to licensed insolvency practitioners to recover the costs of maintaining the register, could not be paid by companies because a fee is a charge that relates to specific goods or services provided to an individual. Companies will not directly benefit from the register being maintained so they should not pay for these fees.

56. There could be a higher levy for companies and no fees for practitioners. This would mean that practitioners would not pay for the register that they benefit from so this would not be fair or appropriate.

Costs recovered only from practitioners – does not meet the equity objective or the objective to have a low impact on the market

57. An option for recovering the costs of the oversight activities could be through a levy on all insolvency practitioners, as oversight provides integrity to the scheme.

58. However recovering these costs ($605,237) through an annual levy of about $6,000 per practitioner would not be feasible as a levy of this level would drive some practitioners out of the market. This would harm competition, reduce access to insolvency services and ultimately drive up costs for companies and creditors.

59. Also, all companies will enjoy the benefits of the new scheme so it is reasonable to expect that they also contribute to the costs.

Oversight costs recovered from both companies and practitioners - does not meet the equity objective or the objective to have a low impact on the market

60. The oversight costs could be apportioned between practitioners and companies but even if the portion to practitioners was 25 per cent for example (in the range of $1,500), the levy per practitioner would still be a burden disproportionate to the general benefit of those costs.

Cost recovery model

61. The annual cost to the Registrar is based on time taken to complete updating activities on the register and an estimate on the level of staff required to have effective oversight of the scheme.

62. The forecast volumes drive the setting of the fees and levy, and thereby the forecast revenue to fund the expenditure. The forecast number of insolvency practitioner licence registrations in the model is 100 and is a conservative forecast based on the current number of 110 practitioners under the informal RITANZ/CAANZ regime.

63. If the actual number of applicants is significantly lower than 100, it would reduce the revenue collected to, in turn, fund the updating of the register functions. Lower licences would, in turn, reduce the revenue in future years of annual confirmations. The reduction in revenue would be partially offset by a decrease in staff costs but the overheads and IT support costs are a fixed annual figure. Overall this impact is not financially significant.

64. The forecast volumes used to set the levy is based on the level of registered companies and forecasted growth. These volumes are the primary drivers for Companies Office fees and MBIE has an extensive forecasting tool to support its costing model in setting those fees.

65. The 2021/22 review will minimise any financial risk if the actual volumes are significantly different to the forecast used in this costing model.

66. Table 1 below provides a detailed breakdown of costs by activity.

Table 1: Proposed cost of insolvency practitioner regulation scheme

Cost of scheme to MBIE	**Annual cost total**	**Register - maintain & update**	**Oversight - total**	**Oversight**			
				Accreditation	**Compliance - Monitoring/ analysis/reporting/ enforcement**	**Compliance - Education & awareness[2]**	**General management[3]**
FTE	2.5	0.053	2.447	0.05	1.747	0.15	0.5
Category of cost							
Personnel[4]	322,484	3,544	318,940	7,733	221,510	12,372	77,325
Professional services[5]	110,000	10,000	100,000	-	100,000	-	-
Other expenses[6]	65,250	-	65,250	-	5,250	60,000	-
Corporate support - 25% of total direct costs[7]	124,433	3,386	121,047	1,933	81,690	18,093	19,331
TOTAL COSTS	**622,167**	**16,930**	**605,237**	**9,666**	**408,450**	**90,465**	**96,656**

[2] Education and awareness is an element of ensuring compliance with the scheme

[3] General management costs represent the cost of 0.5 FTE manager for the scheme

[4] Personnel costs represent the estimated cost of staff salaries and training

[5] Professional services include the estimated cost of services such as external legal support, expert advice, internal IT support costs

[6] Other expenses include the estimated cost of education campaigns and travel

[7] Corporate support costs represents overhead costs charged by MBIE, including office space and support from central services such as human resources, finance

67. Table 2 below shows the cost to serve and proposed fees and levy.

Table 2: Proposed fees and levy

Proposed fees/levy $	Cost to service	Cost to service GST incl	Proposed fee and levy - Regulations	Proposed fee and levy - Regulations GST incl
Licence registration fee	$169.30	$194.70	$165.00	$189.75
Licence confirmation fee (annual)	$108.66	$124.95	$105.00	$120.75
Levy on new incorporation and company annual return	$0.98	$1.13	$1.00	$1.15

68. A breakdown of the fees and levy by outputs and business processes is provided in Appendix One.

69. The estimated revenue, costs and net surplus of the scheme over the next four years and forecast volumes by year are in shown in Appendices Two and Three. A small rising net surplus is forecast due to rounding up of the cost to serve to set the levy and the rising volumes of company annual returns. A fees review will be undertaken in 2021/22 which will address the surplus. This review will incorporate actual volumes of practitioners and will incorporate a five year average of company annual returns.

Consultation

70. MBIE undertook public consultation (between 18 September 2019 and 15 October 2019) through the release of a Discussion Paper on the proposed fees, levy and other regulations, including the portion of the Registrar's costs that are to be recovered by the levy.

71. Information about the consultation was posted on MBIE and the Companies Office's websites. MBIE also contacted key stakeholders (including CAANZ, RITANZ and CPA Australia) to make them aware of the consultation.

72. Five submissions were received on cost recovery. Feedback has been considered and changes have been made to the options to incorporate submitters' views in the current proposals.

Conclusions and recommendations

73. MBIE proposes a licence registration fee of $165.00 and an annual confirmation fee of $105.00 to be paid by insolvency practitioners and a levy of $1.00 to be paid by all companies.

74. These charges will allow the Registrar to recover the costs of the implementation of the co-regulatory licensing scheme. In turn, this will facilitate achieving the aims of the new scheme (reducing the incidence of unsatisfactory and substandard performance and generally raising the quality of insolvency practice over time).

Implementation plan

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

76. Policy decisions are needed in early 2020 to allow for drafting by the Parliamentary Counsel Office before the new scheme comes into force.

77. In order to mitigate this risk, officials will liaise with industry and work with the Parliamentary Counsel Office so that satisfactory regulations are developed in a timely manner.

78. Under the Act, the Registrar has to publish a plan that will deal with the insolvency practitioner regulation and oversight. The plan will address compliance. This document will be published in 2020.

Monitoring and evaluation

79. The Registrar will be responsible for oversight of the accredited bodies. Oversight includes accreditation of bodies, ongoing monitoring and reporting, and corrective action to ensure the quality and effectiveness of the accredited bodies' regulatory systems and processes, and general management of the scheme.

80. As part of the Registrar's oversight responsibilities, the Registrar is required to develop and publish an oversight plan within six months of the new scheme coming into force in 2020. This will set out the Registrar's intentions in relation to insolvency practitioner regulation and oversight, including the specific effects, outcomes, or objectives that the Registrar seeks to achieve or contribute to. The Registrar must publish further oversight plans at intervals of not more than four years.

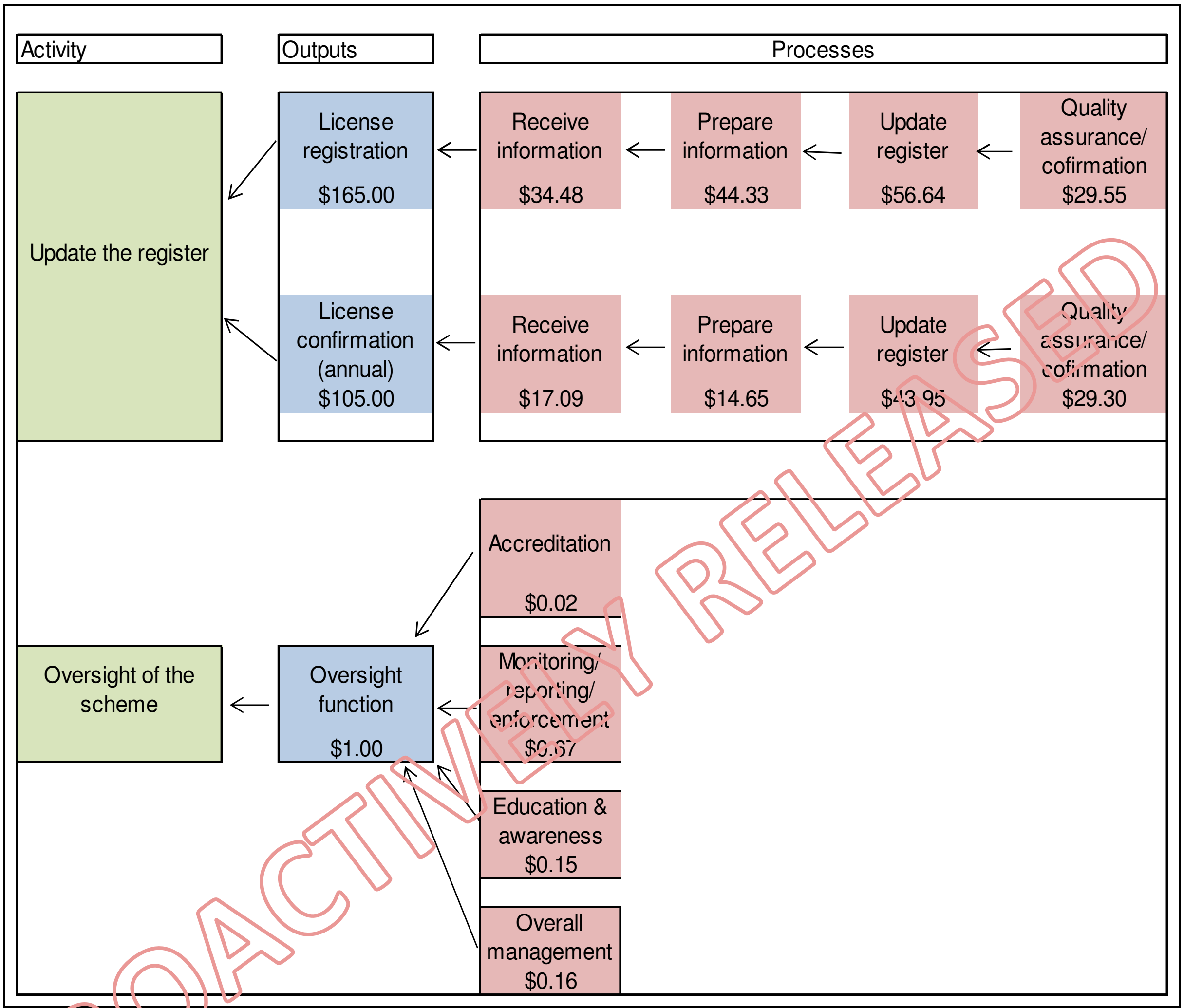
81. The plan will include how the Registrar intends to monitor and evaluate the effectiveness of scheme, and will set out performance indicators and how data will be collected.

Review

82. MBIE will review the fees and levy in line with the next review of Companies Office fees, expected to commence in 2021/22. At this time the fees and levy can be adjusted to ensure they recover the actual and ongoing costs of the scheme and are based on actual volumes. Any changes to fees or the levy would be implemented at the beginning of 2022/23. Thereafter, the fees and levy would be reviewed every three to five years, in line with Companies Office's periodic fees reviews and Treasury guidelines.

Appendices

Appendix One: Cost drivers of an activity, broken down by outputs and business processes



Appendix Two: Insolvency practitioner revenue and costs over time

Forecast revenue	**2020/21**	**2021/22**	**2022/23**	**2023/24**
License registration	16,500	495	495	495
License confirmation (annual)	-	10,500	10,815	11,130
Levy on new incorporation and company annual return	615,000	627,300	639,846	652,643
Total revenue	631,500	638,295	651,156	664,268
Total expense	622,167	622,167	622,167	622,167
Net surplus/ (deficit)	9,333	16,128	28,989	42,101
Accumulated balance	9,333	25,461	54,450	96,551

Appendix Three: Forecast volumes and revenue

Activity	Fee	2020/21 Volumes	2020/21 Revenue $	2021/22 Volumes	2021/22 Revenue $	2022/23 Volumes	2022/23 Revenue $	2023/24 Volumes	2023/24 Revenue $
License registration	$165.00	100	16,500	3	495	3	495	3	495
License confirmation (annual)	$105.00	-	-	100	10,500	103	10,815	106	11,130
Company annual retrurn	$1.00	560,000	560,000	571,200	571,200	582,624	582,624	594,276	594,276
New company registration	$1.00	55,000	55,000	56,100	56,100	57,222	57,222	58,366	58,366
Total		615,100	631,500	627,403	638,295	639,952	651,156	652,752	664,268