

Short-Form Supplementary Departmental Disclosure Statement

Insolvency Practitioners Bill

A short form supplementary disclosure statement for proposed government amendments to a Bill seeks to bring together in one place some selected information to support and enhance the Parliamentary and public scrutiny of those proposed amendments.

It highlights certain significant powers or features in the proposed amendments that might be of particular Parliamentary or public interest and warrant an explanation.

It provides a limited supplement to the original disclosure statement for the Insolvency Practitioners Bill – Supplementary Order Paper, dated June 2018, which can be found at this link <http://disclosure.legislation.govt.nz/sop/government/2018/45>

This supplementary disclosure statement was prepared by the Ministry of Business, Innovation and Employment.

The Ministry of Business, Innovation and Employment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

8 May 2019

Significant Legislative Features

Offences, penalties and court jurisdictions

1. Do the proposed amendments create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalties)?	NO
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	YES
<p>The amount of any unpaid levy is recoverable by the Registrar of Companies in court as a debt due to the Registrar.</p> <p>This is a standard part of a charging provision to ensure that amounts due are able to be recovered.</p>	

Privacy issues

2. Do the proposed amendments create, amend, or remove any provisions relating to the collection storage, access to, correction of, use or disclosure of personal information?	NO
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Compulsory acquisition of private property

3. Do the proposed amendments contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4. Do the proposed amendments create or amend a power to impose a fee, levy or charge in the nature of a tax?	YES
<p>The SOP inserts new Clauses 92A and 92B into the Bill, which enable regulations to be made that would impose a levy. The levy would cover a portion of the costs incurred by the Registrar of Companies in providing independent oversight of the insolvency practitioners licensing regime.</p> <p>The levy would be payable by companies (within the meaning of Parts 3 to 6 of the Bill) or a class of companies. This definition of company is expansive and applies to all types of entities that can be liquidated under the <i>Companies Act 1993</i> (e.g. limited partnerships). It is foreseeable that different classes of company will be charged a different levy.</p> <p>We anticipate that this levy will be collected at the same time as when an entity makes its annual filings and would be payable alongside other levies collected at that time (such as the Financial Markets Authority levy).</p> <p>We consider that this power to levy companies is necessary because collecting the full amount of the estimated cost of oversight (between \$750,000 and \$1 million) from insolvency practitioners would result in annual fees for practitioners of between \$7,500 and \$10,000 a year. Costs of this level could harm competition by driving smaller practitioners out of business. We also expect that these costs would be passed on to businesses in the form of higher fees by those practitioners. These issues are avoided by spreading the costs of providing independent oversight of insolvency practitioners across all companies.</p> <p>The Minister (responsible for the administration of the Act) will be required to consult about the setting of the levies, and the regulations setting these levies will have scope to, among other things:</p> <ul style="list-style-type: none">• provide for refunds of any over-recovery of the actual costs of providing independent	

oversight of insolvency practitioners
<ul style="list-style-type: none"> provide for waivers or refunds of the whole or any part of a levy.

Retrospective effect

5. Do the proposed amendments affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the burden of proof for offences

6. Do the proposed amendments:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for any offence or civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

7. Do the proposed amendments create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

8. Do the proposed amendments create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

9. Do the proposed amendments create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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10. Do the proposed amendments create or amend any other powers to make delegated legislation?	YES
<p>The SOP inserts new Clause 92A into the Bill, which enables regulations to be made for the purpose of setting the levy discussed above.</p> <p>The regulations will provide for the matters of detail necessary to implement a levy to cover a portion the costs of the Registrar of Companies in providing independent oversight of the insolvency practitioners licensing regime.</p> <p>The Minister (responsible for the administration of the Act) is required to consult interested parties before making any changes to the levies.</p> <p>The Regulations will be drafted by the Parliamentary Counsel Office, subject to Cabinet scrutiny, and will not come into force until at least 28 days after their making. In addition, any regulations made will be subject to disallowance under the Legislation Act 2012 and to review by the Regulations Review Committee under Standing Order 314.</p>	

Any other unusual provisions or features

11. Do the proposed amendments contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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