

Privacy Commissioner's submission to the Economic Development, Science and Innovation Committee on the Insolvency Practitioners Bill (including Supplementary Order Paper 45)

Introduction

1. The functions of the Privacy Commissioner include examining new legislation for its possible impact on individual privacy. Central to that examination is the principle that policy and legislation should be consistent with privacy rights unless there is very good reason (and evidence) to override those rights.
2. The Insolvency Practitioners Bill (the Bill), as introduced in 2010, sought to strengthen the regulation of insolvency practitioners by using a negative licensing system and providing the Registrar of Companies the power to restrict or prohibit individuals from providing corporate insolvency services.
3. The select committee recommended replacing the negative licensing system with a registration framework, under which all insolvency practitioners would instead be required to be registered. This recommendation was subsequently adopted and Supplementary Order Paper No 45 (the SOP) was subsequently drafted to provide for the new regulatory approach. As the SOP substantially amends the Bill, the Minister of Commerce and Consumer Affairs has referred the Bill back to select committee.
4. This submission focuses on Clause 42 of Subpart 3 of the SOP which provides for a register of licenced insolvency practitioners to be maintained by the Registrar of Companies. In particular, I make reference to the suppression mechanism included as a result of comments made by my Office during consultation with the Ministry of Business, Innovation and Employment (the Ministry) during the development of the SOP.

Protecting the privacy and personal safety of individuals

5. The purpose of the register of licenced insolvency practitioners is to enable any person to determine whether a person is a licensed insolvency practitioner and, if so, the status and relevant history of the person's licence (including which practitioners have been disciplined within the preceding 7 years) and to choose a suitable practitioner to carry out particular insolvency work.

6. I was consulted on the draft SOP before it was referred back to Select Committee. While I was comfortable with the personal information to be recorded on the register I noted that the Bill allows for additional unspecified personal information ("*any other prescribed information*") to be recorded. I considered that it was important to have a compensating mechanism to suppress additional prescribed information recorded on the register in some situations.
7. I recommended that a suppression mechanism be included in the Bill to enable the Registrar to suppress personal information from the register in cases where personal safety issues arise. I suggested Section 239 of the Land Transport Act as a model.
8. I was pleased to note that the Ministry acted on my advice and Subclause 42(4) is included in the SOP as follows:

The Registrar may, despite subsection (1), omit or remove any information about an insolvency practitioner from the publicly available register if—

(a) the person requests the Registrar to do so on the basis that the information is personal information; and

(b) the Registrar considers that the disclosure of the information on the publicly available register would be likely to prejudice the privacy or personal safety of any person.

9. I do not seek to speak to this submission but would be pleased to appear before the Committee should the Committee find that helpful in its consideration of this Bill.



John Edwards
Privacy Commissioner

22 August 2018