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

Submission Form

November 2019

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

The Companies Office is seeking written submissions on proposed minimum standards and conditions for the licensing of insolvency practitioners under the Insolvency Practitioners Regulation Act 2019. The Companies Office is a group within the Ministry of Business, Innovation and Employment (MBIE). Please provide your feedback by 5pm, 13 December 2019.

We appreciate your time and effort taken to respond to this consultation.

We may contact submitters directly if we require clarification of any matters in submissions.

Instructions

To make a submission you will need to:

1. Fill out your name, email address, phone number and organisation.
2. Fill out your responses to the discussion document questions. You can answer any or all of the questions in the discussion paper. Where possible, please provide us with evidence to support your views. Examples can include references to independent research or facts and figures.
3. If your submission has any confidential information:
 - i. Please state this in the e-mail accompanying your submission, and set out clearly which parts you consider should be withheld and the grounds under the Official Information Act 1982 that you believe apply. The Companies Office will take such objections into account and will consult with submitters when responding to requests under the Official Information Act.
 - ii. Indicate this on the front of your submission (e.g. the first page header may state "In Confidence"). Any confidential information should be clearly marked within the text of your submission (preferably as Microsoft Word comments).

Note that submissions are subject to the Official Information Act and may, therefore, be released in part or full. The Privacy Act 1993 also applies.

4. Submit your feedback:
 - i. As a Microsoft Word document by email practitioners@companies.govt.nz
 - ii. By post to:

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

iii. If you would prefer, you can fill in the [online form](#).

5. Note: The Companies Office may contact you directly if we require clarification of any matters in your submission.

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

Name	Dr John Purcell, FCPA – Policy Adviser Environmental, Social and Governance
Email address	john.purcell@cpaaustralia.com.au
Phone number	+613 9606 9826
Organisation	CPA Australia

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 and/or MBIE's website at 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">1) a) The person:<ol style="list-style-type: none">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; orii) 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; andb) In both cases, the person must have at least five years' insolvency experience (including the senior experience above); or <ol style="list-style-type: none">2) The accredited body is satisfied that the person is otherwise competent to act as an insolvency practitioner. <p>Number of hours</p> <p>Do you agree that non-CPP holders should be required to have a higher amount of insolvency experience than non-CPP holders?</p>
	<p><i>We would like to highlight what appears to be a typo in the question. We are assuming that the question should read "Do you agree that non-CPP holders should be required to have a higher amount of insolvency experience than CPP holders?"</i></p> <p><i>CPA Australia supports this proposal. To be eligible to receive a Public Practice Certificate (PPC) from CPA Australia, a member must provide evidence satisfactory to the Board of having for a period of at least three years within the last eight years immediately preceding the application been engaged in full-time employment in an area of work that includes provision of public accounting services. Insolvency is defined as a public accounting service. We would recommend that only members holding a PPC be granted a licence.</i></p>
2	<p>Do you agree with the proposed 1,000 hours of experience over 5 years for CPP-holders?</p> <p><i>CPA Australia tentatively supports this proposal. We note in Australia that relevant employment requirements under Rule 20-1 of the Insolvency Practice Rules is materially higher at 4000 hours. CPA Australia recommends that the minimum hours is scaled upwards over time in New Zealand.</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>CPA Australia tentatively supports this proposal. Please refer to the answer for question 2. CPA Australia recommends that the minimum hours is scaled upwards over time for non-CPP holders.</i></p>
4	<p>Work on insolvency engagements</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>

	<p><i>Minimum hours of experience should relate to engagements where a licence is required to perform the engagement. While general insolvency experience is valuable, it may not be as relevant to more complex work which would usually require a licence.</i></p>
5	<p>Senior experience</p> <p>Should the minimum standards require a practitioner’s experience to be at a senior level?</p>
	<p><i>CPA Australia is of the view that the experience required to obtain a licence should be obtained under the supervision of a senior insolvency practitioner who currently holds a licence.</i></p>
6	<p>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?</p>
	<p><i>Criteria should be applied that pertains to the type of engagement. For example, was the experience obtained on an engagement that requires a licence? The experience should include a range of complex matters and the involvement of the applicant on these matters. It may be necessary for the applicant to keep a journal which describes the activities undertaken and the duration of their involvement on the engagement.</i></p>
7	<p>General experience</p> <p>Do you agree the minimum standards should require a practitioner to have at least five years of general insolvency experience?</p>
	<p><i>CPA Australia supports five years of general insolvency experience as a pre-requisite to completing an approved course of study to obtain the licence but not as experience relevant to obtaining a full licence. For example, a minimum level of experience is required to gain entry to a licencing program and the licencing program includes study and experience as an assistant on engagements under the supervision of a licence holder in order to obtain a full licence.</i></p>
8	<p>Alternative pathway</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>CPA Australia does not agree with this proposal. CPA Australia is of the view that the ability to waive some or all of the minimum standards may give rise to inconsistencies with experience and knowledge and may result in undue advantage.</i></p>
9	<p>Qualifications</p> <p>Do you agree that the minimum standards should not require any formal qualifications or completion of specific courses?</p>
	<p><i>CPA Australia recommends that minimum standards should require formal qualifications and completion of specific courses. Due to a lack of specialist training available in Professional Accountancy Organisations (PAOs) certification programs, formal qualifications or completion of courses would be considered appropriate. A formal tertiary qualification at both under-graduate (commercial law and accounting) and post graduate (minimum two course units) are applied in the Australian licencing regime. To avoid disruption and allow appropriate planning, it may be that a phase-in approach be adopted.</i></p>

10	Insurance
	Should the minimum standards require licensed insolvency practitioners to hold professional indemnity insurance?
11	<i>CPA Australia supports this proposal. Professional Indemnity Insurance is an important public interest measure. The licence requirements may consider an insurance requirement which is appropriate to the practice's risk profile and is at least equivalent to the practitioner's occupational association by-law requirements.</i>
	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?
12	<i>As a Professional Standards Scheme occupational association, CPA Australia currently assesses the adequacy of public practitioner minimum insurance requirements using risk management strategies and the compliance monitoring plan. CPA Australia assess the claims landscape against the political and industry landscape to periodically assess adequacy. CPA Australia considers these aspects against professional indemnity insurance affordability to achieve a balance between protection of the public interest and manageability for members. CPA Australia, therefore, agrees that it is appropriate to enable accredited bodies to assess the adequacy of insurance.</i>
	Overseas practitioners
13	Should the minimum standards require Australian applicants to be registered liquidators and provide evidence of continuing experience?
	<i>CPA Australia agrees that Australian practitioners appointed to a New Zealand engagement be recognised under the New Zealand Act on the proviso they be a registered liquidator under the Australian Corporations Act and able to substantiate continuing experience. In the longer term, it may be beneficial to consider aligning the requirements between each country.</i>

Proposed conditions to which a licence must be subject

13	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?

	<p><i>CPA Australia agrees and supports the contention that all licenced insolvency practitioners should be required to comply with the rules, codes and professional standards applicable to their accredited body. It is a requirement of membership to the PAOs and Insolvency Practitioner Associations that members comply with professional standards.</i></p>
14	<p>Practice review</p> <p>Should licensed insolvency practitioners be subject to practice review requirements set by accredited bodies?</p>
	<p><i>As insolvency is a public accounting service, it would be subject to the Quality Review Program delivered by CPA Australia.</i></p>
15	<p>Do you have comments on how practice reviews should be carried out?</p>
	<p><i>In Australia, practice reviews of insolvency practitioners is completed by using a checklist which summarises the professional requirements as established by prevailing laws and professional standards including APES 330 - Insolvency Services.</i></p>
16	<p>Reports and notifications</p> <p>Should licensed insolvency practitioners be obliged to provide reports and notifications to the accredited body?</p>
	<p><i>The accredited body is expected to provide oversight of insolvency practitioners, therefore any report (internal or external) that indicated a change of status or breach of any kind should be forwarded to the relevant body. This may or may not be linked with a practice review. A formal annual report may not be required depending on the frequency and depth of practice reviews. The reporting regime should consider expanding further than just exception reporting. It may be appropriate for the practitioner to provide reports which describe activities, operations, relationships with third parties which may create conflicts of interests (such as credit providers). This may be similar to the Transparency Report which is provided by Audit firms.</i></p>
17	<p>Do you agree with the matters we have identified which may be subject to reporting and notification conditions?</p>
	<p><i>The alignment with fit and proper criteria is likewise essential that this framework remain contemporarily relevant with any shift in legal and good public policy expectation.</i></p>
18	<p>Insurance</p> <p>Should licensed insolvency practitioners be subject to insurance conditions set by accredited bodies?</p>
	<p><i>CPA Australia considers that licences must be subject to conditions which ensure the licenced insolvency practitioner has professional indemnity insurance that is adequate and appropriate for the nature and scale of the licenced insolvency practitioner's business activities.</i></p>
19	<p>Other</p> <p>Should we consider any other mandatory conditions?</p>
	<p><i>No additional mandatory conditions are apparent at this stage other than those mentioned elsewhere in CPA Australia's responses.</i></p>

Conditions to which a licence may be subject

20	Solvent company liquidations
	<p>What (if any) special considerations apply to solvent company liquidations?</p> <p>CPA Australia believes that despite the provision made in the New Zealand legislation for conditions on the scope of licence, the flexibility should be treated with caution. 'Dual' schemes may carry additional regulatory burden, and on the matter of solvent company liquidations, there needs to be confidence that the practitioner is at least familiar with the potential for wrongdoing notwithstanding apparent solvency upon liquidation.</p>
21	Restricting engagements
	<p>In what circumstances (if any) would it be appropriate to limit the types of engagement a licensed insolvency practitioner could work on</p> <p><i>As alluded to in the Discussion Paper, a distinction could be drawn between corporate and personal engagements. Please refer to the response provided to Question 25.</i></p>
22	Other
	<p>Should we consider any other discretionary conditions an accredited body may apply?</p> <p><i>There are no other discretionary conditions which should be considered for the accredited body to apply at this point.</i></p>

Ongoing competence

23	<p>Do you agree with the proposed ongoing competence requirements?</p> <p><i>CPA Australia supports the proposed ongoing competence requirements as expert knowledge which is contemporaneous is a necessity for the avoidance of detriment to related parties.</i></p>
	<p>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?</p>
24	<p><i>CPA Australia supports that continued professional development must align to the areas of practice delivered by the licence holder. To align with the requirements of the PAOs, it is suggested that these minimum requirement reflect the By-Law requirements of the PAOs.</i></p>

Personal insolvency creditor proposal trustees

25	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?
	<i>CPA Australia does not support different minimum standards applying to trustees or provisional trustees appointed under subpart 2 of Part 5 of the Insolvency Act 2006. Minimum standards should apply and align with those applicable to other forms of external administration.</i>
26	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?
	<i>It is a reasonable proposition to draw a distinction between corporate and personal bankruptcy allowing a separation of licencing. Nevertheless, given the inclusion of arrangements within a single statutory regime, this tends more strongly to not allowing discrete licensing.</i>
27	Are there other types of insolvency engagement where different minimum standards should apply?
	<i>CPA Australia has no response.</i>

Other

	Do you have any other feedback on the proposals in the discussion paper?
	<i>CPA Australia has no response.</i>