

IWG Additional Comment on Report 1 of the Corporate Insolvency Review

I Introduction

1. The Insolvency Working Group (IWG) welcomes the release of Report No. 1 on insolvency practitioner regulation and voluntary liquidation for public consultation.
2. The IWG wishes to comment on questions 8-10 raised by the Ministry that were not considered in Report No. 1. It is hoped this may provide assistance to the Ministry in its analysis of the recommendations contained in Report 1.

II Comments

3. Insolvency practitioners play a pivotal role in promoting and protecting the integrity of the corporate insolvency system. To do this they must have integrity and skill, and a good understanding of the principles and practices of corporate insolvency law. The law should enable and support them to ensure the wider objectives of insolvency law are realised, but also be able to efficiently address issues of dishonesty and incompetence.
4. The IWG recommends an occupational licensing system with a professional body acting as front-line regulator, overseen by an independent government regulator. The reasons for this are given in Report 1.

A Question 8

5. The IWG does not support the alternative option of only requiring practitioners to be a member of a professional body such as CAANZ or RITANZ, without any oversight from an independent government regulator.
6. While this option may cost less money up front, we consider that there are important benefits to independent oversight from a government regulator. An objective of insolvency practitioner regulation is to provide public trust and confidence in the insolvency system. Having an independent government oversight body to monitor and report on the adequacy and effectiveness of each accredited professional body's regulatory systems and processes is essential from that point of view.
7. A government regulator would also set minimum requirements to be applied by accredited bodies for licensing insolvency practitioners, in accordance with the public's expectations. We would be very concerned about public perceptions if there was no transparency around whether the frontline regulators are, in fact, acting in the public interest, rather than in the interests of the profession.
8. RITANZ is not a statutory body nor is it subject to any supervision or oversight. While we support the aims of the self-regulatory model administered by RITANZ, we consider fairness, public transparency, and accountability are also important. It is not sufficiently clear how the suggested options in questions 8 and 9 would be structured to ensure these objectives would be met.

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9. Schemes with no government oversight could develop or have requirements that failed to take into account principles of wider public policy.
10. We would also be concerned about the competition impacts of restricting practitioners to professional accounting bodies. Around 20 of the practitioners accredited under the existing RITANZ/CAANZ scheme are not chartered accountants or CPAs. This option would therefore have the unfortunate effect of preventing these insolvency practitioners from continuing to practise for no reason other than their lack of affiliation to a particular professional body.
11. Conversely, many chartered accountants and CPA's do not currently take insolvency appointments. We are, therefore, also concerned that many of those individuals would not have the necessary skills and experience to do the work to the appropriate professional standards.

B Question 9

12. The IWG does not support the alternative option to restrict insolvency services to only certain members of an accredited professional body.
13. In addition to the comments raised above, the IWG considers this option is further unjustifiably restrictive in that it would only allow certain professional accountants to become insolvency practitioners.
14. Limiting insolvency appointments to professional accountants in such a way is also out of step with international practice, such as in the United Kingdom and Australia.

C Question 10

15. The IWG considers that the options raised in questions 9 and 10 have the potential to decrease, and at the very least would not decisively increase, the availability of insolvency services to businesses and creditors outside the main New Zealand centres.
16. We note that currently there are few practitioners located outside the main centres. In our view, the recommended model for regulating practitioners in Report No. 1 will neither improve this situation nor make it worse. The predominant creditors are the banks and the IRD, who always source this work to their accredited panel of firms, rather than local accountants. They do not seek out and employ a local accounting firm near to the physical location of the insolvent company to perform insolvency procedures.

III Conclusion

17. We thank the Ministry for providing an opportunity for further comment. If additional information or discussion would assist, please do not hesitate to contact the Chair, Graeme Mitchell, in the first instance.