



NEW ZEALAND
COMPANIES OFFICE

Insolvency
Practitioners Register

Report on Regulatory Systems of Accredited Body – NZICA

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UNCLASSIFIED



MINISTRY OF BUSINESS,
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HĪKINA WHAKATUTUKI

Te Kāwanatanga o Aotearoa
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Executive summary

This report contains the findings of the Registrar of Companies' ("the Registrar") inaugural monitoring visit of the frontline insolvency regulator, New Zealand Institute of Chartered Accountants (NZICA). The visit assessed NZICA's regulatory systems and the extent to which they are adequate and effective within the meaning of the Insolvency Practitioners Regulation Act 2019 ("the Act"). The review period for the purposes of this report is from 1 September 2020 (the date accredited bodies were able to issue insolvency practitioner licences) to 30 June 2022 ('the Review Period').

It is important for context to note and acknowledge the previous voluntary accreditation regime for insolvency practitioners. The voluntary regime was in effect from 2015 until the commencement of the statutory regime and most current licensed insolvency practitioners were part of that regime. Prior to this, NZICA members undertaking insolvency services were monitored, regulated, and disciplined in accordance with NZICA's general statutory jurisdiction under the NZICA Act 1996 and preceding legislation which has been in effect for many years.

NZICA is currently enhancing its existing regulatory systems and processes to reflect their new statutory responsibilities. Any references in this report to the design of systems are in regard to the requirements of the current statutory regime only, and not their suitability in regard to the previous voluntary regime.

In the review period, NZICA undertook licensing activity and started to design systems to monitor and regulate licensed insolvency practitioners, looking to build on existing systems in place for other similar monitoring regimes. Given the activity undertaken in this initial review period was licensing, the Registrar's overall conclusion is that NZICA's systems are adequate and effective in order for NZICA to undertake this activity and comply with its obligations under the Act.

Now that the licencing stage of the regime is completed, NZICA will shift its focus to developing its systems relating to the ongoing monitoring of licenced insolvency practitioners required under the Act, which is not yet considered fully adequate and effective. The design work currently being undertaken by NZICA based on existing systems it has in place for other monitoring regimes is targeted at addressing this requirement. This will be a key focus in the next review period by the Registrar.

We acknowledge the work that NZICA plans to undertake to develop its systems and have highlighted some areas of continued focus and interest to the Registrar in its ongoing monitoring of NZICA under the regime. We have also made some development recommendations to NZICA.

About this report

The Act established a co-regulatory scheme for insolvency practitioners operating in New Zealand and requires insolvency practitioners in New Zealand to be licensed.

Anyone acting as an insolvency practitioner must hold a licence and act in accordance with the conditions of that licence. The regulatory regime applies to all insolvencies in New Zealand, regardless of where the insolvency practitioner is based.

Accredited bodies carry out frontline regulation of insolvency practitioners including issuing licences, setting professional standards, investigating complaints and potential breaches of these standards as well as taking disciplinary action where they have not been met.

Accredited bodies have a crucial role to play in the success of the insolvency practitioners regime as the frontline regulators of the profession.

The Registrar is responsible for overseeing accredited bodies, maintaining an online register of insolvency practitioners, and exercising other functions, powers and duties conferred by the Act with regards to monitoring the insolvency practitioner regulatory system.

The Act requires the Registrar to report on its monitoring of the accredited bodies regulatory systems, and the extent to which they are adequate and effective within the meaning of the Act, at intervals of not more than four (4) years.

NZICA is currently the only accredited body under the Act. This report contains the findings of the first review conducted by the Registrar and our monitoring assessment of NZICA for the Review Period.

About NZICA and its obligations

NZICA and the Institute of Chartered Accountants of Australia (ICAA) formally amalgamated on 1 January 2015 to form Chartered Accountants Australia and New Zealand (CAANZ). NZICA is the statutory body responsible for regulating New Zealand resident members of CAANZ.

NZICA was accredited by the Registrar under the Act on 18 August 2020 and must comply with standard conditions of accreditation.

The Act requires that accredited bodies implement and maintain regulatory systems that are adequate and effective. In the Act, regulatory systems are described as 'adequate and effective' if they are designed and operated in a manner that promotes quality, expertise, and integrity in the profession of insolvency practitioners as well as promotes compliance with the statutory duties of insolvency practitioners. Regulatory systems, in accordance with the Act, are the accredited body's systems and processes for performing its regulatory functions over insolvency practitioners which includes:

- a) considering applications for licences, issuing licences, and setting conditions of licences;
- b) adopting, implementing, and monitoring codes of conduct or ethics;
- c) monitoring compliance with any relevant standards relating to insolvency engagements;
- d) promoting, monitoring, and reviewing the ongoing competence of members;
- e) inquiring into the conduct of members;
- f) investigating complaints against members and former members;
- g) hearing complaints about, and taking disciplinary action against, members and former members; and
- h) dealing with appeals against decisions of the disciplinary body.

The Act also requires NZICA to provide to the Registrar a report and an annual confirmation primarily relating to the accredited body's performance in carrying out its regulatory functions for the purposes of the Act.

How we approached this review

In this Review Period, we reviewed and considered the design of NZICA's systems as well as tested the effectiveness of these systems by reviewing a sample of the activity undertaken during the Review Period. We also interviewed members of NZICA's Regulation and Conduct teams during an onsite visit in August 2022 and reviewed NZICA's report and annual confirmation. This, along with other monitoring of, and engagement with, NZICA throughout the period provided sufficient detail for the Registrar to undertake this review.

Overall assessment

In the Review Period, NZICA undertook licensing activity and started to design systems to monitor and regulate insolvency practitioners, looking to build on existing systems in place for other similar monitoring regimes. Given the activity undertaken in this Review Period was licensing, the Registrar's overall conclusion is that NZICA's systems are adequate and effective in order for NZICA to undertake this activity and comply with its obligations under the Act.

Due to the work that is being undertaken to enhance and build into existing processes, NZICA's systems in terms of ongoing monitoring of insolvency practitioners are not yet considered adequate and effective. This will be a key focus in the next review period by the Registrar.

We acknowledge the work that NZICA plans to undertake to develop its systems and have highlighted some areas of continued focus and interest to the Registrar in its ongoing monitoring of NZICA under the regime. We have also made some recommendations to NZICA.

Focus areas

Licensing and registration

During the Review Period, NZICA licensed 69 Accredited Body members, 48 Recognised Body members and 15 overseas practitioners. There were also 14 transitional license holders who did not obtain a full licence, due to the practitioner requesting cancellation, or not meeting the requirements.

For our review, we requested detailed information relating to all insolvency practitioner licence activity including where licences were approved and issued, cancelled, suspended, declined or expired and where any conditions were imposed or lifted. We undertook a review of a sample of the licence activity that took place during the Review Period.

We observed that NZICA followed licensing processes and kept adequate records and we made some recommendations to NZICA to further enhance its systems in this area. We also noted NZICA's intention to liaise further with the Registrar regarding additional licensing conditions that the Registrar should consider prescribing.

Regulatory systems and processes

We requested and obtained all required information relating to NZICA's policies and procedures to understand the design of its overarching regulatory regime and the codes of conduct and ethics adopted and implemented. We also held discussions with key staff.

The NZICA Regulatory Board receives updates on the Insolvency regime at each Board meeting to allow the Board to have sufficient oversight. The Regulatory Board Charter specifically covers its responsibilities and accreditation under the Act and to the Registrar.

Given the regime's infancy, the focus for NZICA in this first Review Period has been on licensing and it has started to build into its monitoring and oversight systems, leveraging from existing systems where appropriate. We made some recommendations to NZICA to further enhance its existing work programme in this area.

Surveillance and monitoring ongoing competence and compliance

We obtained information relating to NZICA's competency programme and monitoring arrangements in relation to competency and compliance checks. We also discussed surveillance and monitoring plans during our onsite review. Again, given the infancy of the regime and focus of NZICA in this initial period, our review focused on existing and intended monitoring plans.

We observed NZICA has a good system for carrying out practice reviews, CPD monitoring and continuous disclosure monitoring. Practice review is an integral part of NZICA's regulatory processes and the practice review process is being refined to fully reflect the requirements of the new regime.

Recognising NZICA is still building its monitoring systems, we made some recommendations for further refinement in this area and noted this will be a key focus of the Registrar's next review.

Complaints, enquiries and investigations

We reviewed a sample of concluded cases and obtained information regarding the status of complaints, enquiries and investigations undertaken in relation to licensed insolvency practitioners' conduct during the review period. We also held discussions with key NZICA staff on complaints, enquiries and investigations and the nature of such cases. We observed regular status updates being provided to the Board.

After reviewing relevant policies and processes we had no specific concerns in this area at this time relating to the new regime.

We observed that all complaints made against licensed insolvency practitioners were reviewed, and escalated as appropriate.

Disciplinary

We reviewed a sample of concluded cases and obtained information regarding the status of all conduct enquiries or complaints elevated to the Disciplinary Tribunal. We also held discussions with key NZICA staff and, again, observed status updates being provided to the Regulatory Board.

As the monitoring and enquiries commence under this new regime, it is of interest to the Registrar what types of conduct arise and what the outcomes of the disciplinary processes are. We have made a recommendation for NZICA to provide ongoing quarterly updates to the Registrar regarding the status of complaints and disciplinary matters.

Promoting ongoing competence

We obtained information relating to NZICA's promotion of ongoing competence, in addition to monitoring ongoing competence as covered above. We note that NZICA is working closely with the Restructuring, Insolvency & Turnaround Association of New Zealand (RITANZ) to provide relevant training to insolvency practitioners including a refresher on expectations under the new regime. Provision of education on insolvency law, practice and obligations for those undertaking insolvency engagements is one of the core objectives of RITANZ.

Additionally, CAANZ provides a wide range of relevant training to insolvency practitioners that complement the RITANZ offerings (for example training on the updated Quality Management standard which is relevant to Insolvency Practitioners).

Other

Registrar Notices and Direction

The Registrar describes below the extent to which NZICA has complied with notices and directions issued by the Registrar to an accredited body.

NZICA met the prescribed minimum standards in the Registrar's Insolvency Practitioners Regulation Act (Prescribed Minimum Standards for Accreditation) Notice 2020. As a result, NZICA was accredited by the Registrar under the Act on 18 August 2020.

NZICA has developed processes which incorporate the prescribed minimum standards for licensing, licence conditions and requirements for ongoing competence in the Registrar's Insolvency Practitioners Regulation Act (Prescribed Minimum Standards, Conditions, and Requirements for Ongoing Competence, for Licensed Insolvency Practitioners) Notice 2020. As a result, NZICA's systems for licensing have been determined by the Registrar to be adequate and effective.

NZICA has complied with the Registrar's Direction for an Accredited Body's Annual Confirmation and Report published on 23 July 2021 by providing an annual confirmation for 2021 and 2022, remitting annual confirmation fees to the Registrar in line with processes put in place between the Registrar and accredited body and providing an Accredited Body Report for the period ended 31 August 2021.

Future focus

The Registrar will take an active interest in NZICA's implementation of its recommendations and receive updates from NZICA regarding its progress.

The Registrar will undertake a further review of NZICA's regulatory systems in 2024, with a focus on NZICA's monitoring of ongoing competence and compliance processes and the results of its practice reviews.

The Registrar will provide a Direction regarding any amendments to the frequency, timing and period covered by the second and subsequent accredited body reports.