

Regulatory Impact Statement

NZICA and ICAA merger reforms

Agency Disclosure Statement

- 1 This Regulatory Impact Statement has been prepared by the Ministry of Business, Innovation and Employment.
- 2 It provides an analysis of options to allow the New Zealand Institute of Chartered Accountants (NZICA) the commercial freedom to structure itself in a manner that is efficient and best for its members' interests, while ensuring NZICA's regulatory function continues to be performed to a high standard. The driver for this work is a request from NZICA, as it explores a merger with the Institute of Chartered Accountants Australia (ICAA). The paragraphs explaining the benefits of such a merger assume the membership would vote in favour of the proposal, but the principle of allowing commercial freedom applies regardless.
- 3 The analysis in this paper relies heavily on consultation with NZICA. Our analysis is therefore potentially constrained by a lack of wider consultation. However, the relevant public benefit elements relate to NZICA's regulatory function and our recommended option would ensure this function continues to be performed to the current high standard. The material changes proposed in this paper relate solely to NZICA's structure. NZICA members, as those directly affected, will have a full opportunity to comment and vote on this proposal. Therefore, we believe that wider public consultation is not necessary.
- 4 We also do not have quantifiable evidence for the potential benefits of the proposal. Many of the potential benefits are based on NZICA's current intentions and cannot be predicted with certainty. However, we believe that NZICA members are best placed to decide the likelihood of the suggested benefits and would indicate their views in the NZICA vote.

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Status Quo and Problem Definition

- 5 NZICA is a New Zealand-based professional membership body for practising accountants. NZICA proposes to merge with its Australian counterpart, the ICAA, but is prevented from doing so by its statutory functions which cannot be transferred to or performed by another. These functions include a role with a public interest component, that of regulating NZICA's members.
- 6 NZICA is a body corporate created by the New Zealand Institute of Chartered Accountants Act 1996 (NZICA Act), with the following functions:
 - a. To promote quality, expertise, and integrity in the profession of accounting by its members in New Zealand
 - b. To promote, control and regulate the profession of accountancy by its members in New Zealand
 - c. To promote the training, education and examination of persons practising, or intending to practice, the profession of accountancy in New Zealand or elsewhere
 - d. Any other function that are conferred on it by the NZICA rules.
- 7 NZICA's regulatory function is of particular public benefit. It encompasses the following aspects:
 - Performing the disciplinary and complaints functions specified in the NZICA Act
 - Monitoring compliance with the NZICA Act regarding the use of NZICA designations such as "Chartered Accountant" and "CA"
 - Fulfilling the duties of being an accredited body under the ARA
 - Undertaking quality reviews under the ARA in accordance with NZICA's contract with FMA
 - Monitoring compliance with other NZ legislation applicable to members e.g. the Financial Advisers Act 2008
 - Undertaking practice review of NZ public practitioners in accordance with NZICA rules
 - Monitoring compliance with self-regulatory initiatives affecting members accepting audit and insolvency engagements.
- 8 NZICA has 33,000 members, with 27,000 operating in New Zealand, making it the largest professional accounting body in New Zealand. By way of comparison, the second-largest (CPA Australia) has 993 members in New Zealand. Eight other overseas-constituted professional bodies may operate in New Zealand but we believe they have a negligible presence.¹
- 9 NZICA considers itself, and we agree, to have two distinct faces: it is set up by statute and has a regulatory function which serves the public interest, but simultaneously it is a commercial body operating in the private sector, funded by membership fees and competes for members with other professional bodies. It discharges its regulatory function over its members only. Therefore, as long as the regulatory function continues to be performed in a robust manner, without undue outside influence, we consider it is up to NZICA and its membership to decide how to organise themselves.

¹ These eight are approved under s199 of the Companies Act, which allows their members to conduct non-issuer statutory audits in New Zealand if they are eligible to do so in their home jurisdiction.

- 10 The drivers behind the proposed merger are that accounting professionals have an increased choice of membership bodies and there is a trend towards regional and global membership bodies, rather than national. NZICA has concluded that an Australasian body would improve its offering to members, enabling it to provide better services and be a stronger voice.
- 11 However, NZICA cannot merge with another organisation under the current statutory arrangement. Courts have interpreted analogous statutes and decided that functions must be discharged by the body that has been given the function. This indicates NZICA's functions must be discharged by NZICA, and not delegated or transferred to another body. NZICA has approached the government seeking a legislative amendment to the NZICA Act to enable its functions to be discharged by a body other than NZICA.
- 12 NZICA's members must vote with a 50% majority to approve any merger. NZICA and ICAA intend to proceed to a member vote in November 2013. NZICA has asked the government for an in-principle agreement to facilitate the legislative change, and to begin the legislative process (including drafting the necessary amendments and introducing the Bill to the House) in advance of that vote. NZICA reports that ICAA is keen for movement on the merger as soon as possible, to give certainty to staff whose jobs will be significantly affected by the change. Delay creates the risk that ICAA will pull out of the proposed merger.

Objectives

- 13 The objectives of this policy are:
- To ensure the regulatory function continues to be performed to a high standard without risk of undue outside influence, while
 - Allowing NZICA the commercial freedom to structure itself in a manner that it considers is efficient and will enhance the value it provides to members.

Regulatory Impact Analysis

- 14 The available options are summarised in the below table, with the preferred option highlighted. Each option is then discussed in the text following.

Option	Considerations against the objectives
a) Do nothing (status quo)	Does not give NZICA commercial freedom to structure itself – expressly prohibits the change NZICA is considering
b) Amend the Act so NZICA may change its structure without allowing it to merge	Same as above.
c) Amend the Act so all of NZICA's functions may be performed by another body	May not ensure a high standard in the performance of the regulatory function, as Australia has a different regulatory system.
d) Preferred option: amend the Act so all except the regulatory function may be performed by another body	Promotes a high standard in the performance of the regulatory function. Partially meets the second objective as NZICA may merge, although must retain a core of its existing entity.
e) Repeal the NZICA Act entirely	Poses a risk to the quality of the regulatory function. NZICA also believes that this option would derail the planned merger process.

a) *Do nothing (status quo)*

15 The first option is to decline to make any legislative changes. The government could suggest to NZICA that it instead negotiate an alliance with ICAA falling short of a formal merger.

16 This is the safest way to ensure NZICA's regulatory function continue to be performed without risk of undue outside influence and maintain the current standard.

17 However, it does not meet the second objective. The NZICA board believes the proposed merger is the best option for their members in an increasingly global market. Declining to make the necessary legislative changes would mean the law would stand in the way of a commercial decision. This is not an optimal situation when there is no apparent market failure.

18 We do not recommend this option. In our view, we can ensure the regulatory function is performed properly through other options.

b) *Allow NZICA to change its structure without allowing it to merge*

19 The NZICA Act could be amended to allow NZICA more freedom to structure itself, without going as far as allowing it to merge entirely with ICAA.

20 This option would give NZICA some flexibility to structure itself more efficiently, while (if carefully structured) ensuring its regulatory function remains performed by the body itself.

21 This option does not meet the second objective, as it expressly prohibits the change NZICA considers is efficient and is in its members' interests. The legislative change would involve significant government and Parliament input but may remain unutilised by NZICA. Therefore, we do not recommend it.

c) *Amend the NZICA Act to allow NZICA to merge and enable all of NZICA's functions to be performed by another body*

22 The NZICA Act could be amended to allow NZICA to change its structure, including allowing its functions to be performed by another body approved by NZICA's board. This would meet the second objective as it would enable the proposed merger with ICAA.

23 Enabling this merger would be consistent with the Government's Single Economic Market objectives with Australia. While it cannot yet quantify the benefits of a merger, NZICA expects the new merged entity would improve its members' international competitiveness through:

- More resources to market the CA brand
- Improved education and member services
- Representation from a larger, more influential, regional body
- Greater trans-Tasman connectivity
- Cost savings through sharing capital expenditure.

- 24 Together, NZICA and ICAA aim to expand into Asian markets. This could contribute to New Zealand's economic growth through the direct export of services, e.g. through providing education and may also enhance the reputation of trans-Tasman auditors and audit practices in Asia. The merger is also likely, however, to increase the membership fees payable by New Zealand accountants. We don't have enough evidence to assess independently whether the merger is in NZICA's members' best interests. However, we believe NZICA's members are best placed to weigh up the costs and expected benefits. Their views would be indicated through NZICA's planned consultation and the member vote scheduled for November 2013.
- 25 There is a risk of a perception that the proposed merger might result in a net migration of accounting professionals to Australia, hollowing out the New Zealand market. NZICA believes this perception is unfounded. There is already a high degree of reciprocity between NZICA and ICAA, so New Zealand Chartered Accountants have been able to work in Australia for some time with relative ease. The expected improvement in member and education services available to New Zealand members may also encourage more to stay in New Zealand. Moreover, if increased migration were to occur, MFAT notes that CER has demonstrated the advantages to both New Zealand and Australia of increased labour mobility, with long term benefits gained in enabling professionals to sell services wherever the demand is in the trans-Tasman economy. This has recently been validated by the New Zealand and Australian Productivity Commissions' joint study on strengthening trans-Tasman economic relations.
- 26 This option poses a risk to the first objective. Australia has a notably different regulatory regime to New Zealand, with fewer requirements on professional bodies and more direct regulation by ASIC. New Zealand's regime is heavily based on self-regulation by professional accounting bodies. We consider it is important the standard of regulation in New Zealand is maintained.
- 27 If the regulatory function was no longer required to be performed by NZICA but could be performed by the new trans-Tasman institute, there is a risk that the necessary resources may not be applied and the quality may drop. This risk is partially mitigated as some parts of the regulatory function are independently overseen. For example, the Financial Markets Authority (FMA) oversees NZICA as a professional body accredited to license and regulate issuer auditors under the Auditor Regulation Act 2011 (ARA).
- d) *Amend the Act to allow NZICA to merge and enable some of NZICA's functions, excluding the regulatory function, to be performed by another body*
- 28 The NZICA Act could be amended to allow all functions except the regulatory function to be performed by a suitable body approved by NZICA's board. Under this option, the existing body corporate of NZICA would retain the powers, and would be obliged to retain the necessary resources, to fulfil the existing regulatory function.
- 29 This option almost completely meets the second objective: it would enable NZICA to merge with ICAA, although a core NZICA entity (a board, with independent control of this function and sufficient resources) would need to be retained. It meets the first objective of ensuring the regulatory function continues to be performed without risk of undue outside influence and to a high standard.
- 30 This option would incur the benefits listed under option c), while avoiding the risk identified in paragraphs 26 and 27. This option is supported by NZICA. As it is the option that goes furthest towards achieving both objectives, this is our preferred option.

e) *Repeal the NZICA Act*

- 31 Another option is to repeal the NZICA Act entirely. NZICA would no longer have statutory functions and would be free to decide its own structure. This option would meet the second objective and would be a simple action for Parliament. However, NZICA's regulatory function would no longer be enshrined in statute. Although NZICA may retain its functions in another form the risk to the first objective, outlined in paragraph 26 and 27 above, would arise.
- 32 NZICA does not prefer this option as it claims that proposing a repeal of the Act now would derail the current amalgamation process by putting the timeframes agreed with ICAA at risk. A repeal of the Act would require a repeal risk project to fully identify the implications for existing legal agreements and other legislation and a consultation process with stakeholders and affected parties. For these reasons, we do not recommend this option.

Conclusions and Recommendations

- 33 Our view is that the government should allow NZICA to decide its own structure, including whether to merge with ICAA. We recommend that:
- The NZICA Act be amended to allow the transfer of some of its functions to another suitable body, approved by NZICA's board, while
 - The regulatory function remains with NZICA.
- 34 This option goes a long way towards allowing NZICA the commercial freedom to structure itself in a manner that is efficient and best for its members' interests. It also best meets the objective of ensuring the regulatory function continues to be performed to a high standard, reflecting the fact that Australia has a significantly different regime to New Zealand. While New Zealand has opted for co- and self-regulatory regimes for auditors, it would be useful to monitor trans-Tasman industry dynamics to determine whether a harmonised regime ought to be considered sometime in the future.
- 35 A risk of this option is that the benefits expected by NZICA and noted in paragraphs 23 and 24 will not eventuate, as NZICA can provide no evidence of why they expect them. If it eventuates, the outcome could be that NZICA spends a significant amount of members' money for which they see no benefit. However, as outlined above, we believe the matter of how to structure itself is a commercial decision for NZICA and its members, that they are best placed to decide what is in their best interests, and it is not the government's role to second guess them.
- 36 Our view is that the government should give NZICA a degree of certainty before its member vote, with a Cabinet decision in principle and beginning the legislative process to implement the proposals, drafting amendments and introducing a Bill.

Consultation

- 37 This proposal has been developed in close consultation with NZICA management. NZICA intends to consult widely with its members on the proposed merger between May and July 2013. Based on the feedback from that consultation, the NZICA and ICAA boards will resolve whether to put the matter to a formal vote (to be held in November 2013) in July.
- 38 We do not believe it is necessary to consult beyond NZICA membership on this proposal as it is a commercial decision made by the members about how to organise themselves.

Implementation

- 39 This proposal requires legislative change to the NZICA Act to enable all functions except the regulatory function to be performed by a suitable body approved by NZICA's board. The implementation of any resulting merger is a commercial matter for NZICA and ICAA.

Monitoring, Evaluation and Review

- 40 We would monitor whether NZICA's regulatory functions continue to be performed without undue outside influence and to a high standard following any merger that results from this proposal. We would do this by noting any complaints to the Minister of Commerce or MBIE and through regular communications with NZICA, the merged body, and those close to the audit market such as other accredited bodies, the Registrar of Companies and the FMA. We would also continue to monitor trans-Tasman industry dynamics to determine whether a harmonised regime ought to be considered sometime in the future.