

House of Representatives

Supplementary Order Paper

Tuesday, 28 May 2019

Insolvency Practitioners Bill

Proposed amendments

Hon Kris Faafoi, in Committee, to move the following amendments:

Clause 2(1)

In *clause 2(1)(d)*, replace “**and 47**” (page 10, line 15) with “**to 48**”.

In *clause 2(1)(f)*, replace “certain members of recognised bodies and” (page 10, line 19) with “certain overseas practitioners, members of recognised bodies, and members of”.

In *clause 2(1)(g)*, replace “**92**” (page 10, line 21) with “**92B**”.

Clause 3E(1)

In *clause 3E(1)*, replace “a licensed insolvency practitioner who is permitted to act as an administrator of the company in accordance with **Parts 3 to 6 of the Insolvency Practitioners Act 2010** and not disqualified from appointment under **section 239F(2)**” (page 13, lines 30 to 33) with “a person who is permitted to act as an administrator of the company in accordance with **section 239F(1)**”.

Clause 4BB: new section 241AA

In *clause 4BB, new section 241AA(2)(b)*, delete “referred to in **subsection (1)**” (page 27, line 34).

In *clause 4BB, new section 241AA(3)*, delete “referred to in **subsection (1)**” (page 28, line 2).

Clause 4HB

In *clause 4HB*, replace “263(1)(a)” (page 36, line 4) with “263(3)(a)”.

Clause 5: new section 280(3)

In *clause 5, new section 280(3)(a)(i)*, replace “having” (page 37, line 38) with “that has”.

Clause 5C: new section 283

In *clause 5C(1), new section 283(1)(e)*, replace “**section 243A(5)**” (page 39, line 35) with “**section 243A(4)**”.

In *clause 5C(2A), new section 283(3A)*, replace “**section 243A(5)**” (page 40, line 8) with “**section 243A(4)**”.

Clause 6A: new section 296A(2)

In *clause 6A, new section 296A(2)*, replace “was made” (page 43, line 15) with “is made”.

Clause 15: new clause 6(1) of the Schedule

In *clause 15, new clause 6(1) of the Schedule*, replace “receiver,” (page 69, line 32) with “receiver”.

Clause 18(1)

In *clause 18(1)*, definition of **licensed insolvency practitioner**, replace “includes a person” (page 72, line 2) with “includes an overseas insolvency practitioner”.

In *clause 18(1)*, after the definition of **member** (page 72, after line 4), insert:

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

Clause 22A

In *clause 22A(1)*,—

(a) replace “**sections 21(1) and 22(2)**” (page 74, line 28) with “**section 21(1)**”;

(b) replace “undertake” (page 74, lines 31 and 32) with “carry out” in each place.

In *clause 22A(2)(a)(ii)*, after “carry out” (page 75, line 3), insert “in”.

Replace *clause 22A(3) to (6)* (page 75, lines 9 to 24) with:

(3) **Subsections (1) and (2)** cease to apply if,—

(a) 10 days after the person is appointed, the person has not applied for a licence under **section 22**; or

(b) the person’s application is declined.

(4) If **subsections (1) and (2)** cease to apply, the person must be treated as having resigned from the insolvency engagement and section 283 of the Companies Act 1993 applies accordingly.

- (5) An accredited body that receives an application from an overseas insolvency practitioner must, as soon as practicable after receiving the application, send to the Registrar notification of the application together with any other prescribed information.
- (6) In this section, **home jurisdiction**, in relation to an overseas insolvency practitioner, means a jurisdiction—
 - (a) that is Australia or a recognised jurisdiction; and
 - (b) in which the practitioner is entitled to carry out insolvency work.

Clause 32(1)

In *clause 32(1)(a)(i)*, replace “cancel or suspend” (page 79, line 31) with “suspend or cancel”.

In *clause 32(1)(b)*, replace “matter” (page 79, line 35) with “matters”.

Clause 33(2)

In *clause 33(2)*, replace “cancel or suspend” (page 80, line 16) with “suspend or cancel”.

Clause 71(2)

In *clause 71(2)*, replace “A” (page 99, line 32) with “In this section, a”.

Clause 79(2)

In *clause 79(2)*, after “must not” (page 103, line 28), insert “, without the leave of the court,”.

Clause 83(4)

In *clause 83(4)*, after “Registrar while” (page 106, line 31), insert “the Registrar or authorised person is”.

Subpart 3 heading in Part 6

In *Part 6*, in the *subpart 3 heading*, after “Regulations” (page 110, line 4), insert “and levy provisions”.

Clause 92(2)

In *clause 92(2)*, replace “**subsection (1)(f) or (h)**” (page 111, line 3) with “**subsection (1)(e) or (g)**”.

New clauses 92A and 92B

After *clause 92* (page 111, after line 11), insert:

92A Levy of persons registered or incorporated under certain Acts

- (1) Every company, or every company that is included in a prescribed class of companies, must pay to the Crown, or a prescribed person on behalf of the Crown, a levy prescribed by regulations.
- (2) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations providing for the levies.
- (3) Levies must be prescribed on the basis that the following costs should be met fully out of the levies:
 - (a) a portion of the costs of the Registrar in performing or exercising the Registrar's functions, powers, and duties under **Parts 3 to 6**, where the size of the portion to be met by levies under **Parts 3 to 6** is determined by the Minister; and
 - (b) the costs of collecting the levy money.
- (4) Levies may be prescribed on the basis that any actual cost that could have been, but has not been, recovered as a levy shortfall for a year may be recovered (along with any financing charge) over any period of up to 5 years.
- (5) The regulations may—
 - (a) specify the class or classes of companies that are required to pay a levy:
 - (b) specify the amount of levies, or method of calculating or ascertaining the amount of levies:
 - (c) include in levies, or provide for the inclusion in levies of, any shortfall in recovering the actual costs:
 - (d) refund, or provide for refunds of, any over-recovery of the actual costs:
 - (e) provide for the payment and collection of levies:
 - (f) provide different levies for different classes of companies:
 - (g) specify the financial year or part financial year to which a levy applies, and apply that levy to that financial year or part financial year and each subsequent financial year until the levy is revoked or replaced:
 - (h) for the first financial year to which a levy applies, include in a levy amount or method the costs relating to establishing the register:
 - (i) require payment of a levy for a financial year or part financial year, irrespective of the fact that the regulations may be made after that financial year has commenced:

- (j) provide for waivers or refunds of the whole or any part of a levy for any case or class of cases.
- (6) If a company is in 2 or more classes of companies in respect of which different levies have been prescribed, the company must pay each of those levies (unless the regulations provide otherwise).
- (7) The amount of any unpaid levy is recoverable in any court of competent jurisdiction as a debt due to the Registrar, or to any other person prescribed for the purposes of this subsection, on behalf of the Crown.

Compare: 2011 No 5 s 68

92B Minister must consult about levy regulations

- (1) Before recommending the making of regulations under **section 92A**, the Minister must consult—
 - (a) the persons or organisations that the Minister considers are able to represent the views of the companies that will be liable to pay a levy under the proposed regulations; and
 - (b) any other representatives of persons whom the Minister believes to be significantly affected by the proposed regulations.
- (2) Regulations made under **section 92A** are not invalid on the grounds that—
 - (a) **subsection (1)** was not complied with before the Minister recommended the making of the regulations; or
 - (b) the consultation carried out was about a specific rate or specific rates of levy that differ from the rate or rates set in the regulations.

Schedule 1: new Part 2 of Schedule IAA of Companies Act 1993

In *Schedule 1, new Part 2 of Schedule IAA of the Companies Act 1993, clause 5*, definition of **commencement date**, after “replaced,” (page 112, line 10), insert “repealed,”.

In *Schedule 1, new Part 2 of Schedule IAA of the Companies Act 1993, clause 6* (page 112, after line 27), insert as subclause (2):

- (2) **Subclause (1)(c)** applies subject to **clause 5(2) to (4) of Schedule 4 of Parts 3 to 6 of the Insolvency Practitioners Act 2010**.

In *Schedule 1, new Part 2 of Schedule IAA of the Companies Act 1993, clause 7(1)(b)*, after “commencement date” (page 112, line 34), insert “of the old provision under which the order is made”.

Schedule 2

In *Schedule 2, Part 1*, item relating to Insurance (Prudential Supervision) Act 2010, replace the items relating to section 158(1) (page 114, lines 18 to 20) with:

Section 158(1): omit “239AI,” and substitute “**239AMB(3)**,”.

Section 158(1): omit “and 257(1)(a)(i) or (ii)” and substitute “**245C(3)**, and 257(1)(a)(i) and (ii) and **(c)**”.

Schedule 3: new Schedule 1AA of Receiverships Act 1993

In *Schedule 3, new Schedule 1AA of the Receiverships Act 1993, clause 1*, definition of **commencement date**, after “replaced,” (page 116, line 13), insert “repealed,”.

In *Schedule 3, new Schedule 1AA of the Receiverships Act 1993, clause 3(1)(b)*, after “commencement date” (page 116, line 29), insert “of the old provision under which the order is made”.

Schedule 4

In *Schedule 4, clause 1*, replace the definition of **commencement date** (page 117, lines 17 and 18) with:

commencement date means the date on which **section 21** comes into force

In *Schedule 4, clause 3(c)*, delete “suspended or” (page 118, lines 10 and 11) in each place.

In *Schedule 4*, after *clause 5(1)(b)* (page 119, after line 5), insert:

(ba) a company under a deed of company arrangement under Part 15A of the Companies Act 1993 for which the deed of company arrangement was executed before the commencement date; or

In *Schedule 4, clause 5(2)*,—

(a) delete “, on the commencement date,” (page 119, line 11):

(b) after “Companies Act 1993” (page 119, line 14), insert “(as amended by **Part 1 of the Insolvency Practitioners Act 2010**)”.

In *Schedule 4, clause 5(3)(a)*, replace “the Companies Act 1993;” (page 119, lines 18 and 19) with “that Act;”.

In *Schedule 4*, replace *clause 5(3)(b)* (page 119, lines 20 and 21) with:

(b) the liquidator has not called (and is not required to call) a meeting of creditors of the company under section 244 of the Companies Act 1993.

In *Schedule 4, clause 5(4)*, after “of a company,” (page 119, line 22), insert “**sections 280 and 283A** of the Companies Act 1993 (as amended and inserted by **Part 1 of the Insolvency Practitioners Act 2010**) and”.

Explanatory note

This Supplementary Order Paper amends the Insolvency Practitioners Bill by making a number of minor and technical amendments to ensure the Bill works as intended.

This Supplementary Order Paper also makes one substantive change. New *clauses 92A and 92B* enable regulations to be made that would impose a levy. The levy would cover a portion of the costs of the Registrar of Companies in providing independent oversight of the insolvency practitioners licensing regime. The levy would be payable by companies or a class of companies. (Note that, in *Parts 3 to 6* of the Bill, “company” also includes other types of entities that can be liquidated under Part 16 of the Companies Act 1993.)

Departmental disclosure statement

The Ministry of Business, Innovation, and Employment is required to prepare a disclosure statement to assist with the scrutiny of this Supplementary Order Paper. The disclosure statement provides access to information about any material policy changes to the Bill and identifies any new significant or unusual legislative features of the Bill as amended.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=sop&subtype=government&year=2019&no=240&>

Regulatory impact assessment

The Ministry of Business, Innovation, and Employment produced a regulatory impact assessment on 1 March 2019 to help inform the new policy decisions taken by the Government relating to the contents of this Supplementary Order Paper.

A copy of this regulatory impact assessment can be found at—

- <https://www.mbie.govt.nz/dmsdocument/5336-insolvency-practitioners-sop-regulatory-impact-statement>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>