

2014

EXPOSURE DRAFT

INSOLVENCY LAW REFORM BILL 2014

EXPLANATORY MATERIAL

(Circulated by the authority of the,
Treasurer, the Hon J. B. Hockey MP
and the Attorney-General, the Hon Senator G. Brandis)

Table of contents

Glossary	1
Chapter 1 General Introduction.....	3
Chapter 2 Introduction — Insolvency Practice Schedule (Bankruptcy).....	5
Chapter 3 Registration and disciplining registered trustees	19
Chapter 4 Remuneration and regulation of trustees	53
Chapter 5 Introduction — Insolvency Practice Schedule (Corporations)	111
Chapter 6 Registration and discipline of registered liquidators	115
Chapter 7 General rules relating to external administrations	159
Chapter 8 Regulator powers and miscellaneous amendments	221

Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
AAT	Administrative Appeals Tribunal
AFSA	Australian Financial Security Authority
ARITA	Australian Restructuring Insolvency and Turnaround Association
ASIC	The Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
Bankruptcy Act	<i>Bankruptcy Act 1966</i>
Bankruptcy Regulations	<i>Bankruptcy Regulations 1996</i>
Bill	Insolvency Law Reform Bill 2014
CALDB	The Companies Auditors and Liquidators Disciplinary Board
COI	Committee of inspection
Corporations Act	<i>Corporations Act 2001</i>
Insolvency practitioner	Collective term for both registered liquidators and registered trustees
ITSA	Insolvency and Trustee Service Australia
options paper	<i>Options Paper: A modernization and harmonization of the regulatory framework applying to insolvency practitioners in Australia, Australian Government, June 2011</i>
proposals paper	<i>Proposals Paper: A modernization and harmonization of the regulatory framework applying to insolvency practitioners in Australia, Australian Government, December 2011</i>
Senate Inquiry Report	<i>The regulation, registration and remuneration of insolvency practitioners in Australia: the case for a new framework, Senate Economics References Committee, September 2010</i>
Acts	Corporations Act and the Bankruptcy Act

Chapter 1

General Introduction

Outline

1.1 The Insolvency Law Reform Bill 2014 (Bill) amends the *Corporations Act 2001* (Corporations Act), the *Australian Securities and Investments Commission Act 2001* (ASIC Act) and the *Bankruptcy Act 1966* (Bankruptcy Act) to create common rules that would:

- remove unnecessary costs and increase efficiency in insolvency administrations;
- align and modernise the registration and disciplinary frameworks that apply to registered liquidators and registered trustees;
- align and modernise a range of specific rules relating to the handling of personal bankruptcies and corporate external administrations;
- enhance communication and transparency between stakeholders;
- promote market competition on price and quality;
- improve the powers available to the corporate regulator to regulate the corporate insolvency market and the ability for both regulators to communicate in relation to insolvency practitioners operating in both the personal and corporate insolvency markets; and
- improve overall confidence in the professionalism and competence of insolvency practitioners.

1.2 Sections 1, 2 and 3 of the *Insolvency Law Reform Act 2014* will commence on the day the Bill receives Royal Assent.

1.3 The Insolvency Practice Schedule (Bankruptcy) will commence on a day to be fixed by Proclamation. The Insolvency Practice Schedule (Corporations) will commence at the same time as the Insolvency Practice Schedule (Corporations). The Government will decide the date of Proclamation. However, for purposes of the consultative process, it is

anticipated that the commencement date will be 1 February 2016. This is based on the assumption that the Bill would be passed by the Parliament during the second half of 2015 and that ASIC would require some time to undertake an IT build in relation to new systems to administer the reforms. The identification of a commencement date (which is subject to the Government's ultimate decision) is also necessary for purposes of some of the transitional provisions in the draft legislation which identify the timing for initial action to be taken under the new requirements, for example, the first financial year that will apply in relation to an annual administration return.

Chapter 2

Introduction — Insolvency Practice Schedule (Bankruptcy)

Outline of chapter

2.1 Schedule 1 to the Bill inserts the Insolvency Practice Schedule (Bankruptcy) (the Schedule) as Schedule 2 to the Bankruptcy Act.

2.2 Part 1 of the Schedule contains an Introduction to the Schedule which sets out the object of the Schedule, a simplified outline of the Schedule and the Dictionary of definitions.

Context of amendments

2.3 Two of the key objectives of the Bill are to align and modernise the registration and disciplinary frameworks that apply to registered liquidators and registered trustees and also to align and modernise a range of specific rules relating to the handling of corporate external administrations and personal bankruptcy. This is achieved by introducing new Schedules into the Bankruptcy Act and the Corporations Act containing common rules in relation to these subject matters.

Summary of new law

2.4 The Schedule has three objectives:

- to ensure that any person registered as a trustee:
 - has an appropriate level of expertise;
 - behaves ethically; and
 - maintains sufficient insurance to cover his or her liabilities in practising as a registered trustee;
- to ensure that the Inspector-General has the necessary powers to protect the integrity of the personal insolvency system; and

- to regulate the administration of bankruptcies and personal insolvency agreements to give greater control to creditors.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
<p>The concept of “regulated debtor” is used in the schedule. The concept of a “regulated debtor” encompasses:</p> <ul style="list-style-type: none"> • a bankrupt ; or • a person whose property is subject to control under Division 2 of Part X of the Bankruptcy Act; or • a debtor under a personal insolvency agreement; or • a deceased person whose estate is being administered under Part XI. 	<p>There is currently no all-encompassing definition in the Bankruptcy Act that captures all of the different circumstances captured by “regulated debtor”.</p>
<p>The Minister may make the <i>Insolvency Practice Rules</i> by legislative instrument for matters required or permitted by the Schedule to be made.</p>	<p>The Minister does not have the power to make such rules.</p>

Detailed explanation of new law

2.5 A new section 4A is inserted into the Bankruptcy Act. The new section provides that the Insolvency Practice Schedule (Bankruptcy) (the Schedule) has effect. [*Schedule 1 Amendments relating to the Insolvency Practice Schedule (Bankruptcy), Part 1, item 1*]

2.6 The Insolvency Practice Schedule (Bankruptcy) (the Schedule) is inserted into the Bankruptcy Act. [*Schedule 1 Amendments relating to the Insolvency Practice Schedule (Bankruptcy), Part 1, item 2*]

2.7 The Dictionary defines terms used in the Schedule. In some cases, the definition is a signpost to another provision in the Schedule in which the meaning of the term is explained. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 1, Division 2, Subdivision B, section 5-5*]

2.8 Subdivision C of Division 2 defines: current conditions, regulated debtor, regulated debtor's estate, meaning of trustee of a regulated debtor's estate and references to the trustee of a regulated debtor's estate. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 1, Division 2, Subdivision C, section 5-10, 5-15, 5-16, 5-20 and 5-25*]

2.9 A provision of Schedule 2 does not apply to the Official Trustee unless the provision is expressed to apply to the Official Trustee. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 1, Division 3, section 6-1*]

Consequential amendments

Definitions-Bankruptcy Act

2.10 A new definition of **approved form** is inserted under section 6D of the Insolvency Practice Schedule (Bankruptcy). The definition of 'approved form' in subsection 5(1) is accordingly repealed. [*Schedule 1, Part 2, item 3*].

2.11 Section 185 of the Bankruptcy Act contains a definition of **bank**, however this only applies to debt agreements in Part IX. A new definition of 'bank' is inserted to apply to the entire Act. The definition clarifies that 'bank' includes an ADI and any other bank [*Schedule 2, Part 2, item 4*]. The following sections are amended to repeal existing definitions of 'bank' which currently only have limited application within various provisions of the Bankruptcy Act:

- Subsection 125(3) [*Schedule 1, Part 2, item 40*]
- Section 185 [*Schedule 1, Part 2, item 59*]

2.12 The phrase 'working day' is currently used in the Bankruptcy Act. In view of updated drafting conventions, the Schedule replaces the phrase 'working day' with 'business day'. A new definition of **business day** is accordingly inserted in subsection 5(1) of the Bankruptcy Act [*Schedule 2, Part 2, item 5*]. The following consequential changes are made to delete 'business day' and insert 'working day' throughout the Act:

- Subsection 73(1A) [*Schedule 1, Part 2, item 26*]
- Section 139ZIB [*Schedule 1, Part 2, item 42*]
- Subparagraph 139ZIE(1)(a)(i) [*Schedule 1, Part 2, item 43*]
- Subsection 139ZIE(5) [*Schedule 1, Part 2, item 44*]
- Paragraph 139ZIF(1)(a) [*Schedule 1, Part 2, item 45*]
- Section 185 [*Schedule 1, Part 2, item 62*]
- Subsections 185LB(1), 185LC(1) and 185N(5) [*Schedule 1, Part 2, item 63*]

- Subsection 188(5) [*Schedule 2, Part 2, item 71*]
- Subsection 224A(5) [*Schedule 2, Part 2, item 85*]

2.13 Subsection 188(5A) and a subsection 224A(6) also provide additional constraints on the definition of 'working day', so these subsections are repealed by items 72 and 86 respectively [*Schedule 1, Part 2, item 72 and 86*]

2.14 A definition of **Insolvency Practice Rules** is inserted. [*Schedule 1, Part 2, item 6*]

2.15 The definition of **registered trustee** is updated for the purposes of section 5-5 of the Schedule. [*Schedule 1, Part 2, item 7*]

2.16 The Schedule creates a 'Register of Trustees'. A definition of **Register of Trustees** is accordingly inserted. [*Schedule 1, Part 2, item 8*].

2.17 The definition of 'resolution' is currently contained in the Bankruptcy Act, however under paragraph 75-50(2)(k) and paragraph 75-40(5)(b), a resolution may be prescribed under the Insolvency Practice Rules. Accordingly, the existing definition of **resolution** in the Bankruptcy Act is repealed and replaced to reflect the scope for further prescription in the Insolvency Practice Rules. [*Schedule 1, Part 2, item 9*]

2.18 The definition of 'special resolution' is currently contained in the Bankruptcy Act, however under paragraph 75-50(2)(k) and paragraph 75-40(5)(b), a special resolution may be prescribed under the Insolvency Practice Rules. Accordingly, the existing definition of **special resolution** in the Bankruptcy Act is repealed and replaced to reflect the scope for further prescription in the Insolvency Practice Rules. [*Schedule 1, Part 2, item 10*]

2.19 The Schedule provides the Minister with the ability to make the 'Insolvency Practice Rules'. The Bankruptcy Act therefore must include the Insolvency Practice Rules, so the definition of **this Act** in subsection 5(1) is amended to refer to the Insolvency Practice Rules. [*Schedule 1, Part 2, item 11*]

2.20 The definition of 'approved form' in section 5(1) is being repealed, and a new definition inserted (the new section 6D) by the Bill. The new definition of **approved form** incorporates the existing definition in paragraph 6D(1)(a), and also provides that an 'approved form' must satisfy additional requirements under paragraphs 6D(1)(b-c). [*Schedule 1, Part 2, item 12*]

Administration-Bankruptcy Act

2.21 Subsection 12(4) of the Bankruptcy Act is repealed as the Inspector General's right to attend and participate in meetings is now contained in section 75-30 of the Schedule. *[Schedule 1, Part 2, item 13]*

2.22 A new subsection 12(5) is inserted that provides that the Inspector-General may disclose information obtained by the Inspector-General in the course of exercising powers or performing functions under the Bankruptcy Act to any of the following bodies, if the Inspector-General is satisfied that the information will enable or assist the body to exercise any of its powers or perform any of its functions:

- a Commonwealth entity (within the meaning of the Public Governance, Performance and Accountability Act 2013);
- a prescribed professional disciplinary body. *[Schedule 1, Part 2, item 14]*

2.23 Paragraph 19(1)(d) of the Bankruptcy Act is repealed because that paragraph overlaps with the duties to provide information imposed under the Schedule (see section 70-40). *[Schedule 1, Part 2, item 15]*

2.24 Subsection 19(1) of the Bankruptcy Act is amended to clarify that the duties of trustees include duties imposed under the Schedule. *[Schedule 1, Part 2, item 16]*

2.25 Section 19B is inserted at the end of Division 1 of Part II of the Bankruptcy Act to facilitate the official receiver's capacity to carry out inspections of trustee's files that are related to the administration of bankruptcies. *[Schedule 1, Part 2, item 17]*

Proceedings in connexion with bankruptcy-Bankruptcy Act

2.26 Details regarding the requirements for a resolution of creditors will now be contained in the Insolvency Practice Rules, so paragraph 40(1)(f) is amended to remove the requirement for a resolution 'of a majority of the creditors present at the meeting either in person or by attorney'. *[Schedule 1, Part 2, item 18]*

2.27 The reference to section 74(5) is repealed and replaced with section 74(1). This is because section 74(5) is being repealed and replaced by section 74(1). *[Schedule 1, Part 2, items 19, 22 & 24]*

2.28 Subsection 54(1) is amended to change the penalty units from 25 to 50 penalty units for failure to comply with subsection 54(1) of the Bankruptcy Act. Similarly, subsection 54(2) is amended to change the

penalty units from 5 to 50 penalty units. The statement of affairs is a crucial document so it is reasonable to ensure that the penalties associated with non-compliance with subsections 54(1) and 54(2) reflect the seriousness of the offence. *[Schedule 1, Part 2, item 20 and 21]*

2.29 The statement of the member's affairs and statement of the affairs of the partnership are crucial documents. Accordingly, it is reasonable to ensure that the penalty associated with non-compliance with subsection 56F(1) reflects the seriousness of the offence. Accordingly subsection 56F(1) is accordingly amended to omit '25 penalty units' and substitute '50 penalty units'. *[Schedule 1, Part 2, item 23].*

2.30 Divisions 5 and 5A of Part IV are repealed. This is because the substance of Division 5 will be moved to the Insolvency Practice Rules (see section 75-50). The substance of Division 5A is reproduced in Division 80 (Committees of inspection) of the Schedule or will be dealt with through the making of Insolvency Practice Rules. *[Schedule 1, Part 2, item 25].*

2.31 Subsection 73(1B) is being removed as the concept of 'working days' in the Bankruptcy Act is being replaced by 'business days'. *[Schedule 1, Part 2, item 27]*

2.32 Subsections 73(2) to (5), subsection 73A and 73C are repealed as most matters relating to meetings will be dealt with through Insolvency Practice Rules created under 75-50. *[Schedule 1, Part 2, item 27, 28, 29 & 31]*

2.33 Subsection 73B(4) is repealed as a consequence of the amendment of section 73. *[Schedule 1, Part 2, Section 30]*

2.34 Subsection 74(5) is amended as a consequence of the repeal of subsection 73(4). *[Schedule 1, Part 2, item 32]*

2.35 Subsection 74A(4) is amended to correct a cross-reference to section 64A in 74A(4). Subsection 74A(5) is to remain because the variation taking effect turns on the date specified in the notice of the meeting. *[Schedule 1, Part 2, item 33]*

2.36 The heading in section 76 of the Bankruptcy Act (*Application of Part VIII to trustee of a composition or arrangement*) is repealed and replaced with a heading that makes clear that the provisions in the Schedule will also apply to a trustee of a composition or arrangement. *[Schedule 1, Part 2, item 34].*

2.37 A composition or arrangement with creditors is a statutory process that is carried out under the Bankruptcy Act. Section 76(1) of the Bankruptcy Act provides that "Part VIII applies, with any modifications

prescribed by the regulations in relation to a trustee of a composition or scheme of arrangement...'. Section 76(1) would be amended to provide that the Schedule would also apply with any modifications prescribed by the Bankruptcy Regulations. This is necessary because many of the rules relating to trustees will now be found in the Schedule and while most of those rules will be able to apply without modification some of them would need to be modified before they could be applied to trustees of compositions or schemes of arrangement. *[Schedule 1, Part 2, item 35]*.

2.38 Subsection 76(2) of the Bankruptcy Act provides that if, after taking into account the modifications in the Bankruptcy Regulations a provision of Part VIII is not applicable to the trustee of a composition or scheme of arrangement or is inconsistent with Division 1 of Part V of the Bankruptcy Act it does not apply. Subsection 76(2) is amended to provide that the same rule that applies with respect to Part VIII will also apply with respect to the Schedule. *[Schedule 1, Part 2, item 36]*

2.39 Section 76A is repealed. Section 76A applied Division 5 of Part IV to meetings under Division 6. The new meetings rules in Division 74 (Meetings) of the Schedule apply to all meetings of creditors in relation to a regulated debtor's estate. *[Schedule 1, Part 2, item 37]*

Administration of property-Bankruptcy Act

2.40 Paragraph 109(1)(a) is amended to omit 'section 175' and substitute 'section 70-15 or section 70-20 of Schedule 2'. This is because section 175 (which currently provides for an audit to be undertaken is to be deleted) and the new sections 70-15 and 70-20 will provide for audits. *[Schedule 1, Part 2, item 38]*

2.41 Subsections 109(7) to (7B) are repealed because rules in relation to meetings will largely be contained in Insolvency Practice Rules made under 75-50. *[Schedule 1, Part 2, item 39]*

2.42 Subsection 134(4) and the accompanying note are repealed because the Court's power to make orders in relation to the administration of an estate is now contained in section 90-15 of the Schedule. *[Schedule 1, Part 2, item 41]*

2.43 Section 139ZIO of the Bankruptcy Act deals with the Inspector-General's powers to review a trustee's decision. A new subsection is inserted into section 139ZIO that provides that the Inspector-General may refuse to review a reviewable decision if the Court is exercising powers under sections 45(1), 90-5, 90-10 or 90-15 of the Schedule or if a review is already underway under section 139ZIO and the Court begins to exercise its powers under sections 45(1), 90-5, 90-10 or 90-15 of the Schedule then the review does not have to be completed until

the Court ceases to exercise those powers. The obligation of the Inspector-General to review a reviewable decision if requested to do so by the Ombudsman will be made subject to the new subsection. [*Schedule 1, Part 2, item 46 and item 47*]

Debt Agreements-Bankruptcy Act

2.44 The definition of 'externally-administered body corporate' is deleted and replaced by the label **Chapter 5 body corporate** under the Insolvency Law Reform Bill. Accordingly, a new definition of 'Chapter 5 body corporate' is to be inserted into section 185 of the Bankruptcy Act and the definition of 'externally-administered body corporate' is repealed. [*Schedule 1, Part 2, item 60 and 61*]

2.45 References to subsection 129(2) and (3) of Corporations Act in paragraph 186A(1)(d) are to be deleted as both of those subsections are to be repealed by the Bill. [*Schedule 1, Part 2, item 64*]

2.46 References to section 155I and section 155H in paragraph 186A(1)(e) are deleted because such references are no longer relevant given that sections 155I and 155H are being repealed and replaced by provisions in the Schedule. [*Schedule 1, Part 2, item 65*]

2.47 The definition of **externally-administered body corporate** is deleted and replaced by the label 'Chapter 5 body corporate' under the Bill. Accordingly, the reference to 'externally-administered body corporate' in paragraph 186A(3)(a) is substituted with 'a Chapter 5 body corporate'. [*Schedule 1, Part 2, item 66*]

2.48 The following cross-references are amended as follows, as the detail contained in the preceding cross-reference is contained in the subsequent cross-reference:

- Subparagraph 186LA(1)(b)(ii) of the Bankruptcy Act: Omit "155H(1)", substitute "section 40-40(1) of Schedule 2" [*Schedule 1, Part 2, item 67*].
- Paragraph 186LA(1)(c) of the Bankruptcy Act: Omit "155H(1)(fa)", substitute "section 40-40(1)(m) of Schedule 2" [*Schedule 1, Part 2, item 68*]
- Subparagraph 186LB(1)(b)(ii) of the Bankruptcy Act: Omit "155H(1)", substitute "section 40-40(1) of Schedule 2" [*Schedule 1, Part 2, item 69*]

- Paragraph 186LB(1)(c) of the Bankruptcy Act: Omit "155H(1)(fa)", substitute "section 40-40(1)(m) of Schedule 2" [*Schedule 1, Part 2, item 70*]

2.49 Subsections 190(4A) and (4B) are repealed because the power of the controlling trustee to apply to the Court for directions have been subsumed within section 80-40 of the Schedule (see section 5-20 which includes 'controlling trustee' in the meaning of 'trustee', and section 90-20, which allows a trustee to apply for an order under section 80-40). [*Schedule 1, Part 2, item 73*]

2.50 Item 74 fixes a drafting error by omitting (1). The substance of (1) remains unchanged. [*Schedule 1, Part 2, item 74*]

2.51 Paragraph 190A(1)(b) of the Bankruptcy Act is repealed because the detail in paragraph 190A(1)(b) is now contained in section 70-40, which allows a creditor to request information from a trustee. [*Schedule 1, Part 2, item 75*]

2.52 Subsection (j) is added to section 190A(1) to ensure that any additional duties that apply to controlling trustees in Schedule 2 are included within the ambit of section 190A(1). [*Schedule 1, Part 2, item 76*]

2.53 Section 194 to 196 of the Bankruptcy Act are repealed for the following reasons:

- Section 194 deals with the timing of meetings. The rules concerning meetings will largely be contained in Insolvency Practice Rules created under section 75-50.
- Section 194A deals with statements of affairs and declarations to be tabled at meetings. The rules concerning meetings will largely be contained in Insolvency Practice Rules created under section 75-50.
- Section 195 deals with the debtor's obligation to attend meetings. This requirement may be dealt with in the Insolvency Practice Rules. The rules concerning meetings will largely be contained in Insolvency Practice Rules created under section 75-50.
- Section 196 deals with the extent to which Division 5 of Part IV applies with regards to meetings. Division 5 Part IV is being repealed and the rules concerning meetings will largely be contained in Insolvency Practice Rules created under section 75-50. [*Schedule 1, Part 2, item 77*]

2.54 The reference to 'in accordance with the regulations' in subsection 217(1) is omitted because the calling of meetings will be largely dealt in Insolvency Practice Rules created under section 75-50. *[Schedule 1, Part 2, item 78]*

2.55 Section 223 deals with the trustee and creditor's right to call meetings. This section is being repealed, so the creditor and/or debtor's right to call a meeting in the event of a vacancy in the office of trustee after the execution of a personal insolvency agreement is prescribed at the end of subsection 220(1). *[Schedule 1, Part 2, item 79]*

2.56 The cross-reference in subsection 221A(3) to section 64A is deleted as it is no longer relevant given that section 64A is being repealed and will be replaced by Insolvency Practice rules made under 75-50. *[Schedule 1, Part 2, item 80]*

2.57 The cross-reference to subsection 194A(3) in paragraph 222(5)(f) of the Bankruptcy Act is being substituted for a reference to Division 75, and the cross-reference to subsection 194A(5) in paragraph 222(5)(h) of the Bankruptcy Act is being substituted for a reference to Division 75, because section 194A is being repealed and the details relating to meetings will be contained in Division 75 of the Schedule and in Insolvency Practice Rules made under that Division. *[Schedule 1, Part 2, item 81 and 82]*

2.58 The cross-reference in subsection 222A(2) to section 64A is omitted as it is no longer relevant given that section 64A is being repealed and the subject matter that section 64A deals with is likely to be dealt with in Insolvency Practice Rules created under 75-50. *[Schedule 1, Part 2, item 83]*.

2.59 Sections 223 and 223A are repealed for the following reasons:

- The trustee's and creditor's right to call meetings (as contained in section 223) is now dealt with in Division 75 of the Schedule. The creditor and/or debtor's right to call a meeting in the event of a vacancy in the office of a trustee after the execution of a personal insolvency agreement is to be prescribed at the end of subsection 220(1). *[Schedule 1, Part 2, item 79]*
- Section 223A deals with the extent to which Division 5 of Part IV and section 195 apply in relation to meetings. These provisions are being repealed, and meetings will be instead dealt with in Division 75 of the Schedule and in Insolvency Practice Rules made under that Division. *[Schedule 1, Part 2, item 84]*

2.60 The references to sections 70, 71 and 72 in subsection 231(3) are to be omitted because the sections are contained in Division 5A of Part IV, which is being repealed. [Schedule 1, Part 2, item 87]

Deceased estates-Bankruptcy Act

2.61 The references in subsection 248(1) to Division 5 of Part IV and sections 70 to 76. Division 5 of Part IV and sections 70 - 72 are to be omitted as that Division and those sections are to be repealed. [Schedule 1, Part 2, item 88]

Offences-Bankruptcy Act

2.62 The definition of *voting document* is inserted into subsection 263C(2) and the existing definition of *voting document* is to be repealed. This is because the existing definition references section 64D and section 64E and both of these sections are to be repealed. [Schedule 1, Part 2, item 89].

2.63 Table items 6 to 11 of subsection 277B(2) are repealed for the following reasons:

- The repeal of table items 6 and 7 is consequential on the repeal of sections 155J and 168.
- The repeal of table items 8, 9 and 10 is consequential on the repeal of sections 170A, 173 and 175.
- The repeal of table item 11 is consequential on the repeal of section 182. [Schedule 1, Part 2, item 90]

2.64 Subsection 277B(2) provides infringement notices to be issued in relation to breaches of various aspects of the Bankruptcy Act. Infringement notices will be able to be issued in respect of breaches of subsections 30-1(5), 35-5(2), 65-40(3), 70-10(4), 70-11(2) and 70-25(4). [Schedule 1, Part 2, item 91]

Provisions relating to the Bankruptcy (Estate Charges) Act 1997-Bankruptcy Act

2.65 The current definition of 'trustee account' in subsection 280(5) refers to section 169 of the Bankruptcy Act. Section 169 is being repealed and the substance of this section has been moved to section 65-5. The existing definition is accordingly repealed and a new definition of *trustee account* is inserted which refers to section 65-5. [Schedule 1, Part 2, item 92]

2.66 Subsection 306B(1) refers to sections 155A(6), 155F(2) and 155I(4) of the Bankruptcy Act. These sections are to be repealed and the references in subsection 306B(1) are to be updated to include references to sections 20-25, 20-60, 40-60 and 70-40. [Schedule 1, Part 2, item 93].

2.67 Section 312 is repealed because the details regarding the retention and return or destruction of books are now located in section 70-35 and section 70-36 [Schedule 1, Part 2, item 94].

2.68 Section 315(2)(i) provides that the regulations may indicate the manner in which committees referred to in Division 1 of Part VIII are to perform their functions. Section 50-25 will now provide for Insolvency Practice rules to be made in relation to procedures and other rules for committees so section 315(2)(i) is consequently repealed. [Schedule 1, Part 2, item 95]

2.69 Paragraph 315(2)(j) provides for the fees to be prescribed in the Bankruptcy Regulations in relation to certain processes and procedures under the Bankruptcy Act. Paragraph 315(2)(j) is to be amended in order to provide that fees may be charged for inspection of material contained in the new Register of Trustees and for obtaining extracts of material entered in the Register of Trustees . [Schedule 1, Part 2, item 96].

2.70 The penalty units for a breach of paragraph 315(2)(k) are now considered inadequate and have been increased from 10 penalty units to 50 penalty units in order to reflect the gravity of a breach of this section. [Schedule 1, Part 2, item 97].

2.71 Subsection 316(1)(a) contains references to paragraphs 154A(3)(b), 155C(1)(b) and 155D(1)(b). These paragraphs are to be repealed, so the references are now irrelevant and accordingly the references are to be omitted from paragraph 316(1)(a). [Schedule 1, Part 2, item 98]

2.72 Section 316 permits the Minister to make legislative instruments determining the amounts of fees. Section 316 is to be amended in order to provide that fees may be levied for the purposes of subsection 20-5(3), paragraph 20-30(1)(c) and subsection 20-70(3). [Schedule 1, Part 2, item 99]

Bankruptcy Estate Charges Act 1997

2.73 Subsection 5(1) of *Bankruptcy (Estate Charges) Act 1997* refers to section 169(1B) of the Bankruptcy Act, which is being repealed. The substance of section 169(1B) is now contained in section 65-31(1) of the Schedule, so this cross reference is accordingly updated. [Schedule 1, Part 2, item 100]

2.74 Subsection 5(2) refers to the extent to which section 169(1B) of the Bankruptcy Act applies. Given that this section is being repealed, subsection 5(2) is no longer necessary and is repealed. [*Schedule 1, Part 2, item 101*]

Application and transitional provisions

Definitions

2.75 The Dictionary defines terms used in this part of the Schedule. In some cases, the definition is a signpost to another provision in the Schedule in which the meaning of the term is explained [*Schedule 1, Part 3, Division 1, section 103*]

2.76 **Commencement day** means the day on which this Schedule commences. [*Schedule 1, Part 3, Division 1, section 103*]

2.77 **Old Act** means the *Bankruptcy Act 1966*, as in force immediately before the commencement day and includes the old regulations. [*Schedule 1, Part 3, Division 1, section 103*]

Application of other consequential amendments

2.78 In circumstances where proposals are put to creditors in a meeting, the repeal and substitution of the definitions of resolution and special resolution in subsection 5(1) of the Bankruptcy Act by the Schedule apply in relation to proposals put to creditors in a meeting where the requirement to hold the meeting arises on or after the commencement day. Similarly, in circumstances of proposals without meetings, the repeal and substitution of the definitions of resolution and special resolution in subsection 5(1) of the Bankruptcy Act by the Schedule apply in relation to proposals put to creditors on or after the commencement day. [*Schedule 1, Part 3, Division 5, section 170*]

2.79 Section 6D of the Bankruptcy Act as inserted by the Schedule applies to documents made, given or lodged on or after the commencement day. [*Schedule 1, Part 3, Division 5, section 171*]

2.80 Subsection 12(5) of the Bankruptcy Act (as inserted by the Schedule) applies whether or not the information was obtained, or is in relation to events that occurred, before, on or after the commencement day. [*Schedule 1, Part 3, Division 5, section 172*]

2.81 Section 19B of the Bankruptcy Act (as inserted by the Schedule applies) whether or not the books were made before, on or after the commencement day *[Schedule 1, Part 3, Division 5, section 173]*

2.82 The amendments of subsections 54(1), 54(2) and 56F(1) of the Bankruptcy Act made by the Schedule apply in relation to offences committed on or after the commencement day. *[Schedule 1, Part 3, Division 5, section 174]*

2.83 The repeal of section 72 of the Bankruptcy Act by this Schedule applies in relation to property purchased before the commencement day. *[Schedule 1, Part 3, Division 5, section 175]*

2.84 If a person is required to do something within a period of time after a particular event, the amendments to subsection 73(1A), subparagraph 139ZIE(1)(a)(i), subsection 139ZIE(5) and paragraph 139ZIF(1)(a) applies if the event occurs on or after the commencement day. *[Schedule 1, Part 3, Division 5, section 176]*

2.85 If, before the commencement day, the Inspector General has asked a person under subsection 155H(1) of the Bankruptcy Act to provide a written explanation as to why the person should continue to be registered as a trustee, sections 186LA and 186LB of the old Act continue to apply on and after the commencement day in relation to the bank with which the person holds or held an account as if the amendments to those sections made by the Schedule had not been made. *[Schedule 1, Part 3, Division 5, section 177]*

2.86 Items 6 to 11 continue to apply in relation to offences committed before the commencement day (despite the repeal of table in subsection 277B(2) of the Bankruptcy Act). *[Schedule 1, Part 3, Division 5, section 178]*

2.87 Despite the amendments and repeals made by the Schedule, subsection 306B(1) of the Bankruptcy Act continues to apply in relation to reports given under subsection 155A(6), 155F(2) or 155I(4) of the Bankruptcy Act *[Schedule 1, Part 3, Division 5, section 179]*

2.88 The Governor General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments and repeals made by the Schedule. The regulations may provide that certain provisions of the Schedule are taken to be modified as set out in the regulations. Those provisions then have effect as if they were so modified. The provisions of the Schedule that provide for regulations to deal with matters do not limit each other *[Schedule 1, Part 3, Division 6, section 180]*.

Chapter 3

Registration and disciplining registered trustees

Outline of chapter

3.1 The Insolvency Practice Schedule (Bankruptcy) introduces new rules relating to the registration, regulation, discipline and deregistration of registered trustees. These rules will be common (with some exceptions) with the corresponding rules in relation to registered trustees which are introduced by the Insolvency Practice Schedule (Corporations).

3.2 The new rules regarding the registration and discipline of registered trustees are based on the existing framework for the registration and discipline of registered trustees.

Context of amendments

3.3 The regulation of insolvency practitioners, particularly corporate insolvency practitioners, has been the subject of a number of reviews in the past two decades by a range of bodies including the Australian Law Reform Commission in 1988 (the *General Insolvency Inquiry* (commonly known as the Harmer Report)); the *Working Party to review the regulation of corporate insolvency practitioners* in 1997; the Parliamentary Joint Committee on Corporations and Financial Service in 2004; and most recently the Senate Economics References Committee (Senate Committee) that released its report, *The regulation, registration and remuneration of insolvency practitioners in Australia: the case for a new framework* in September 2010 (the Senate Inquiry Report).

3.4 The Senate Inquiry was established to consider the practices of liquidators in conducting external administrations, including their remuneration, as well as the role of ASIC in overseeing the corporate insolvency profession. Submissions to the Senate Inquiry identified a wide range of regulatory failures in relation to the regulation of liquidators, and in particular expressed concerns regarding: the process for the registration of new liquidators; the process for the discipline and deregistration of insolvency practitioners who had engaged in misconduct; and the regulatory tools available to ASIC, and the obligations of ASIC, to actively oversee the profession.

3.5 The Senate Inquiry Report was critical of a number of areas of the current regulatory framework for corporate insolvency, including the current registration and discipline frameworks, insurance obligations, and remuneration of registered liquidators. The Senate Committee was also critical of ASIC's performance in the regulatory oversight of registered liquidators. The Senate Inquiry gave voice to creditor discontent following recent high profile cases of fraud and negligence by members of the corporate insolvency industry.

3.6 Australia has always had separate personal and corporate insolvency systems. This includes separate laws, regulators, agencies responsible for policy development, and ministerial responsibility. The Senate Inquiry Report highlighted the current divergence between the regulatory systems for corporate and personal insolvency and expressed a desire for greater harmonisation of the two.

3.7 The Government has not accepted the Senate Committee recommendation that the corporate insolvency arm of ASIC be transferred to AFSA to form a new personal and corporate insolvency regulator. The Government has, however, recognised that providing for greater alignment of the laws that govern insolvency administration and insolvency practitioner regulation would benefit insolvency practitioners, creditors, shareholders, regulators and other stakeholders.

Summary of new law

3.8 The Schedule introduces a new framework in relation to the regulation of registered trustees:

- applications to the Inspector-General to be registered as a trustee;
- the referral of an application by the Inspector-General to a committee for consideration which will assess the application against specified criteria;
- the registration of the applicant by the Inspector-General (in the event their application is successful), which may be subject to conditions;
- a requirement that a registered liquidator lodge an annual return with the Inspector-General;

- a requirement that a registered trustee must give the Inspector-General notice if the person's circumstances change or if certain specified events occur;
- the Inspector-General's powers in circumstances where a registered trustee fails to lodge a document or give information;
- the Inspector-General's powers to suspend or cancel a registered trustee's registration in certain circumstances;
- the Inspector-General's powers to give a show-cause notice and if no sufficient explanation is given, the
- Inspector-General's powers to take further disciplinary action on the decision of a committee;
- a committee's powers to take disciplinary action and the Inspector-General's obligation to give effect to the committee's decision;
- a right given to industry bodies to notify the
- Inspector-General where they suspect there are grounds for disciplinary action to be taken against a registered trustee.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
A Register of Trustees will be established.	The details of registered trustees are accessible on the NPII. AFSA's website also provides an informal list of trustees by jurisdiction.
The committee that the Inspector-General convenes to consider applications for registration must consist of: <ul style="list-style-type: none"> (a) the Inspector-General; and (b) a registered trustee chosen by a prescribed body; and (c) a person appointed by the Minister. 	The committee that the Inspector-General convenes to consider applications for registration as a trustee must consist of: <ul style="list-style-type: none"> (a) the Inspector-General; and (b) an APS employee; and (c) a registered trustee chosen by the Insolvency Practitioners' Association (who are now known as ARITA).

<i>New law</i>	<i>Current law</i>
<p>In order to be register an applicant a committee must be satisfied that the applicant will take out:</p> <p>(a) adequate and appropriate professional indemnity insurance; and</p> <p>(b) adequate and appropriate fidelity insurance</p> <p>against the liabilities that the applicant may incur working as a registered trustee.</p>	<p>The committee must be satisfied that that applicant will take out insurance against liabilities that the applicant may incur working as a trustee.</p>
<p>In order to register an applicant a committee must be satisfied that the applicant has not had his or her registration as a liquidator under the Corporations Act cancelled within 10 years before making the application, other than in response to a written request by the applicant to have the registration cancelled</p>	<p>There is currently no corresponding law.</p>
<p>In order to register an applicant a committee must be satisfied that the applicant is not disqualified from managing corporations under Part 2D.6 of the Corporations Act 2001, or under a law of an external Territory or a law of a foreign country</p>	<p>There is currently no corresponding law.</p>
<p>In order to register an applicant a committee must be satisfied that the applicant is a fit and proper person.</p>	<p>There is currently no corresponding law. .</p>
<p>In order to be registered as a trustee the applicant must produce evidence in writing to the Inspector-General that the applicant has taken out:</p> <p>(a) adequate and appropriate professional indemnity insurance; and</p> <p>(b) adequate and appropriate fidelity insurance</p> <p>against the liabilities that the applicant may incur working as a registered trustee.</p>	<p>While the committee must be satisfied that that applicant will take out insurance against liabilities that the applicant may incur working as a trustee there is no requirement for the applicant to produce evidence in writing about the status of their insurance to the Inspector-General.</p>

<i>New law</i>	<i>Current law</i>
The Insolvency Practice Rules may provide for conditions to be placed on all registered trustees or a class of registered trustees.	Conditions can be placed on an individual's registration by a registration committee or a committee convened to consider the involuntary termination of a trustee's registration.
The committee that the Inspector-General convenes to consider applications for changes of conditions must consist of: <ul style="list-style-type: none"> (a) the Inspector-General; and (b) a registered trustee chosen by a prescribe body; and (c) a person appointed by the Minister. 	The committee that the Inspector-General convenes to consider applications for change of conditions on a trustee must consist of: <ul style="list-style-type: none"> (a) the Inspector-General; and (b) an APS employee; and a registered trustee chosen by the Insolvency Practitioners' Association (who are now known as ARITA).
In order to renew their registration a trustee must produce evidence to the Inspector-General regarding their insurance status.	There is no requirement that trustees produce evidence of their insurance status in order to be reregistered.
A person who makes a false representation that they are a trustee will have committed an offence	There is currently no corresponding offence.
A registered trustee must maintain: <ul style="list-style-type: none"> (a) adequate and appropriate indemnity insurance; and (b) adequate and appropriate fidelity insurance; against the liabilities that the trustee may incur working as a registered trustee. The Inspector-General may, by legislative instrument, determine what constitutes adequate and appropriate insurance.	A registration committee must be satisfied that an applicant will take out insurance against liabilities that the applicant may incur working as a trustee before a trustee can be registered but the Bankruptcy Act does not specify what type of insurance must be obtained.
A registered trustee who fails to comply with his/her insurance requirements may have committed an offence.	There is no offence provision connected with the failure by a trustee to comply with their insurance requirements.
Trustees will be required to inform the Inspector-General if an expanded number of events happen (for example if they are disqualified from managing corporations).	A trustee is required to notify the Inspector-General if they are convicted of an offence involving fraud or dishonesty or if they enter into an insolvency administration.

<i>New law</i>	<i>Current law</i>
The Inspector-General will be able to cancel a trustee's registration without first referring it to a committee under a number of prescribed circumstances.	The Inspector-General can only cancel a trustee's registration involuntarily if they are giving effect to the decision of a committee.
The Inspector-General will be able to suspend a trustee's registration under a number of prescribed circumstances.	A disciplinary committee can decide that a trustee's registration be cancelled.

Detailed explanation of new law

Working cooperatively with ASIC

3.9 1.9 The Inspector-General must work cooperatively with the Inspector-General in Bankruptcy in relation to persons who are, have been or may become both registered trustees under the Bankruptcy Act and registered liquidators under the Corporations Act. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 10, section 10-5]*

Register of Trustees

3.10 The Inspector-General must establish and maintain a Register of Trustees which may be kept in any form that the Inspector-General considers appropriate. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 15, subsection 15-1(1) and (2)]*

3.11 The Insolvency Practice Rules may provide for and in relation to the Register of Trustees including the details to be entered on the Register and the parts of the Register that are to be made available to the public. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 15, subsection 15-1(3) and (4)]*

3.12 Without limiting the details to be entered in the Register, the details may include details of any disciplinary action recommended by a committee against a registered trustee and the details of persons who have had their registration suspended or cancelled. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 15, subsection 15-1(5)]*

Registration

3.13 An individual may apply to the Inspector-General to be registered as a trustee. An application is properly made if it is lodged with the Inspector-General in the approved form. The application must be

accompanied by the application fee as determined by the Minister by legislative instrument. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 20, Subdivision B, subsections 20-5(1-4)*].

3.14 If an application is properly made the Inspector-General may convene a committee to consider an application. The committee must consist of the Inspector-General, a registered trustee chosen by a prescribed body (ARITA) and a person appointed by the Minister. The Inspector-General must refer an application for registration that is properly made to a committee to consider within 3 months of receiving the application. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 20, Subdivision B, sections 20-10 and 20-15*]

3.15 The committee must consider an application referred to it by the Inspector-General and must interview the applicant for purposes of its consideration. The committee may also require the applicant to sit for an exam. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 20, Subdivision B, Subsections 20-20(1) and (2)*]

3.16 Within 45 business days after interviewing the applicant, the committee must decide whether the applicant should be registered as a trustee or not. The committee must decide that the applicant should be registered if it is satisfied that the applicant:

- has the qualifications, experience, knowledge and abilities prescribed in the Insolvency Practice Rules;
- will take out adequate and appropriate professional indemnity and fidelity insurance;
- has not been convicted, within 10 years before making the application, of an offence involving fraud or dishonesty;
- is not, and has not been within 10 years before making the application, an insolvent under administration;
- is not a person who is a party (as debtor) to a debt agreement under Part IX of the Bankruptcy Act, or the corresponding provisions of a law of an external Territory or a law of a foreign country;
- has not had his or her registration as a trustee under the Bankruptcy Act cancelled within 10 years before making the application, other than in response to a written request by the applicant to have the registration cancelled;

- has not had his or her registration as a liquidator under the Corporations Act cancelled within 10 years before making the application, other than in response to a written request by the applicant to have the registration cancelled;
- is not disqualified from managing corporations under this Act, or under a law of an external Territory or a law of a foreign country;
- is otherwise a fit and proper person; and
- is resident in Australia. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 20, Subdivision B, subsection 20-20(4)]*

3.17 The committee may decide that the applicant should be registered even if the committee is not satisfied that the applicant has the qualifications, experience, knowledge and abilities prescribed in the Insolvency Practice Rules or is not resident in Australia, provided that the committee is satisfied that the applicant would be suitable to be registered if the applicant complied with conditions specified by the committee. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 20, Subdivision B, subsection 20-20(5)]*

3.18 The committee may decide that the applicant's registration is to be subject to any other conditions specified by the committee. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 20, Subdivision B, subsection 20-20(6)]*

3.19 The registration requirements do not affect the operation of Part VIIC of the Crimes Act 1914 which in certain circumstances relieves a person from disclosing spent convictions. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 20, Subdivision B, subsection 20-20(7)]*

3.20 The committee must give the applicant and the Inspector-General a report setting out the committee's decision on the application, and its reasons for the decision and if the committee decides that the registration should be subject to conditions:

- the condition; and
- the committee's reasons for imposing the condition. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 20, Subdivision B, section 20-25]*

3.21 When the committee decides that an applicant should be registered, the Inspector-General must register the person upon the payment of the prescribed fee and the production of evidence that the person has taken out adequate and appropriate professional indemnity and fidelity insurance against the liabilities that the person may incur working

as a registered trustee. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 20, Subdivision B, subsection 20-30(1)*]

3.22 The Inspector-General registers an applicant by entering on the Register of Trustees the details relating to the applicant prescribed in the Insolvency Practice Rules. The registration is subject to the current conditions imposed on the registered trustee. After registering a person, the Inspector-General must give the person a certificate of registration which may be given electronically. The registration has effect for 3 years. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 20, Subdivision B, subsection 20-30(2), (3), (4), (5) and (6)*]

3.23 The Insolvency Practice Rules may prescribe conditions applying to the registration of all registered trustees or registered trustees of a specified class. A condition may be imposed limiting the kinds of activity in which a registered trustee may engage, either for the duration of the registration or for a shorter period. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 20, Subdivision B, section 20-35*]

Variation of conditions

3.24 A registered trustee whose registration has conditions imposed on him or her may apply to the Inspector-General to have those conditions varied. However, an application cannot be made if the person's registration as a trustee is suspended; the condition is of a prescribed kind or in prescribed circumstances. The application must be lodged with the Inspector-General in the approved form. A single application by a registered trustee may deal with more than one condition. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 20, Subdivision C, section 20-40*]

3.25 The Inspector-General may convene a committee to consider an application to vary conditions. The committee must consist of the Inspector-General, a registered trustee chosen by a prescribed body (ARITA) and a person appointed by the Minister. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 20, Subdivision C, section 20-45*]

3.26 Within 3 months of receiving an application to vary a condition that is properly made the Inspector-General must refer the application to a committee which the Inspector-General has convened for that purpose. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 20, Subdivision C, section 20-50*]

3.27 If an application to vary or remove a condition is referred to a committee, the committee must consider the application and unless the applicant otherwise agrees the committee must interview the applicant. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 20, Subdivision C, subsection 20-55(1) and (2)*]

3.28 The committee must, within 20 business days after interviewing the applicant or obtaining the agreement of the applicant to forgo the interview either decide whether the condition which is the subject of the application should be varied/removed and if the condition is to be varied specify the way in which it is to be varied. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 20, Subdivision C, sub section 20-55(3)]*

3.29 The committee must give the applicant and the Inspector-General a report setting out the committee's decision and the reasons for the decision. If the committee decides that a condition should be varied, the committee must set out the variation that is to be made. The condition is varied or removed in accordance with that decision. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 20, Subdivision C, section 20-60 and section 20-65]*

Renewal of registration

3.30 If a registered trustee wishes to continue practising after the current registration period, the individual must apply to have their registration renewed. The application must be lodged with the Inspector-General in the approved form and must be made before the applicant's registration as a trustee ceases to have effect. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 20, Subdivision D, subsection 20-70(1) and (2)]*

3.31 If an individual applies to have his or her registration as a trustee renewed, the individual must, at least 1 month before the registration ceases to have effect pay the renewal fee determined by the Minister by legislative instrument. If the renewal fee is not paid before that time, an additional amount equal to 20% of the renewal fee is payable by the applicant by way of penalty. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 20, Subdivision D, subsection 20-70(3)]*

3.32 The application is properly made if it lodged with the Inspector-General, in the approved form, before the applicant's registration as a trustee ceases to have effect. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 20, Subdivision D, subsection 20-70(4)]*

3.33 The Inspector-General must renew the registration where:

- the application is properly made;
- the applicant has produced evidence in writing to the Inspector-General that the applicant maintains adequate and appropriate professional indemnity insurance and adequate and appropriate fidelity insurance

- the applicant has complied with any condition dealing with continuing professional education to which the applicant is subject;
- the applicant has paid the renewal fee and any late payment penalty; and
- the applicant does not owe more than the prescribed amount of notified estate charges [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 20, Subdivision D, subsection 20-75(1), (2) and (3)*]

3.34 The Inspector-General renews the registration by entering or maintaining in the Register of Trustees the details relating to the applicant which are prescribed in the Insolvency Practice Rules. After renewing the registration, the Inspector-General must give the person a certificate of registration which may be given electronically. The renewed registration has effect for 3 years and the renewed registration is subject to the current conditions imposed on the registered trustee. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 20, Subdivision D, subsection 20-75(2), (3), (4), (5) and (6)*]

3.35 For the purposes of reregistration a person owes a notified estate charge if:

- the person owes either of the following: a charge under the Bankruptcy (Estate Charges) Act 1997, a penalty under section 281 (late payment penalty) of the Bankruptcy Act; and
- the Inspector-General notified the person of the unpaid estate charge at least one month and 10 business days before the person's registration as a trustee ceases to have effect. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 20, Subdivision D, subsection 20-75(7)*]

Offences relating to registration

3.36 A person commits an offence with a penalty of 30 penalty units if the person represents that he or she is a registered trustee and the representation is false. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 20, Subdivision E, section 20-80*]

Insurance

3.37 A registered trustee must maintain adequate and appropriate professional indemnity and fidelity insurance. If a registered trustee fails

to comply with this requirement, he or she commits an offence. The Inspector-General may, by legislative instrument, determine what constitutes adequate and appropriate professional indemnity and fidelity insurance, in relation to either or both of the following:

- specified circumstances;
- one or more specified classes of registered trustees. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 25, subsection 25-1(1) and (2)*]

3.38 1.38 Where the registered trustee intentionally or recklessly fails to comply with the insurance requirements, the maximum penalty is 1,000 penalty units, otherwise there is a strict liability offence with a maximum penalty of 60 penalty units. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 25, subsection 25-1(3) and (4)*]

Annual trustee returns

3.39 A registered trustee during all or part of a return year for the person must, within 1 month after the end of that year, lodge with the Inspector-General an annual return. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 30, subsection 30-1(1)*]

3.40 A return year for a person who is registered as a trustee is:

- the period of 12 months beginning on the day on which that registration first began; and
- each subsequent period of 12 months. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 30, Subsection 30-1(2)*]

3.41 A return must be in the approved form and include evidence that the person has, during the whole of any period of the year during which the person was registered as a registered trustee, maintained adequate and appropriate professional indemnity and fidelity insurance against the liabilities that the person may incur working as a registered trustee. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 30, subsection 30-1(3)*]

3.42 On the application of the registered trustee made before the end of the period for lodging a return, the Inspector-General may extend that period. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 30, subsection 30-1(4)*]

3.43 A registered trustee commits a strict liability offence, punishable by 5 penalty units, if the trustee fails to lodge a return. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 30, subsection 30-1(5)*]

Notice requirements

3.44 1.44 A registered trustee must notify the Inspector-General, in the approved form, where any of the following events occur that would affect the ability of the registered trustee to continue to practice:

- the trustee becomes an insolvent under administration;
- a bankruptcy notice is issued under the Bankruptcy Act in relation to the trustee as a debtor, or a corresponding notice is issued in relation to the registered trustee as debtor under a law of an external Territory or a law of a foreign country;
- the registered trustee is convicted of an offence involving fraud or dishonesty;
- the registered trustee is disqualified from managing corporations under the Corporations Act, or under a law of an external Territory or a law of a foreign country;
- the registered trustee ceases to have adequate and appropriate professional indemnity insurance or fidelity insurance against the liabilities that the registered trustee may incur working as a registered trustee;
- The registered trustee is issued with a show-cause notice under the Corporations Act in relation to the registered trustee's registration as a trustee under that Act;
- the registered trustee's registration as a liquidator under the Corporation's Act is suspended or cancelled;
- any other prescribed event.

the notice must be lodged by the registered trustee within 5 business days after the registered trustee could reasonably be expected to be aware that the event has occurred. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 35, subsection 35-1(1)*]

3.45 Where a trustee intentionally or recklessly fails to notify the Inspector-General that a specified event has occurred, the registered trustee commits an offence punishable by a maximum penalty of 100 penalty points. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 35, subsection 35-1(2)*]

3.46 A registered trustee must notify the Inspector-General, in the approved form, if information, prepared by or on behalf of the registered trustee, and included in an annual trustee return or in an annual

administration return, is or becomes inaccurate in a material particular. A registered trustee must also notify the Inspector-General if any prescribed event occurs. Failure to notify the Inspector-General within 5 business days after the registered trustee could reasonably be expected to be aware that the event has occurred commits an offence punishable by a maximum penalty of 5 penalty points. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 35, section 35-5]*

Direction to comply

3.47 The Inspector-General may give a registered trustee a direction in writing to comply with a requirement under the Bankruptcy Act to lodge documents or provide information required under the Bankruptcy Act within 10 business days after the direction is given. On the application of the registered trustee, the Inspector-General may extend, or further extend, that period. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 40, Subdivision B, subsections 40-5(1), (2) and (3)]*

3.48 Where the document or information is not provided within 10 business days after the direction has been given (or that period as extended), the Inspector-General may give a direction that the registered trustee not accept any further appointments or apply to the Court for an order that the registered trustee comply with the Inspector-General's direction. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 40, Subdivision B, subsection 40-5(4)]*

3.49 A direction to comply is not a legislative instrument. Nothing in section 40-5 limits the operation of any other provision of the Bankruptcy Act, or any other law, in relation to a person who fails to comply with a requirement to lodge a document with, or give information or a document to, the Inspector-General. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 40, Subdivision B, subsection 40-5(5) and (6)]*

3.50 Where the Inspector-General reasonably suspects that any information that a registered trustee is required under the Bankruptcy Act to give to the Inspector-General is incomplete or incorrect in any particular, the Inspector-General may direct the trustee to do one or more of the following within 10 business days after the direction (the period can be extended on the application of the registered trustee):

- confirm to the Inspector-General that the information is complete and correct;
- complete or correct the information;
- notify any person specified by the Inspector-General in the direction of the addition or correction. *[Schedule 2 Insolvency*

Practice Schedule (Bankruptcy), Part 2, Division 40, Subdivision B, subsections 40-10(1), (2) and (3)

3.51 Where the registered trustee does not comply within the period of 10 business days (or the period as extended), the Inspector-General may give a direction that the registered trustee not accept further appointments or apply to the Court for an order directing the trustee to comply with the requirement within such time specified in the order. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 40, Subdivision B, subsection 40-10(4)]*

3.52 A direction to correct inaccuracies is not a legislative instrument. Nothing in section 40-10 limits the operation of any other provision of the Bankruptcy Act, or any other law, in relation to a person given incomplete or incorrect information. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 40, Subdivision B, subsections 40-10(5) and (6)]*

3.53 The Inspector-General may, in writing, direct a registered trustee not to accept any further appointments as a registered trustee or not to accept any further appointments for a period specified in the direction if:

- the registered trustee has failed to comply with a direction to remedy a failure to lodge documents, or give information or documents; or
- the registered trustee has failed to comply with a direction to correct inaccuracies; or
- a committee has decided that the Inspector-General should direct that a trustee not to accept any further appointments as trustee, or not to accept any further appointments as trustee during the period specified in the direction; or
- the registered trustee has failed to comply with a direction to give relevant information to the Inspector-General. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 16, Subdivision B, subsection 40-15(1)]*

3.54 If the Inspector-General gives a direction not to accept further appointments, it is a condition of the registered trustee's registration that the registered trustee must comply with the direction. The Inspector-General may withdraw a direction not to accept further appointments. Upon the direction being withdrawn the condition is removed from the trustee's registration. A direction not to accept further appointments is not a legislative instrument. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 40, Subdivision B, subsections 40-15(2), (3) (4) and (5)]*

3.55 The Inspector-General's power to direct a registered trustee not to accept further appointments, does not limit the operation of any other provision of the Bankruptcy Act, or any other law, relating to the lodgement of a document or a person giving incomplete or incorrect information or any matter relating to a decision by a committee in relation to the Inspector-General giving a direction that a registered trustee not accept further appointments. The Inspector-General's power to apply to a Court for an order that a registered trustee comply with a direction to give relevant material is also not affected. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 40, Subdivision B, Subsections 40-15(6) and (7)]*

Automatic cancellation

3.56 The registration of a registered trustee is automatically cancelled if:

- the person becomes an insolvent under administration; or
- the person dies. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 40, Subdivision C, subsection 40-20(1)]*

3.57 The cancellation takes effect on the day that the person becomes an insolvent under administration or the day that the person dies. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 40, Subdivision C, subsection 40-20(2)]*

The Inspector-General may suspend or cancel registration

3.58 The Inspector-General may suspend or cancel the registration of a registered trustee if:

- the person is disqualified from managing corporations under Part 2D.6 of the Corporations Act, or under a law of an external Territory or a law of a foreign country;
- the person ceases to have adequate and appropriate professional indemnity and fidelity insurance against the liabilities that the person may incur working as a registered liquidator;
- the person's registration as a liquidator under the Corporations Act has been cancelled or suspended, other than in compliance with a written request by the person to cancel or suspend the registration;
- the person owes more than the prescribed amount of notified estate charges;

- the person fails to repay remuneration in accordance with an order of the Court;
- the person has been convicted of an offence involving fraud or dishonesty;
- the person lodges a request with the Inspector-General in the approved form to have the registration suspended or cancelled. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 40, Subdivision D, subsections 40-25(1) and 40(30(1))*]

3.59 The powers given to the Inspector-General to suspend or cancel a person's registration as a trustee does not affect the operation of Part VIIC of the Crimes Act 1914 which in certain circumstances relieves a person from disclosing spent convictions. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 40, Subdivision D, subsections 40-25(2) and 40-30(2)*]

3.60 Where the Inspector-General decides to suspend or cancel a person's registration as a trustee, the Inspector-General must, within 10 days of making the decision, give the person a written notice setting out the decision and the reasons for the decision. The decision comes into effect on the day after the notice is given to the person. However, a failure by the Inspector-General to give the notice within 10 business days, does not affect the validity of the decision. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 40, Subdivision D, section 40-35*]

Disciplinary action by committee

3.61 The Inspector-General may issue a show cause notice to a registered trustee where, in the Inspector-General's opinion:

- the registered trustee no longer has the prescribed qualifications, experience, knowledge and abilities;
- the registered trustee has committed an act of bankruptcy, within the meaning of the Bankruptcy Act or a corresponding law of an external Territory or a foreign country;
- the registered trustee is disqualified from managing corporations under Part 2D.6 of the Corporations Act, or under a law of an external Territory or a law of a foreign country;
- the registered trustee has ceased to have adequate and appropriate professional indemnity or fidelity insurance

against the liabilities that the person may incur working as a registered trustee;

- the registered trustee has breached a current condition imposed on the registered trustee;
- the trustee has contravened a provision of the Bankruptcy Act;
- the trustee's registration as a liquidator has been cancelled or suspended involuntarily;
- the trustee owes more than the prescribed amount of notified estate charges;
- the trustee fails to repay remuneration in accordance with an order from the Court;
- the trustee has been convicted of an offence involving fraud or dishonesty;
- the trustee is permanently or temporarily unable to perform the functions and duties of a trustee because of physical or mental incapacity;
- the trustee has failed to carry out adequately and properly the duties of a trustee or any other duties or functions that under a law of the Commonwealth or of a State or Territory, or the general law that a trustee is required to carry out;
- the trustee has failed to carry out adequately and properly (whether in Australia or in an external Territory, or in a foreign country) the duties of an administrator in relation to a debt agreement;
- the trustee is not a fit and proper person; or
- the trustee is not resident in Australia.
- the trustee has failed to comply with prescribed standards applicable to the exercise of powers, or the carrying out of duties, of registered trustees. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 40, Subdivision E, Subsection 40-40(1)*]

3.62 A show cause notice issued by the Inspector-General is not a legislative instrument. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 40, Subdivision E, subsection 40-40(2)*]

3.63 The Inspector-General's powers to issue a show cause notice do not affect the operation of Part VIIC of the Crimes Act 1914 which in certain circumstances relieves a person from disclosing spent convictions. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 40, Subdivision E, subsection 40-40(3)]*

3.64 The Insolvency Practice Rules may prescribe standards applicable to the exercise of powers, or the carrying out of duties, of registered trustees. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 40, Subdivision E, subsection 40-40(4)]*

3.65 The Inspector-General may convene a committee to consider disciplinary action in relation to a registered trustee. The committee convened by the Inspector-General must consist of the Inspector-General, a registered trustee chosen by a prescribed body (ARITA) and a person appointed by the Minister. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 40, Subdivision E, subsections 40-45(1) and (2)]*

3.66 The Inspector-General may refer a registered trustee to a committee which they have convened if they have given a show cause notice to the registered trustee and either:

- the Inspector-General does not receive an explanation within 20 business days after the notice is given; or
- the Inspector-General is not satisfied by the explanation given by the registered trustee. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 40, Subdivision E, section 40-50]*

3.67 Where a registered trustee is referred to a committee, the committee must decide one or more of the following:

- that the trustee should continue to be registered;
- that the trustee's registration should be suspended for a period, or until the occurrence of an event, specified in the decision;
- that the trustee's registration be cancelled;
- that the Inspector-General should direct the trustee not to accept any further appointments as trustee, or not to accept any further appointments as trustee during the period specified in the decision;
- that the trustee should be publicly admonished or reprimanded;

- that a condition specified in the decision should be imposed on the trustee;
- that a condition should be imposed on all other registered trustees that they must not allow the trustee to carry out any of the functions or duties, or exercise any of the powers of a registered trustee on their behalf for a period specified in the decision of no more than 10 years;
- that the Inspector-General should publish specified information in relation to the committee's decision and the reasons for that decision. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 40, Subdivision E, subsection 40-55(1)*]

3.68 The conditions imposed by a committee on a registered trustee may include one or more of the following:

- a condition that the trustee engage in, or refrain from engaging in, specified conduct;
- a condition that the trustee engage in, or refrain from engaging in, specified conduct except in specified circumstances;
- a condition that the trustee publish specified information;
- a condition that the trustee notify a specified person or class of persons of specified information;
- a condition that the trustee publish a specified statement;
- a condition that the trustee make a specified statement to a specified person or class of persons. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 40, Subdivision E, subsection 40-55(2)*]

3.69 In making its decision, the committee may have regard to:

- any information provided to the committee by the
- Inspector-General;
- any explanation given by the trustee;
- any other information given by the trustee to the committee;
- if the trustee is or was also a registered liquidator under the Corporations Act - any information in relation to the trustee

given to the committee by ASIC or a committee convened under the Insolvency Practice Schedule (Corporations); and

- any other matter that the committee considers relevant. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 40, Subdivision E, subsection 40-55(3)]*

3.70 The committee is required to give the registered trustee and the Inspector-General a report setting out:

- the committee's decision in relation to the trustee;
- the committee's reasons for that decision;
- if the committee decides that the trustee should be registered subject to a condition:
 - the condition; and
 - the committee's reasons for imposing the condition; and
- if the committee decides that a condition should be imposed on all or other registered trustees in relation to the registered trustee:
 - the condition; and
 - the committee's reasons for the decision. *[Schedule 2, Insolvency Practice Schedule (Bankruptcy), Part 2, Division 40, Subdivision E, section 40-60]*

3.71 Inspector-General is required to give effect to the committee's decision. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 40, Subdivision E, section 40-65]*

Lifting or shortening suspension

3.72 A person whose registration as a registered trustee has been suspended may apply to the Inspector-General in the approved form for the suspension to be lifted or for the period of the suspension to be shortened. The application must be lodged with the Inspector-General in the approved form. If the application is lodged in the approved form the application is properly made. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 40, Subdivision F, section 40-70]*

3.73 The Inspector-General may convene a committee for the purposes of considering an application, or applications, made to have a suspension shortened or lifted. The committee must consist of the

Inspector-General, a registered trustee chosen by a prescribed body (ARITA) and a person appointed by the Minister. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 40, Subdivision F, section 40-75]*

3.74 The Inspector-General must refer an application to a committee which the Inspector-General has convened within 3 months after receiving the application. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 40, Subdivision F, section 40-80]*

3.75 The committee must consider the application referred to it and, unless the applicant otherwise agrees, the committee must interview the applicant for the purposes of considering the application. Within 10 business days after the interview the committee must decide whether the suspension should be lifted, or the period of the suspension shortened, and if it is to be shortened, specify when the suspension is to end. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 40, Subdivision F, section 40-85]*

3.76 The committee must give the applicant and the Inspector-General a report setting out the committee's decision, the committee's reasons for the decision and if the committee has decided that the period of suspension should be shortened, when the suspension is to end. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 40, Subdivision F, section 40-90]*

3.77 If the committee decides that a suspension should be lifted or the period of suspension shortened, the lifting or shortening of the suspension comes into effect in accordance with the decision. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Division 40, Subdivision F, section 40-95]*

Action initiated by industry body

3.78 An industry body (prescribed in the Insolvency Practice Rules) may lodge a notice (an **industry notice**) stating that the body reasonably suspects that there are grounds for the Inspector-General to take disciplinary action against a registered trustee. The industry body must identify the registered trustee and include the information and copies of any documents upon which the suspicion is founded. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 40, Subdivision G, subsection 40-100(1)]*

3.79 The Inspector-General must consider the information and documents included in the industry notice and take action as follows:

- If the Inspector-General decides to take no action the Inspector-General, must give the industry body a notice within 45 business days after the industry notice is lodged.

- However, such a notice does not preclude the Inspector-General from taking action based wholly or partly on the basis of information in the industry notice of the following kind:
 - suspending or cancelling the registration of the registered trustee;
 - giving the registered trustee a show cause notice; or
 - imposing a condition on the registered trustee.
- If the Inspector-General does take action based wholly or partly on the information included in an industry notice, the Inspector-General must give the industry body notice of that fact. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 40, Subdivision G, subsections 40-100(2-6)]*

3.80 An industry notice is not a legislative instrument. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Division 40, Subdivision G, subsection 40-100(7)]*

3.81 An industry body is not liable civilly, criminally or under any administrative process for giving an industry notice if the body acted in good faith and the suspicion that the body holds in relation to the subject of the notice is a reasonable suspicion. A person who makes a decision in good faith as a result of which an industry body gives an industry notice is not civilly, criminally or under any administrative process for making the decision. A person who gives information or a document in good faith which is included, or a copy of which is included, in an industry notice is not liable civilly, criminally or under any administrative process for giving the information or document. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 40, Subdivision G, section 40-105]*

3.82 The Insolvency Practice Rules may prescribe industry bodies for the purposes of Subdivision G of Division 40. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), 2 Part 2, Division 40, Subdivision G, section 40-110]*

Court oversight of registered trustees

3.83 The Court may make such orders as it thinks fit in relation to a registered trustee. The Court may exercise this power on its own initiative, during proceedings before the Court or on application by the trustee or the Inspector-General. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 45, subsections 45-1(1), (2) and (3)]*

3.84 Without limiting the matters which the Court may take into account when making orders the Court may take into account:

- whether the registered trustee has faithfully preformed, or is faithfully performing, the registered trustee's duties;
- whether an action or failure to act by the registered trustee is in compliance with an order of the Court
- whether any person has suffered, or is likely to suffer, loss or damage because of an action or failure to act by the registered trustee; and
- the seriousness of the consequences of any action or failure by the registered trustee, including the effect of that action or failure to act on public confidence in registered trustees as a group. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 45, section 45-1(4)]*

3.85 Section 45-1 does not limit the Court's powers under any other provision of the Bankruptcy Act or under any other law. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 45, subsection 45-1(5)]*

3.86 The Court may also make orders in relation to a registered trustee that deal with the costs of a matter considered by the Court. The orders may order that the registered trustee is personally liable for some or all of the costs and that the registered trustee is not entitled to be reimbursed by a regulated debtor's estate or creditors in relation to some or all of those costs. Section 17-10 does not limit the Court's powers under any other provision of the Bankruptcy Act or under any other law. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 45, section 45-5]*

Committees under this Part

3.87 If a prescribed body appoints a person to a committee, that person must have the knowledge or experience prescribed in the Insolvency Practice Rules or if no knowledge is prescribed, the knowledge and experience necessary to carry out the functions to be performed. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 50, section 50-5]*

3.88 If the Minister appoints a person to a committee, that person must have knowledge or experience in one or more fields of business, law (including the law relating to bankruptcy), economics, accounting, public policy relating to bankruptcy. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 50, section 50-10]*

3.89 A single committee may consider more than one matter relating to the application for registration of one or more applicants for registration as a trustee and a matter or matters relating to one or more registered

trustees. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 50, section 50-15]*

3.90 The consideration of a matter is not affected by a change in the membership of the committee. A matter may be adjourned or transferred to another committee. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 50, section 50-20]*

3.91 The Insolvency Practice Rules may provide for and in relation to the manner in which the committees perform their functions including: meetings, requirements for a quorum, disclosure of interests, the manner in which questions are to be decided by the committee, the reconstitution of a committee and the termination of the consideration of a matter by committee, and the transfer of matters to another committee. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 50, section 50-25].*

3.92 A member of a committee is entitled to receive the remuneration that is determined by the Remuneration Tribunal but if no determination by the Tribunal is in operation, the member is entitled to receive such remuneration as the Minister determines in writing. A member is entitled to receive such allowances as the Minister determines in writing. The operation of the requirements in relation to the remuneration of a member of a committee has effect subject to the Remuneration Tribunal Act 1973. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 50, section 50-30]*

3.93 A member of a committee commits an offence if information or a document is given to the member for the purposes of exercising powers or functions as a member of the committee and the member uses or discloses the information or document for any other purpose. The penalty is 50 penalty units. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 50, subsection 50-35(1)]*

3.94 The restriction on the use of information or a document disclosed to a member of a committee does not apply if the information is disclosed:

- to ASIC to assist ASIC to exercise its powers or perform its functions under Chapter 5 of *the Corporations Act 2001* or the Insolvency Practice Schedule (Corporations);
- to a committee convened under Part 2 of the Insolvency Practice Schedule (Corporations) to assist the committee to exercise its powers or perform its functions;
- to another committee convened to assist the committee to exercise its powers or perform its functions;

- to enable or assist a prescribed body to perform its disciplinary function in relation to its members;
- in order to enable or assist an authority or person in a State or Territory or a foreign country to perform or exercise a function or power that corresponds, or is analogous, to any of the committee's or the Inspector-General's functions and powers; or
- to a court or tribunal in relation to proceedings before the court or tribunal. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 2, Division 50, subsection 50-35(2)*]

Consequential amendments

Trustees

3.95 Sections 154A to 155K are repealed as the details regarding the appointment of trustees are now contained in Division 20 (Registering trustees) of the Schedule [*Schedule 1, Part 2, item 48*].

3.96 Subsections 156A(4) to (7) are repealed as the Court power to make orders in relation to estate administration is now contained in section 90-15 of the Schedule [*Schedule 1, Part 2, item 49*].

3.97 Subsections 157(6) to (9) are repealed as the provisions are considered to no longer be necessary due to the following reasons:

- Section 90-15 contains a general power for the Court to 'make orders as it thinks fit in relation to the administration of the regulated debtor's estate', whilst section 90-20 allows a creditor to apply for an order under section 90-15.
- Subsection 157(7A) contains a requirement for the provision of notice to the Official Receiver of the cancellation of a trustee's appointment and reappointment of a new trustee. It is not necessary that this requirement be legislated, because standard practice is that the Official Receiver is made of aware of the cancellation/appointment of trustees via other measures.
- Subsection 157(8) currently requires that the Official Receiver issue a person with a certificate of appointment following their appointment as a trustee. The provision of a

certificate is considered to be superfluous, so the Schedule repeals this subsection [*Schedule 1, Part 2, item 50*].

3.98 Section 161A is repealed because the requirement to provide the Inspector-General notice if the trustee is convicted of an offence involving fraud or dishonesty or dishonesty is now contained in section 35-1 [*Schedule 1, Part 2, item 51*].

3.99 The heading of Division 2 Part VIII is amended to clarify the application of remunerations and costs to the Official Trustee and Official Receiver [*Schedule 1, Part 2, item 52*].

3.100 Sections 161B and 162 are repealed as the details regarding the constraints on a trustee's remuneration are now contained in section 60-15. [*Schedule 1, Part 2, item 53*].

3.101 Sections 164 to 167 of the Bankruptcy Act are repealed for the following reasons:

- Section 164: Details regarding remuneration of trustees where one trustee succeeds another are now contained in section 60-30 and section 60-35-70 of the Insolvency Law Reform Bill.
- Section 165: Details from section 165 are now contained in section 60-20, section 60-25 and section 60-30 of the Insolvency Law Reform Bill.
- Section 166: An obligation to provide creditors with notice of the trustee's engagement of services in connection with the administration of the estate is now contained in section 60-26.
- Section 167: The substance of section 167 is replaced by Subdivision C in Division 90. [*Schedule 1, Part 2, item 54*].

3.102 1.102 Divisions 3 and 4 of Part VIII are repealed for the following reasons:

- Section 168 & 169: replaced by section 65-5 and section 90-15
- Subsection 170(2) is now contained in section 70-56
- Section 170A: Details regarding the provision of a return in relation to the administration of an estate during a financial year are now contained in section 70-5

- Section 171: is now covered by section 65-35
- Section 173: is now covered by section 70-10
- Section 174: is now covered by section 70-11
- Section 175: is now covered by section 701-5 and section 70-25
- Section 176: is now covered by section 90-15
- Section 177: is now covered in section 90-5
- Section 178: the right to make an application to the Court to appeal against trustee's decision is contained in section 90-20
- Section 179 is to be repealed because subsection 179(1) is replaced by section 90-15 and subsection 179(2) replaced by creditor's right to request information contained in Subdivision C of Division 26 of Schedule 2 and section 70-60. The Court's power to make orders as it thinks fit in relation to the administration of the regulated debtor's estate is contained in section 90-5 [*Schedule 1, Part 2, item 55*].

3.103 Section 181 is repealed because removal by creditors is now dealt with in Subdivision D of Division 90 (Review) of the Schedule [*Schedule 1, Part 2, Section 56*].

3.104 Section 181A(2) is being amended to remove the cross reference to section 64A as this reference is no longer relevant given that section 64A is being repealed and replaced by the meetings regulation-making power in section 75-50 [*Schedule 1, Part 2, item 57*].

3.105 Section 182 is repealed for the following reasons:

- because subsection 182(1) provides for the automatic cancellation of a trustee's registration if the trustee becomes bankrupt, enters into a debt agreement or signs an authority under section 188 (Part X). This detail is now contained in section 40-20 of the Schedule and so can be replaced.
- Subsections 182(4) and (5) are no longer required. [*Schedule 1, Part 2, item 58*].

Application and transitional provisions

Registering trustees

3.106 If a person applies for registration as a trustee under section 154A of the old Act and the person's application has not been refused and the person is not registered as a trustee, the application will be considered to have never been made. In these circumstances, the Inspector General must, on behalf of the Commonwealth, refund to the person an amount equal to the fee paid in relation to the application. A person will be considered to be registered as a trustee at a particular time if the person is registered as a trustee under the National Personal Insolvency Index [Schedule 1, Part 3, Division 2, Subdivision A, section 104]

3.107 If a person has applied for their registration as a trustee to be extended under section 155D of the old Act and the person's application has not been refused and the person's registration as a trustee has not been extended, section 155D of the old Act continues to apply in relation to the application as if that section had not been repealed by the Schedule. At the time for renewal, the Inspector General must renew the registration of the person as a trustee under the Schedule [Schedule 1, Part 3, Division 2, Subdivision A, section 105]

3.108 If a person is registered as a trustee immediately before the commencement day, on the commencement day the person is taken to be registered as a trustee under Subdivision B of Division 20 of the Schedule. However, a person will not be considered to be registered as a trustee if the person is an insolvent under administration or the person is dead [Schedule 1, Part 3, Division 2, Subdivision A, subitems 106(1) and (2)]

3.109 An old Act registrant is a person who is taken to be registered under Subdivision B of Division 20 of the Schedule because of section 107. [Schedule 1, Part 3, Division 2, Subdivision A, subitem 106(3)]

3.110 The Inspector General must enter the details of old Act registrants on the Register of Trustees. The details must be those prescribed under subsection 15-1(3) of the Insolvency Practice Schedule (Bankruptcy) that relate to the old Act registrant. [Schedule 1, Part 3, Division 2, Subdivision A, subitem 107(1)]

3.111 If the Inspector General holds information in relation to old Act registrants, the Inspector General may use and disclose that information to establish and maintain the Register of Trustees. [Schedule 1, Part 3, Division 2, Subdivision A, subitem 107(2)]

3.112 An old Act registrant's registration on the Register of Trustees, under the Schedule is for 3 years after the 'old Act registration day'. The

old Act registration day is the day on which registration began; or the most recent extension of that registration began; whichever is the later *[Schedule 1, Part 3, Division 2, Subdivision A, section 108]*

3.113 Conditions may be imposed on old Act registrants in accordance with the Schedule. *[Schedule 1, Part 3, Division 2, Subdivision A, section 109]*

3.114 If a condition applies to an old Act registrant under section 155E, 155F or 155I of the old Act; and that condition is still in force immediately before the commencement day, that condition (including any modifications under section 155F or 155I of the old Act) will be a current condition imposed on the old Act registrant. Subdivision C of Division 20 of the Schedule applies to a condition imposed under subitem (1) of section 110 in the same way as it applies to a condition imposed by a committee under that Schedule. *[Schedule 1, Part 3, Division 2, Subdivision A, section 110]*

3.115 If a condition applies to an old Act registrant under section 155A, 155F or 155I of the old Act; and the old Act registrant has applied for the condition to be changed or removed under section 155E of the old Act before the commencement day; and a decision on the application has not been made before the commencement day under section 155F of the old Act; the application is taken never to have been made and the Inspector General must, on behalf of the Commonwealth, refund to the person an amount equal to the fee paid in relation to the application. The trustee may then apply under section 20-40 of the Schedule for the condition to be varied or removed. *[Schedule 1, Part 3, Division 2, Subdivision A, Section 111]*

3.116 The old Act will apply in relation to the decision if an old Act registrant has applied for a condition to be changed or removed under section 155E of the old Act before the commencement day; and before the commencement day, a committee has made a decision on the application under section 155F. The same matter may not be dealt with under Division 20 of the Schedule. *[Schedule 1, Part 3, Division 2, Subdivision A, section 112].*

3.117 An old Act registrant who chooses not to apply for renewal of their registration before his or her period of registration ends under section 108 is taken to be registered as a trustee under Subdivision B of Division 20 of the Schedule after the expiry day, subject to a condition that they must not accept any further appointments as trustee of an estate. That condition is a current condition imposed on the old Act registrant. *[Schedule 1, Part 3, Division 2, Subdivision A, subitems 113(1), (2) and (3)]*

3.118 The old Act registrant will be considered to have lodged a request to have their registration as a trustee cancelled on the day after the end of the administration of all estates for which the old Act registrant is a

trustee and the Inspector General will be taken to have cancelled the registration under subsection 40-30(1) of the Schedule on that day. *[Schedule 1, Part 3, Division 2, Subdivision A, subitem 113(4)]*

Annual Returns

3.119 For the purposes of determining a ‘return year’ under subsection 30-1(2) of the Schedule, ‘the day on which that registration first began’, means ‘the old Act registration day for that person (as defined for the purpose of Part 3 of Schedule 1 of the Bill)’ Section 30-1 of the Schedule applies in relation to return years that begin on or after the commencement day. *[Schedule 1, Part 3, Division 2, Subdivision B, Section 114]*

Notice Requirements

3.120 If within 2 years before the commencement day, an event mentioned in subsection 35-1(1) of the Schedule occurs in relation to an old Act registrant; and the old Act registrant has not already informed the Inspector General of the event before the commencement day; the old Act registrant must provide a notice relating to the event to the Inspector General. *[Schedule 1, Part 3, Division 2, Subdivision C, subitem 115(1)]*

3.121 If the old Act registrant is or could reasonably be expected to be aware of the event on or before the commencement day they are required to lodge the notice within one month after the commencement day. However if the old Act registrant was not aware of or could not reasonably be expected to be aware of the event but they become aware of it after commencement day or could reasonably be expected to become aware of it after commencement day they are required to lodge a notice within one month after the first day on which the old Act registrant is or could reasonably be expected to be aware of the event. *[Schedule 1, Part 3, Division 2, Subdivision C, subitem 115(2)]*

3.122 A person commits an offence if the person with a penalty of 100 penalty units if the person is subject to a requirement under subitem 115(1) within the period specified in subitem 115(2). *[Schedule 1, Part 3, Division 2, Subdivision C, subitem 115(3)]*

Cancellation by the Inspector-General under the old Act

3.123 If before the commencement day, a person gives the Inspector General under section 155G of the old Act a written request that the person cease to be registered as a trustee; and no decision by the Inspector General to accept the request has come into effect before the commencement day, then the Inspector General may not accept the request under section 155G of the old Act. However, for the purposes of

paragraph 40-30(1)(g) of the Schedule, the person is taken to have lodged a request with the Inspector General in the approved form to have the person's registration as a trustee cancelled. The repeal of section 155G of the old Act by the Schedule applies in relation to requests made to the Inspector General under section 155G on or after the commencement day. *[Schedule 1, Part 3, Division 2, Subdivision D, section 116]*

Disciplinary proceedings before a committee

3.124 If, before the commencement day, the Inspector General believes a matter mentioned in paragraphs 155H(1)(a) to (g) of the old Act in relation to an old Act registrant; and the Inspector General asks the old Act registrant under section 155H of the old Act to give a written explanation why the old Act registrant should continue to be registered; and the Inspector General has not received an explanation within a reasonable time or is not satisfied by the explanation; and the Inspector General has not convened a committee under subsection 155H(2) to consider if the old Act registrant should continue to be registered; the request from the Inspector General to provide a written explanation why the old Act registrant should continue to be registered is taken never to have been made. The fact that the request is taken never to have been made does not preclude the Inspector General from giving another notice to the old Act registrant under section 16-50 of the Schedule in relation to the same matter, or any aspect of the same matter. Section 117 does not apply for the purposes of sections 186LA and 186LB. *[Schedule 1, Part 3, Division 2, Subdivision E, section 117]*

3.125 If before the commencement day, a decision is made by a committee under section 155I of the old Act that the trustee should cease to be registered and the Inspector General has not given effect to the committee's decision before the commencement day, on the commencement day, the committee is taken to have made a decision under section 40-55 of the Schedule to cancel the registration of the person as a trustee. Section 40-65 of the Schedule applies in relation to the decision as if the decision were made on the commencement day. *[Schedule 1, Part 3, Division 2, Subdivision E, subsections (1), (2) and (3)]*

3.126 Section 118 does not affect any right or obligation that any person has before the commencement day (including any right to review) in relation to the consideration of the matter by the committee. *[Schedule 1, Part 3, Division 2, Subdivision E, subsection 118(4)]*

3.127 If the Inspector General convened a committee under section 155H of the old Act to consider whether a trustee should continue to be registered before the commencement day; and the committee has not made a decision in relation to the trustee under section 155I of the old Act before the commencement day, the committee must cease its

consideration of the matter on the commencement day without making a decision. The fact that the committee has ceased to consider the matter does not preclude the matter, or any aspect of the matter, from being dealt with under Division 40 of the Schedule. To avoid doubt, nothing in this item affects any right or obligation that any person has before the commencement day, including any right to review, in relation to the consideration of the matter by the committee. *[Schedule 1, Part 3, Division 2, Subdivision E, section 119]*

Suspension cancellation and disciplinary action

3.128 Subdivision B of Division 40 of the Schedule applies whether or not a requirement mentioned in that Subdivision to lodge a document or give information or a document arises before, on or after the commencement day. *[Schedule 1, Part 3, Division 2, Subdivision F, Section 120]*

3.129 Section 40-25 of the Schedule applies whether or not an event mentioned in subsection 40-25(1) occurs before, on or after the commencement day. However, paragraph 40-25 (1)(c) of the Schedule does not apply where a liquidator's registration is cancelled or suspended under the Corporations Act (as in force at any time before the commencement day). *[Schedule 1, Part 3, Division 2, Subdivision F, Section 121]*

3.130 Section 40-30 of the Schedule applies whether or not an event mentioned in subsection 40-30(1) occurs before, on or after the commencement day. However, paragraph 40-30(1)(c) of the Schedule does not apply where a liquidator's registration is cancelled or suspended under the Corporations Act (as in force at any time before the commencement day). *[Schedule 1, Part 3, Division 2, Subdivision F, Section 122]*

3.131 Subdivision E of Division 40 of the Schedule applies whether or not an event mentioned in subsection 40-40(1) of the Schedule occurs before, on or after the commencement day. However, in relation to an event that occurs before the commencement day, paragraph 40-40(1)(p) of the Schedule has effect as if the reference in that paragraph to "a standard prescribed for the purposes of subsection (4)" was a reference instead to "a standard prescribed by regulations made for the purpose of subsection 155H(5) of the old Act". *[Schedule 1, Part 3, Division 2, Subdivision F, Section 123].*

3.132 Section 40-100 of the Schedule applies, whether or not the grounds to which a notice under that section relates arise because of an action, a failure to act or circumstance that occurs before, on or after the commencement day. *[Schedule 1, Part 3, Division 2, Subdivision F, section 124]*

Powers of the Court and other bodies

3.133 Regardless of whether or not an event in relation to which (or because of which) an order is made occurs before, on or after the commencement day, the Court may exercise its powers to make an order under section 45-1 of the Schedule. *[Schedule 1, Part 3, Division 2, Subdivision G, section 125]*

3.134 If, as a result of the continued application of the old Act on or after the commencement day, a relevant body (the Inspector General, the Administrative Appeals Tribunal, the Court or any other body) (**'relevant body'**) may decide to register or cancel the registration of a trustee or impose conditions on a person's registration as a trustee under the old Act. A relevant body may instead register or cancel the registration of the trustee under the Schedule or impose conditions on a trustee's registration; and by order, modify the application of Part 3 of Schedule 1 or the Schedule in relation to the registration, or the cancellation of the registration, of the trustee under the Schedule or in relation to the conditions imposed on a trustee's registration under that Schedule *[Schedule 1, Part 3, Division 2, Subdivision G, Section 126]*.

Chapter 4

Remuneration and regulation of trustees

Outline of chapter

4.1 This chapter relates to rules regarding the remuneration of trustees, interactions between trustees and creditors and the review of a trustee's actions. These rules will be common (with some exceptions) with the corresponding rules in relation to registered trustees which are introduced by the Insolvency Practice Schedule (Corporations).

4.2 Many of the rules are based on the existing framework that exists for registered trustees.

Context of amendments

4.3 The interaction between trustees and creditors was the subject of a significant amount of attention in the Senate Inquiry. Concerns were raised that creditors lacked the ability to influence the actions taken by insolvency practitioners and to monitor the actions taken by insolvency practitioners.

4.4 A fundamental issue with regards to the regulation of insolvency practitioners is that generally creditors are disinterested in the details of the administration. This creditor disinterest can sometimes encourage bad behaviour by rogue insolvency practitioners. The rules detailed in this chapter seek to empower creditors.

Summary of new law

4.5 1.5 The parts of the Schedule that this chapter is concerned with:

- provide for a maximum default amount of remuneration for trustees;
- provide for the making of remuneration determinations by the creditors and/or the Inspector-General;

- provide for rules relating to the receipt of benefits by trustees;
- provide for requirements relating to fund handling by trustees;
- provide for requirements relating to record keeping by trustees;
- provide for rules relating to the provision of information;
- provide for rules relating to meetings;
- provide for rules relating to committees;
- provide for rules relating to the review of the administration of regulated debtor's estates; and
- provide for rules relating to committees of inspection.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
The trustee will be entitled to a “maximum default amount” if no remuneration determination is made in relation the necessary and proper work	If the total remuneration payable to the trustee would be less than: (a)\$5,000; or (b) another prescribed amount; the trustee is entitled to be paid, from the funds in the bankrupt’s estate, additional remuneration equal to the shortfall.
It will be an offence for a trustee not to disclose employment of related entities.	There is currently no corresponding offence.
It will be an offence for a trustee to not notify creditors of the employment of related entities in connection with the administration of the estate.	There is currently no corresponding offence.
A trustee commits an offence (subject to certain exceptions) if they derive or confer a benefit or gift from an estate.	A trustee is guilty of contempt of court if they derive or confer a benefit or gift from an estate.

<i>New law</i>	<i>Current law</i>
A trustee commits an offence (subject to certain exceptions) if they accept extra benefits in connection with the administration of the estate.	A trustee who accepts extra benefits is guilty of contempt of court.
A trustee commits an offence if they give up any remuneration.	A trustee who gives up any remuneration is guilty of contempt of court.
A trustee commits an offence if they directly or indirectly purchase any part of a regulated debtor's estate.	A trustee who (except with the leave of the Court) directly or indirectly becomes the purchaser of any part of the estate is guilty of contempt of court.
A trustee commits an offence (subject to certain exceptions) if a trustee pays for the performance of a trustee's ordinary duties by another person out of the estate.	There is currently no corresponding offence.
A trustee commits an offence if they do not comply with the requirement to maintain an administration account.	There is currently no corresponding offence.
A trustee commits an offence if they do not pay the money received in relation to the estate into the administration account within 5 days after receipt.	There is currently no corresponding offence.
A trustee commits an offence if they pay money into an administration that is unconnected with the administration of an estate.	There is currently no corresponding offence.
A trustee commits an offence if they pay money out of the administration account otherwise than for purposes related to the administration of estate or in accordance with Bankruptcy Act or in accordance with a direction of the Court.	There is currently no corresponding offence.
A trustee will be able to make payments out of the administration account by cheque or by electronic funds transfer.	The Bankruptcy Act does not provide for the form that payments by the trustee must take.

<i>New law</i>	<i>Current law</i>
A trustee who maintains a single bank account for more than one estate will be required to maintain separate records for each estate and they will be required to reconcile the balance relating to each estate with their records at least once every 25 business days.	While there is a requirement for a trustee to keep “such accounts and records as are necessary to exhibit a full and correct account of the administration of the estate” there is no requirement to reconcile these accounts.
A trustee commits an offence if they do not deposit in the administration account bills of exchange, promissory notes and other negotiable instruments or security.	The Bankruptcy Act does not place any requirements on the handling of securities.
The Court will be empowered-on application-to give directions regarding the payment, deposit or custody of money and securities.	There is currently no corresponding law.
The Insolvency Practice Rules may provide rules in relation to consequences for trustees who fail to comply with the requirements for funds handling.	There is currently no corresponding law.
Trustees will be liable to pay a late lodgement fee in relation to annual administration returns that are not lodged within the prescribed time frame.	A strict liability offence applies to the failure of a trustee to lodge an annual return within the prescribed time frame.
A trustee commits an offence if they fail to comply with the requirement to maintain proper books when carrying on a business previously carried on by the bankrupt.	There is currently no corresponding offence.
The Court may order that the Inspector-General audit or cause to be audited the administration books or books kept when trading.	There is currently no corresponding law.
A trustee commits an offence if they fail to comply with auditor requirements.	There is currently no corresponding offence.
A trustee commits an offence if they intentionally or recklessly fail to transfer books to a trustee that is succeeding them as trustee within five business days.	Trustees who are succeeded by a trustee are required to prepare an account but the failure to do so does not constitute an offence.

<i>New law</i>	<i>Current law</i>
The last trustee to administer an estate must retain the books of the estate (with the exception of books provided by the bankrupt) for a period of seven years from the end of the administration.	Where property was realised the trustee must generally retain the books of the estate for a period of 15 years after the end of the administration. Where property was not realised and no dividends were distributed the trustee must generally retain the books of the estate for a period of 6 years after the end of the administration.
A trustee commits an offence if they fail to retain the books of an estate for the prescribed time period.	There is currently no corresponding offence.
The creditors may by resolution request the trustee provide them with information about the administration of the estate.	While trustees have a duty to give information about the administration of an estate to creditors who reasonably request it there is no power for the creditors to pass a resolution requesting the trustee provide them with information.
Individual creditors can request the trustee provide them with information about the administration of the estate.	Trustees have a duty to give information about the administration of an estate to creditors who reasonably request it there is no power for the creditors to pass a resolution requesting the trustee provide them with information but the new power is broader.
The Insolvency Practice Rules may provide for and in relation to the obligations of trustees to provide information, reports and documents to creditors.	The regulations may provide for the trustee to be required to give notices in relation to their remuneration and payments to third parties.
The Insolvency Practice Rules may provide for and in relation to the obligation of trustees to provide information, reports and documents to the Inspector-General.	There is currently no corresponding law however the Inspector-General can, for the purposes of carrying out their duties, request that a trustee provide a report as to the operation of the Bankruptcy Act.
If the trustee refuses a request for information the Inspector-General may direct that the trustee comply.	The Inspector-General has broad powers to require the production of information from trustees (and others).
If a trustee refuses a request for information the Court may order relevant material be provided.	There is currently no corresponding law.

<i>New law</i>	<i>Current law</i>
The trustee must convene a meeting if less than 25% but more than 10% in value of the creditors direct the trustee to do so in writing provided that security for the cost of the meeting is lodged with the trustee.	Currently there is no requirement that the percentage of creditors directing the trustee to convene a meeting (provided security for the meeting is lodged with the trustee) exceed 10% in value.
The trustee must convene meetings if required by the Inspector-General.	There is currently no corresponding law.
In cases where former employees of the bankrupt have made a claim for financial assistance from the Commonwealth in relation to unpaid employment entitlements the Commonwealth is entitled to nominate a representative to attend any meetings.	There is currently no corresponding law.
The Insolvency Practice Rules may provide for and in relation to meetings of creditors.	There is no general power for the regulations to provide for and in relation to meetings of creditors.
If requested by a creditor, a trustee must convene a meeting to determine whether there is to be a committee of inspection.	There is currently no corresponding law. However creditors may appoint a committee of inspection at a meeting of creditors.
There are no limits on the size of a committee of inspection.	Committees of inspection must have between three to five members.
Members of the committee of inspection can only be removed through a creditors' resolution.	A member of a committee of inspection will cease to be a member in certain circumstance (for example if they are absent from five consecutive meetings of the committee).
A creditor representing at least 10% in value of the creditors or a group of creditors who together represent at least 10% in value of the creditors may appoint a representative as a member of a committee of inspection.	There is currently no corresponding law.
An employee or employees of a bankrupt employer representing at least 50% in value of amounts due to or in respect of employees in respect of services rendered to or for the bankrupt may appoint a person as a member of a committee of inspection in relation to the administration of the estate.	There is currently no corresponding law.

<i>New law</i>	<i>Current law</i>
The Insolvency Practice Rules may provide for and in relation to committees of inspection.	There is currently no corresponding law.
A committee of inspection may request the trustee provide them with information about the estate.	Trustees have a duty to give information about the administration of an estate to creditors who reasonably request it but there is no specific power for a committee of inspection to request information.
A committee of inspection may obtain specialist advice or assistance.	There is currently no corresponding law.
A member of a committee of inspection will be prohibited from accepting extra benefits, gifts, profits and from purchasing property from the estate.	Currently members of a committee of inspection are prohibited from purchasing property from the estate but the Bankruptcy Act is silent on extra benefits, gifts and profits.
The Court may inquire into conduct of a committee of inspection.	There is currently no corresponding law.
The Court may inquire, on its own initiative, into the administration of a regulated debtor's estate.	The Court can only inquire on the application of the Inspector-General, a creditor or the bankrupt.
The Court may inquire into the administration of a regulated debtor's estate on the application of a creditor, committee of inspection, any other person with a financial interest in the estate, the bankrupt, the trustee and the Inspector-General.	Currently the Court may only inquire into the administration of a bankrupt's estate on the application of the Inspector-General, a creditor or the bankrupt.
A creditor, a committee of inspection, the regulated debtor, the trustee, any other person with a financial interest in the estate, the bankrupt and the Inspector-General may apply for the Court to make an order in relation to estate administration.	While currently the Court can make orders in a variety of circumstances there is no general power to apply to have the Court make an order in relation to estate administration.

Detailed explanation of new law

4.6 A trustee's remuneration will be determined on the basis of whether a remuneration determination has been made or not. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 60, Subdivision B, subsection 60-5(1)]*

4.7 If a remuneration determination is made (there may be more than one) the trustee of a regulated debtor's is entitled to receive

remuneration for the necessary and proper work performed by the trustee in relation to the administration of the regulated debtor's estate in accordance with the remuneration determination. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 60, Subdivision B, subsection 60-5(1)]*

4.8 The qualifier "necessary and proper" seeks to ensure that (if asked to) trustees can justify the work undertaken in relation to the administration of a regulated debtor's estate for which they are seeking remuneration.

4.9 If no remuneration determination is made the trustee is entitled to receive reasonable remuneration for the work undertaken by the trustee in relation to the administration of the regulated debtor's estate. However that remuneration must not exceed the maximum default amount. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 60, Subdivision B, subsection 60-5(2)]*

4.10 For example if a trustee carries out work in relation to the administration of a regulated debtor's estate and the reasonable remuneration the trustee would be entitled to is less than the maximum default amount then they are not entitled to the maximum default amount. They may however claim reasonable remuneration for the work they have carried out on the regulated debtor's estate even if the amount they would be entitled to is less than the maximum default amount.

4.11 The remuneration is to be paid from the funds in the regulated debtor's estate. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 60, Subdivision B, subsection 60-5(3)]*

4.12 A remuneration determination may be made by resolution of the creditors or (if no resolution has been made by the creditors) by the committee of inspection *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 60, Subdivision B, section 60-10]*

4.13 The Inspector-General may, in prescribed circumstances, make a determination specifying remuneration that a trustee of a regulated debtor's estate is entitled to receive for necessary and proper work performed by the trustee in relation to the administration of the estate. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 60, Subdivision B, subsection 60-11(1)]*

4.14 When making a remuneration determination the Inspector-General must have regard to any matter prescribed. The matters prescribed may provide for an in relation to a matter referred to in section 60-12 or any other matter *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 60, Subdivision B, subsections 60-11(2) and (3)]*

4.15 A remuneration determination may specify that the remuneration that the trustee is entitled to receive by way of specifying an amount of remuneration or by specifying a method for working out an amount of remuneration or through a combination of these two approaches. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 60, Subdivision B, subsection 60-12(1)]*

4.16 If a remuneration determination specifies that the trustee is entitled to receive remuneration worked out wholly or partly on a time-cost basis, the determination must include a cap on the amount of remuneration worked out on a time-cost basis that the trustee is entitled to receive. *[Schedule 2 Insolvency Practice Schedule Bankruptcy, Part 3, Division 60, Subdivision B, subsection 60-12(2)]*

4.17 If a remuneration determination specifies that the trustee is entitled to receive remuneration worked out wholly or partly on the basis of a specified percentage of money received by the trustee in respect of the regulated debtor's estate the determination must specify the money to which the specified percentage applies and the specified percentage must not be greater than the prescribed percentage. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 60, Subdivision B, subsection 60-12(3)]*

4.18 A remuneration determination may, for example, specify that a trustee is entitled to receive part of his or her remuneration on the basis of a specified percentage of money received from the sale of an asset that forms part of the regulated debtor's estate.

4.19 More than one remuneration determination may be made in relation to a particular trustee and a particular regulated debtor's estate. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 22, Subdivision B, subsection 60-12(4)]*

4.20 The maximum default amount for a trustee is an amount (exclusive of GST) worked out as follows:

- if the trustee is appointed as the trustee of the regulated debtor's estate during the financial year beginning on 1 July 2015-\$5000;
- if the trustee is appointed as the trustee of the regulated debtor's estate during a financial year beginning on or after 1 July 2016 the greater of:
 - (i) the amount worked out by multiplying the indexation factor for the financial year (worked out in accordance with subsections 60-15(3) and (4)) by the maximum default amount for a trustee appointed as the trustee of

a regulated debtor's estate during the previous financial year; and

- (ii) the amount (if any) prescribed for the purposes of subparagraph 60-15(1)(b)(ii) [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 22, Subdivision B, subsection 60-15(1)*]

4.21 Amounts worked out under the formula for the maximum default amount must be rounded to the nearest whole dollar. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 22, Subdivision B, subsection 60-15(2)*]

4.22 Subject to subsection 60-15(4), the indexation factor for a financial year is the number worked out by dividing the index number for the March quarter immediately preceding that financial year by the index number of the March quarter immediately preceding that first mentioned March quarter. If the indexation factor would be less than 1, the indexation factor is to be increased to 1. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 60, Subdivision B, subsection 60-15(3) and (4)*]

4.23 When working out the indexation factor for section 60-15:

- use only the index numbers published in terms of the most recently published index reference period for the Consumer Price Index; and
- disregard index numbers published in substitution for previously published index numbers (except where the substituted numbers are published to take account of changes in the index reference period). [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 60, Subdivision B, subsection 60-15(5)*]

4.24 With regards to a reference in section 60-15 to the “index number”, the “index number” in relation to a quarter means the All Groups Consumer Price Index, being the weighted average of the 8 capital cities, published by the Australian statistician in respect of that quarter. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 60, Subdivision B, subsection 60-15(6)*]

Duties of trustees relating to remuneration and benefits etc.

4.25 A trustee of a regulated debtor's estate must not directly or indirectly derive any profit or advantage from a transaction, sale or purchase for or on account of the estate. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 60, Subdivision E, subsection 60-20(1)*]

4.26 To avoid doubt, a trustee of a regulated debtor's estate is taken to derive a profit or advantage from the administration of the estate if:

- the trustee directly or indirectly derives a profit or advantage from a transaction (including a sale or purchase) entered into for or on account of the estate;
- the trustee directly or indirectly derives a profit or advantage from a creditor of the estate; or
- a related entity of the trustee directly or indirectly derives a profit or advantage from the administration of the estate.
[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 60, Subdivision E, subsection 60-20(2)]

4.27 Subsection 60-20(1) does not apply to the extent that another provision of the Bankruptcy Act, or of another law, requires or permits the trustee to derive the profit or advantage or the Court gives leave to the trustee to derive the profit or advantage *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 60, Subdivision E, subsection 60-20(3)]*

4.28 Subsection 60-20(1) does not apply to the extent that:

- the profit or advantage arises because the trustee employs or engages a person to provide services in connection with the administration of the regulated debtor's estate and the person is a related entity and:
- either:
 - (i) the trustee does not know, and could not reasonably be expected to know, that the person employed or engaged in a related entity of the trustee; or
 - (ii) the creditors consent to the related entity being employed or engaged. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 60, Subdivision E, subsection 60-20(4)]*

4.29 In many cases a trustee may structure their business so that they have a service company that provides services relating to their practice. Trustees will be able to engage their service firms (as a related entity) to provide services in relation to the administration of a regulated debtor's estate provided creditors consent to the arrangement.

4.30 Subsection 60-20(1) does not apply to the extent that the profit or advantage is a payment that is made to the trustee by or on behalf of the Commonwealth or an agency or authority of the Commonwealth and is of

a kind prescribed. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 60, Subdivision E, subsection 60-20(5)]*

4.31 A trustee commits an offence with a penalty of 50 penalty units if they fail to comply with the requirements of subsection 60-20(1). *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 60, Subdivision E, subsection 60-20(6)]*

4.32 A transaction, sale or purchase or any other arrangement entered into in contravention of the requirements under section 60-20 may be set aside by the Court. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 60, Subdivision E, subsection 60-20(7)]*

4.33 A person who is, or has been, the trustee of a regulated debtor's estate must not make an arrangement for giving up; or give up to any other person, any or all of the remuneration which the trustee is entitled to receive under the Bankruptcy Act in relation to the administration of the estate. A person commits an offence of strict liability with a penalty of 50 penalty units if they fail to comply with this requirement. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 60, Subdivision E, Subsection 60-25(1) and (2)]*

4.34 If a trustee of a regulated debtor's estate receives remuneration for his or her services, a payment in respect of the performance by another person of the ordinary duties that are required by the Bankruptcy Act to be performed by the trustee is not allowed in the trustee's accounts unless the creditors or the committee of inspection (if any) authorise the payment through a resolution. A person who fails to comply with this requirement commits an an offence of strict liability with a penalty of 50 penalty units *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 60, Subdivision E, subsection 60-26(1), (2) and (3)]*

Remuneration for successive trustees

4.35 In cases where a trustee is succeeded by a new trustee and the trustees agree on the remuneration that the former trustee is entitled to receive and the creditors, by resolution, endorse that agreement the creditors are taken to have made a remuneration determination. The agreement does not constitute the giving up of remuneration in relation to the administration of the regulated debtor's estate even if the remuneration agreed and endorsed is less than the remuneration to which the former trustee might otherwise be entitled. Section 60-30 applies in relation to a former trustee even if the new trustee is the Official Trustee. *[Schedule 2, Insolvency Practice Schedule (Bankruptcy), Part 3, Division 60, Subdivision F, section 60-30]*

4.36 Section 60-30 does not apply in cases where the former trustee is Official Trustee as the Official Trustee's remuneration is determined by an instrument made under section 163 of the Bankruptcy Act.

4.37 If a former trustee and the new trustee agree on the expenses of the administration of the bankruptcy; and the creditors, by resolution, endorse that agreement; then for the purposes of paragraph 109(1)(a) of the Bankruptcy Act those expenses are taken to be expenses of the administration of the bankruptcy. Section 60-35 applies in relation to a former trustee even if the new trustee is the Official Trustee. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 60, Subdivision F, section 60-35]*

Funds handling

4.38 The trustee of a regulated debtor's estate must maintain a bank account (the administration account) and the trustee must ensure that the administration account complies with the prescribed requirements (if any). This bank account is the administration account for the estate. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 65, subsection 65-5(1), (2) and (3)]*

4.39 The trustee is taken to comply with the requirements regarding the maintenance of an administration account if the trustee maintains a single bank account, that complies with the requirements (if any) prescribed, in relation to more than one estate of a regulated debtor and the relevant estate is one of those estates. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 65, subsection 65-5(4)]*

4.40 Hence a trustee will be able to maintain one bank account that serves as the administration account for multiple estates.

4.41 If the Court gives a direction that is inconsistent with the requirements regarding the administration account the Court direction prevails to the extent of the inconsistency. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 65, subsection 65-5(5)]*

4.42 Failure to comply with the requirements regarding the administration account would be an offence with a penalty of 50 penalty units. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 65, section 65-5(6)]*

4.43 The trustee must pay all money received by the trustee on behalf of, or in relation to, the estate into the administration account for the estate within five days after receipt. *[Schedule 2, Part 3, Division 65, subsection 65-10(1)]*

4.44 If the Court gives a direction that is inconsistent with the requirements regarding the payment of money received by the trustee on behalf, or in relation to, the estate into the administration account for the estate the Court direction prevails to the extent of the inconsistency. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 65, section 65-10(2)]*

4.45 A trustee commits an offence of strict liability with a penalty of 50 penalty units if they fail to pay all pay all money received by the trustee on behalf of, or in relation to, the estate into the administration account for the estate within five days after receipt. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 65, subsection 65-10(3)]*

4.46 The trustee of a regulated debtor's estate must not pay any money into the administration account for the estate if it is not received by the trustee on behalf of, or in relation to, the estate or where the trustee maintains the account in relation to more than one estate of a regulated debtor or regulated debtors-one of those estates. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 65, subsection 65-15(1)]*

4.47 If the Court gives a direction that is inconsistent with the requirement that trustees must not pay other money into the administration account the Court direction prevails to the extent of the inconsistency. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 65, subsection 65-15(2)]*

4.48 A trustee commits an offence of strict liability with a penalty of 50 penalty units if they pay any money into the administration account for the estate if it is not received by the trustee on behalf of, or in relation to the estate, or where the trustee maintains the account in relation to more than one estate of a regulated debtor or regulated debtors-one of those estates. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 65, subsection 65-15(3)]*

4.49 If the trustee fails to pay any money into an administration account that they are obliged to pay into the administration account and the amount exceeds \$50 (or another prescribed amount) and the trustee does not satisfy the Court that the trustee had sufficient reason for failing to comply with the requirement in relation to the amount then the trustee may pay an interest penalty on the excess. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 65, subsections 65-20(1) and (2)]*

4.50 The penalty must be paid to the Commonwealth at the rate of 20% a year (or a prescribed rate if applicable) for the period during which the trustee fails to comply with the requirement. The trustee is personally liable for, and is not entitled to be reimbursed by the estate in relation to, the payment of that interest. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 65, subsection 65-20(3) and (4)]*

4.51 The trustee of a regulated debtor's estate must not pay any money out of the administration account for the estate otherwise than for purposes related to the administration of the estate; or in accordance with the Bankruptcy Act or in accordance with a direction of the Court. A person who fails to comply with this requirement will be committing an offence of strict liability with a penalty of 50 penalty units. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 65, subsections 65-25(1) and (2)]*

4.52 A payment out of the administration account for a regulated debtor's estate may be made by cheque or by electronic funds transfer. A cheque must have the name of the regulated debtor written on it and be signed by the trustee. *[Schedule 2 Insolvency Practice Schedule, Part 3, Division 65, subsection 65-30(1) and (2)]*

4.53 This requirement ensures that an audit trail for payments made in relation to the administration of a regulated debtor's estate exists.

4.54 The trustee of a regulated debtor's estate is entitled, in his or her personal capacity, to each payment of interest on the administration account for the estate, less an amount equal to the bank fees or charges (if any) paid or payable on the account during the period to which the interest relates. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 65, subsection 65-31(1)]*

4.55 If the trustee is only entitled to part of a payment of interest, the rest of that payment:

- if the administration account contains money from only one estate of a regulated debtor-forms part of that estate; or
- if the administration account contains money from more than one estate of a regulated debtor or regulated debtors-forms part of those estates in proportion to the respective amounts of money held in the administration account on account of each of those estates. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 65, subsection 65-31(2)]*

4.56 Interest on money in the administration account for a regulated debtor's estate is not subject to taxation under a law of the Commonwealth, a State, or a Territory except as provided for in Part 2 of the *Bankruptcy (Estate Charges) Act 1997*. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 65, subsection 65-31(3)]*

4.57 If a trustee maintains a single bank account for more than one estate of a regulated debtor or regulated debtors the trustee must maintain a separate records for each of these estates of:

- money received by the trustee from the regulated debtor in relation to the estate: and
- payments made by the trustee in relation to the estate; and
- the balance of money held by the trustee in relation to the estate; and
- at least once every 25 business days the trustee must reconcile the balance relating to each estate held in the account with the corresponding separate record. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 65, subsection 65-32(1) and (2)]*

4.58 The trustee of a regulated debtor’s estate must issue a receipt for a payment into the estate if asked to do so by the person making the payment. The trustee must, wherever practicable, obtain a receipt for a payment made out of the estate. This requirement also applies to the Official Trustee. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 65, subsection 65-35(1), (2) and (3)]*

4.59 The trustee of a regulated debtor’s estate must deposit in the bank with which the administration account for the estate is held bills of exchange, promissory notes and any other negotiable instrument or security payable to the regulated debtor or the trustee as soon as practicable after they are received by the trustee. If a Court gives a direction that is inconsistent with this requirement then that requirement does not apply. A person commits an offence of strict liability with a penalty of 5 penalty units if they are required to comply with this requirement and they fail to do so. The bills, notes or other instruments must be delivered out on the signed request of the trustee. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 65, subsection 65-40(1), (2), (3) and (4)]*

4.60 The Court may, on application, give directions regarding the payment, deposit or custody of money and securities that are payable to, or held by, the trustee of a regulated debtor’s estate. *[Schedule 2, Part 3, Division 65, subsection 65-45(1)]*

4.61 The Court may, on application, give directions authorising the trustee of a regulated debtor’s estate to make payments into and out of a special bank account. Without limiting the scope of the directions the Court can make the Court may:

- authorise the payments for the time and on the terms it thinks fit; and

- if the Court thinks the account is no longer required-at any time order it to be closed. An order to close an account must be served by the trustee on the relevant bank. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 65, subsection 65-45(2) and (3)*]

4.62 A copy of a Court direction authorising the trustee of a regulated debtor's estate to make payments into and out of a special bank account must be served by the trustee on the bank which with the special account was opened. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 65, subsection 65-45(4)*]

4.63 An application for the Court to give directions may be made by:

- a creditor; or
- the regulated debtor; or
- the trustee; or
- any other person with a financial interest in the administration of the estate. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 65, subsection 65-45(5)*]

4.64 The Insolvency Practice Rules may provide for and in relation to the review by the Inspector-General of a bill of costs for services provided by a person in relation to the administration of a regulated debtor's estate. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 65, subsection 65-46(1)*].

4.65 Without limiting the scope of what the Insolvency Practice Rules may provide for and in relation to the review of payments to third parties the Insolvency Practice Rules may provide for and in relation to:

- the application for the review (including who may apply); and
- the powers available to the Inspector-General in relation to the review; and
- the provision of information or documents to the Inspector-General for the purposes of the review; and
- the decisions that may be made by the Inspector-General in relation to the review; and
- the notification of decisions made by the Inspector-General; and

- the consideration of the decisions made by the Inspector-General in relation to the review by the Court. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 65, section 65-46(2)*].

4.66 The Insolvency Practice Rules may provide for and in relation to rules in relation to consequences for failure to comply with Division 65. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 65, section 65-50*]

Annual Administration Return

4.67 If a person is the trustee of a regulated debtor's estate during all or part of a financial year the person must lodge a return in relation to the person's administration of that estate during that year (or part year). [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Subdivision B, Division 70, subsection 70-5(1) and (2)*]

4.68 The return must be in the approved form; and be lodged with the Inspector-General within 25 days after the end of the financial year. If the person does not lodge the return within this time period the person must pay a late lodgement fee. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Subdivision B, Division 70, subsection 70-5(3) and (4)*]

Record Keeping

4.69 Subdivision C of Division 70 applies to the Official Trustee in the same way as it applies to the trustee of a regulated debtor's estate. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision C, subsection 70-6*]

4.70 The trustee of a regulated debtor's estate must keep proper books in which the trustee must cause to be made:

- entries of minutes of proceedings at meetings relating to the administration of the estate; and
- such other entries as are necessary to give a complete and correct record of the trustee's administration of the estate. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision C, subsection 70-10(1)*]

4.71 The trustee must:

- ensure that the books are available at the trustee's office for inspection; and

- permit a creditor, or another person acting on the creditor's behalf, to inspect the books at all reasonable times. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision C, subsection 70-10(2)*]

4.72 The requirements to keep proper books and to allow for the books to be inspected do not apply if the trustee has a reasonable excuse. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Subdivision C, Division 70, subsection 70-10(3)*].

4.73 A person commits an offence of strict liability with a penalty of five penalty units if they are subject to the requirement to keep proper books or to allow for the books to be inspected and they do not comply with the requirement. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision C, subsection 70-10(4)*]

4.74 If the trustee of a regulated debtor's estate carries on a business previously carried on by the regulated debtor, the trustee must:

- keep such books as are usually kept in relation to the carrying on of a business of that kind; and
- permit a creditor or another person acting on the creditor's behalf, to inspect the books at all reasonable times. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision C, subsection 70-11(1)*]

4.75 A person commits an offence with a penalty of five penalty units if they are subject to the requirements in subsection 70-11(1) regarding the keeping of books while trading and they fail to comply with it. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision C, subsection 70-11(2)*]

4.76 The Inspector-General may audit, or cause to be audited administration books, administration returns or books kept when trading. The auditor must prepare a report and the audit may be conducted:

- on the Inspector-General's own initiative; or
- at the request of the regulated debtor; or
- at the request of a creditor [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision C, subsection 70-15(1) and (2)*]

4.77 The person carrying out the audit must prepare a report of the audit. The Inspector-General must give a copy of the report to the trustee of the estate and the person who requested the report (if any). The costs of an audit must be determined by the Inspector-General and are to be borne

by the estate. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision C, subsection 70-15(3), (4) and (5)]*

4.78 A person who conducts an audit under section 70-15 has qualified privilege (within the meaning of the Corporations Act) in respect of any report prepared that is given to the trustee of the estate or the person who requested the report (if any). *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision C, subsection 70-15(6)]*

4.79 Qualified privilege is defined in section 89 of the Corporations Act. If the person who conducts an audit did not have qualified privilege they may be unable to present all the facts of the case in a candid and unvarnished fashion.

4.80 The Court may order that the Inspector-General audit, or cause to be audited, the administration books or books kept when trading. The order may be made on application of any person with a financial interest in the administration of the regulated debtor's estate. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision C, subsection 70-20(1) and (2)]*

4.81 The Court may make such orders in relation to the audit as it thinks fit, including:

- the preparation and provision of a report on the audit; and
- orders as to the costs of the audit. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision C, Subsection 70-20(3)]*

4.82 If books of an estate are being audited the trustee must give to the person carrying out the audit such books, information and assistance as the person reasonably requires (unless the trustee has a reasonable excuse). A trustee commits an offence with a penalty of five penalty units if they fail to comply with this requirement. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision C, subsection 70-25(1), (2), (3) and (4)]*

4.83 In cases where a trustee succeeds another trustee the former trustee must transfer to the new trustee, within 5 business days after the new trustee is appointed, any books relating to the administration of the estate that are in the former trustee's possession or control. The former trustee may take a copy of any part of the books before transferring them to the new trustee. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision C, subsection 70-30(1), (2) and (3)]*

4.84 After the books are transferred, the new trustee must allow the former trustee to inspect them at any reasonable time and take a copy of

any part of the books. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision C, subsection 70-30(4)]*

4.85 A person commits an offence with a penalty of 50 penalty units if a former trustee intentionally or recklessly fails to transfer the books or a new trustee intentionally or recklessly fails to allow the former trustee to inspect the books and the trustee does either of these things. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision C, subsection 70-30(5)]*

4.86 If the new trustee is entitled to take possession of the books under section 70-30 a person is not entitled, as against the new trustee, to claim a lien on the books and such a lien is not otherwise prejudiced. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision C, subsection 70-30(6)]*

4.87 Unless the trustee has a reasonable excuse the last trustee to administer a regulated debtor's estate must retain all books that:

- relate to the administration of the estate; and
- are in the last trustee's possession or control at the end of the administration;

for a period of 7 years from the end of the administration. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision C, subsection 70-35(1) and (2)]*

4.88 Despite the requirement to retain books the books that the regulated debtor has given to the trustee of the estate may be returned to the regulated debtor within the retention period:

- if there is a committee of inspection-as the committee directs;
- otherwise-as the creditors by resolution direct. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision C, subsection 70-35(3)]*

4.89 The trustee may return the books to the regulated debtor, or destroy the books at the end of the retention period. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision C, subsection 70-35(4)].*

4.90 A person commits an offence with a penalty of 50 penalty units if the person is subject to this requirement and the person intentionally or recklessly fails to comply with the requirements regarding the retention and return or destruction of books. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision C, subsection 70-35(5)]*

4.91 The trustee is unable to return the books that the regulated debtor has given to the trustee, to the regulated debtor within the retention period or return the books to the regulated debtor or destroy the books at the end of the retention period to the extent that the trustee is under an obligation to retain the books, or a part of the books under another provision of the Bankruptcy Act, or under any other law. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision C, subsection 70-35(6)]*

4.92 For example laws relating to taxation may prohibit the destruction of some records.

4.93 The trustee of a regulated debtor's estate may, at any time during the administration of the estate, return to the regulated debtor, or destroy, any books that:

- the regulated debtor has given to any trustee of the estate; and
- the trustee considers will not help the administration of the estate. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision C, subsection 70-36(1)]*

4.94 Despite subsection 70-36(1) the trustee is not permitted to return to the books to the regulated debtor, or to destroy them, if the trustee knows, or reasonably ought to know, that:

- another person had a lien over the books before the trustee took possession of them; or
- another person has a legal right to possession of the books; or
- the trustee is not permitted to return the books to the regulated debtor or destroy them (as the case requires) because of another provision of the Bankruptcy Act, or a provision of any other law. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision C, section 70-36(2)]*

Giving information etc. to creditors

4.95 Subdivision D of Division 70 applies to the Official Trustee in the same way as it applies to the trustee of a regulated debtor's estate. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision D, section 70-37]*

4.96 The creditors may by resolution request the trustee of a regulated debtor's estate to:

- give information; or
- provide a report; or
- produce a document;

to the creditors. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision D, subsection 70-40(1)]*

4.97 The trustee must comply with a request made under section 70-40 unless:

- the information, report or document is not relevant to the administration of the regulated debtor's estate; or
- the trustee would breach his or her duties in relation to the administration of the regulated debtor's estate if the trustee complied with the request; or
- it is otherwise not reasonable for the trustee to comply with the request. *[Schedule 2 Insolvency Practice Schedule, Part 3, Division 70, Subdivision D, section 70-40(2)]*

4.98 The Insolvency Practice Rules may prescribe circumstances in which it is, or is not, reasonable for a trustee to comply with a request of a kind mentioned in subsection 70-40(1). *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision D, section 70-40(3)]*

4.99 A creditor may request the trustee of a regulated debtor's estate to:

- give information; or
- provide a report; or
- produce a document;

to the creditor. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision D, subsection 70-45(1)]*

4.100 The trustee must comply with the request under subsection 70-45(1) unless:

- the information, report or document is not relevant to the administration of the regulated debtor's estate; or

- the trustee would breach his or her duties in relation to the administration of the regulated debtor's estate if the trustee complied with the request; or
- it is otherwise not reasonable for the trustee to comply with the request [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision D, section 70-45(2)*]

4.101 The Insolvency Practice Rules may prescribe circumstances in which it is, or is not, reasonable for the trustee of a regulated debtor's estate to comply with a request of a kind mentioned in subsection 70-45(1) [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision D, section 70-45(3)*]

4.102 The Insolvency Practice Rules may provide for and in relation to the obligations of trustees of regulated debtors' estates:

- to give information; and
- to provide reports; and
- to produce documents

to creditors [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision D, subsection 70-50(1)*]

4.103 Without limiting subsection 70-50(1) the Insolvency Practice Rules may provide for and in relation to:

- other circumstances in which the trustee of a regulated debtor's estate must give information, provide a report, or produce a document to a creditor or a regulated debtor; and
- the manner and form in which the information is to be given, a report provided or a document produced; and
- the timeframes in which information is to be given, a report provided or a document produced; and
- who is to bear the cost of giving information, providing a report or producing a document. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision D, subsection 70-50(2)*]

4.104 The Insolvency Practice Rules may:

- make different provisions in relation to different kinds of estate administration; and

- provide that specified requirements imposed under the Insolvency Practice Rules may be replaced or modified, by resolution, by:
 - (i) the creditors; or
 - (ii) if there is a committee of inspection-the committee. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision D, subsection 70-50(3)].*

Other requests for information

4.105 Subdivision E of Division 70 applies to the Official Trustee in the same way as it applies to the trustee of a regulated debtor's estate.

4.106 Section 70-55 applies if:

- either:
 - (i) a former employee of the regulated debtor has made a claim for financial assistance from the Commonwealth in relation to unpaid employment entitlements; or
 - (ii) the Commonwealth considers that such a claim is likely to be made. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision E, subsection 70-55(1)]*

4.107 The Commonwealth may request the trustee of the regulated debtor's estate provide specified information, reports or documents in relation to the administration of the regulated debtor's estate and the trustee must comply with the request. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision E, subsection 70-55(2) and (3)]*

4.108 The Insolvency Practice Rules may provide for and in relation to who is to bear the cost of providing the information, reports or documents. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision E, subsection 70-55(4)]*

4.109 A regulated debtor may request a trustee of the regulated debtor's estate to:

- give information; or
- provide a report; or

- produce a document;

to the regulated debtor. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision E, subsection 70-56(1)]*

4.110 The trustee must comply with the request unless:

- the information, report or document is not relevant to the administration of the regulated debtor's estate; or
- the trustee would breach his or her duties in relation to the administration of the regulated debtor's estate if the trustee complied with the request; or
- it is otherwise not reasonable for the trustee to comply with the request. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision E, subsection 70-56(2)]*

4.111 The Insolvency Practice Rules may prescribe circumstances in which it is, or is not, reasonable for a trustee of a regulated debtor's estate to comply with a request of a kind mentioned in subsection 70-56(1). *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision E, subsection 70-56(3)]*

Reporting to the Inspector-General

4.112 The Insolvency Practice Rules may provide for and in relation to the obligations of trustees of regulated debtor's estates:

- to give information; and
- to provide reports; and
- to produce documents;

to the Inspector-General. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision F, subsection 70-60(1)]*

4.113 Without limiting subsection 70-60(1), the Insolvency Practice Rules may provide for and in relation to:

- the manner and form in which information is to be given, a report provided or a document produced; and
- the timeframes in which information is to be given, a request provided or a document produced; and

- who is to bear the cost of giving information, providing a report or producing a document. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision F, Subsection 70-60(2)]*

4.114 The Insolvency Practice Rules may make different provision in relation to reporting to the Inspector-General in relation to different kinds of estate administration. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision F, subsection 70-60(3)]*

Trustee may be compelled to comply with requests for information etc.

4.115 Subdivision G of Division 70 applies if the trustee of a regulated debtor's estate refuses a request made by a person under:

- Subdivision D of Division 70; or
- Subdivision E of Division 70; or
- Section 80-40; or
- a rule made under section 70-50

to give information, provide a report or produce a document. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision G, subsection 70-65(1)]*

4.116 In Subdivision G of Division 70:

- the information report or document is referred to as the relevant material; and
- the request is referred to as the request for relevant material; and
- giving the information, providing the report or producing the document is referred to as giving the relevant material. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision G, subsection 70-65(2)]*

4.117 The Inspector-General may, in writing, direct the trustee to give all or part of the relevant material to the person or persons who made the request for the relevant material within 5 business days after the direction is given. A direction is not a legislative instrument. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision F, subsection 70-70(1) and (2)]*

4.118 Before giving the trustee a direction under section 70-70, the Inspector-General must give the trustee notice in writing:

- stating that the Inspector-General proposes to give the trustee a direction under section 70-70; and identifying
- the relevant material, or the part of the relevant material that the Inspector-General proposes to direct be given; and
- the person or persons to whom the Inspector-General proposes to direct that the relevant material, or that part of the relevant material, be given; and
- inviting the trustee to make a written submission to the Inspector-General within 10 business days after the notice is given, stating;
 - (i) whether the trustee has any objection to giving the relevant material, or that part of the relevant material, to a person or persons as proposed; and
 - (ii) if the trustee has such an objection—the reasons for that objection. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 26, Subdivision F, subsection 70-75(1)]*

4.119 If the trustee objects to giving the relevant material, or part of the relevant material, to a person, the Inspector-General must take into account the reasons for that objection when deciding whether to direct that the relevant material; or that part of the relevant material be given to the person. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision G, subsection 70-75(2)].*

4.120 A notice under subsection 70-75(1) is not a legislative instrument. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision G, subsection 70-75(3)]*

4.121 The Inspector-General must not give a direction under section 70-70 to give the relevant material or part of the relevant material, to a person if the Inspector-General is satisfied that the trustee was entitled, under a provision of the Bankruptcy Act, or any other law, not to comply with the request for the relevant material. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision G, subsection 70-80]*

4.122 The Inspector-General may, by notice in writing to the person or persons to whom the relevant material is to be given, impose conditions on the use and disclosure of the relevant material, or part of the relevant

material, by the person or persons *[Schedule 2 Insolvency Practice Schedule, Part 3, Division 70, Subdivision G subsection 70-85(1)]*

4.123 A person commits an offence with a penalty of 10 penalty units or 3 months in prison if:

- the Inspector-General directs that the relevant material, or part of the relevant material, be given to the person; and
- the Inspector-General has given the person notice under subsection 70-85(1) imposing a condition in relation to the use or disclosure of the that material by the person; and
- the person does not comply with the condition *[Schedule 2 Insolvency Practice Schedule, Part 3, Division 70, Subdivision G. Subsection 70-85(2)]*

4.124 A notice under subsection 70-85(1) is not a legislative instrument. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision G, subsection 70-85(3)]*

4.125 The person or persons who made the request for the relevant material may apply to the Court for an order that the trustee give the person all or part of the relevant material. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision G, subsection 70-90(1)]*

4.126 If:

- the Inspector-General gives the trustee a direction under section 70-70 in relation to all or part of the relevant material; and
- the trustee does not comply with the direction;

the Inspector-General may apply to the Court for an order that the trustee comply with the direction. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision G, subsection 70-90(2)]*

4.127 On application under subsection 70-90(1) or 70-90(2) the Court may:

- order the trustee to give the person, or any or all of the persons, who made the request for the relevant material all or part of that material; and
- make such other orders, including orders as to costs, as it thinks fit. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 70, Subdivision G, subsection 70-90(3)]*

Meetings of creditors

4.128 Division 75 applies to the Official Trustee in the same way as it applies to the trustee of a regulated debtor's estate. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 75, Subsection 75-2]*

4.129 Nothing in Division 75 limits the operation of any other provision of the Bankruptcy Act or any other law, imposing an obligation to convene a meeting in relation to a regulated debtor, of the administration of a regulated debtor's estate. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 75, subsection 75-5]*

4.130 The trustee of a regulated debtor's estate may convene a meeting of the creditors at any time. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 75, Subsection 75-10]*

4.131 The trustee of a regulated debtor's estate must convene a meeting of the creditors if:

- where there is a committee of inspection—the committee of inspection requests the trustee to do so; or
- the creditors direct the trustee to do so by resolution; or
- at least 25% in value of the creditors direct the trustee to do so in writing; or
- both of the following are satisfied:
 - (i) less than 25% but more than 10% in value of the creditors direct the trustee to do so in writing;
 - (ii) security for the cost of holding the meeting is given the trustee before the meeting is convened. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 75, subsection 75-15(1)]*

4.132 However the trustee of a regulated debtor's estate need not comply with the request or direction if the request or direction is not reasonable. The Insolvency Practice Rules may prescribe circumstances in which a request or direction is, or is not, reasonable. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 75, subsection 75-15(2) and (3)]*

4.133 For the purposes of paragraphs (1)(c) and (d) of section 75-15, the value of the creditors' claims is to be worked out by reference to the value of the creditor's claims against the regulated debtor's estate that are known at the time the direction is given. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 75, subsection 75-15(4)]*

4.134 The Inspector-General may, in writing, direct the trustee of a regulated debtor's estate to convene a meeting of the creditors. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 75, subsection 75-20(1)]*

4.135 The Inspector-General may include in the direction requirements to be complied with by the trustee in notifying the creditors of the meeting and conducting the meeting. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 75, subsection 75-20(2)]*

4.136 The trustee must comply with a direction given subsection 75-20(1), and any requirements included in the direction under subsection 75-20(2). *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 75, subsection 75-20(3)]*

4.137 A direction given under subsection 75-20(1) is not a legislative instrument. *[Schedule 2, Part 3, Division 75, subsection 75-20(4)]*

4.138 The trustee of a regulated debtor's estate may, in writing, appoint a person to represent the trustee at a meeting. However this does not apply to a meeting of a prescribed kind. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 75, subsection 75-25(1) and (2)]*

4.139 If the trustee is not personally present at a meeting, then a reference in a provision of the Bankruptcy Act to a trustee, in respect of matters occurring at or in connection with the meeting, is a reference to a person so appointed to represent the trustee at the meeting. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 75, subsection 75-25(3)]*

Committees of inspection

4.140 The Inspector-General is entitled to attend any meetings of creditors held under the Bankruptcy Act. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 75, subsection 75-30(1)]*

4.141 Subject to any provision of the Bankruptcy Act (including any provision in the relation to voting) the Inspector-General is entitled to participate in any meeting of creditors held under the Bankruptcy Act. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 75, subsection 75-30(2)]*

4.142 The Inspector-General could for example put forward a view on a proposed resolution or the conduct of a meeting.

4.143 If:

- a former employee of a regulated debtor has made a claim for financial assistance from the Commonwealth in relation to unpaid employee entitlements; or

- the Commonwealth considers that such a claim is likely to be made;

the Commonwealth is entitled to nominate a representative to attend any meeting of creditors held in relation to the administration of the regulated debtor's estate [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 75, section 75-35*]

4.144 The trustee of a regulated debtor's estate may at any time put a proposal to the creditors by giving notice, in writing under section 28-40 of the Bankruptcy Act. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 75, subsection 75-40(1)*]

4.145 The notice given under section 75-40 must:

- contain a single proposal; and
- include a statement of the reasons for the proposal and the likely impact it will have on creditors (if it is passed); and
- be given to each creditor who would be entitled to receive notice of a meeting of creditors; and
- invite the creditors to either:
 - (i) vote Yes or No on the proposal; or
 - (ii) object to the proposal being resolved without a meeting of creditors and
- specify a reasonable time by which replies must be received by the trustee (in order to be taken into account). [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 75, Subsection 75-40(2)*]

4.146 A certificate signed by the trustee of the regulated debtor's estate stating any matter relating to a proposal under this section is prima facie evidence of the matter. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 75, Subsection 75-40(3)*]

4.147 The Insolvency Practice Rules may provide for and in relation to proposals without meeting under section 28(40). [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 75, Subsection 75-40(4)*]

4.148 Without limiting what the Insolvency Practice Rules may provide for under subsection 75-40(4) the Insolvency Practice Rules may provide for and in relation to:

- the circumstances in which a proposal is taken to be passed; and
- whether a proposal, if passed, is taken to have been passed as a resolution or a special resolution; and
- costs and security for those costs in relation to a proposal
[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 75, subsection 75-40(5)]

4.149 The Insolvency Practice Rules may provide for and in relation to meetings of creditors. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 75, Subsection 75-50(1)]*

4.150 Without limiting subsection 75-50(1) the Insolvency Practice Rules may provide for and in relation to:

- the circumstances in which meetings must or may be convened; and
- notice for convening meetings; and
- agenda; and
- information to be given to creditors; and
- who is to preside at meetings; and
- the number of creditors required to constitute a quorum; and
- proxies and attorneys; and
- motions; and
- voting (including casting votes); and
- the circumstances in which a resolution or a or a special resolution must or may be put to creditors in a meeting; and
- the circumstances in which a resolution or a special resolution put to creditors in a meeting is passed; and
- facilities, including electronic communication facilities, to be available at meetings; and
- minutes; and

- costs in relation to meetings and security for those costs. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 75, subsection 75-50(2)]*

4.151 Division 80 applies to the Official Trustee in the same way as it applies to the trustee of a regulated debtor's estate. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 80, section 80-2]*

4.152 If requested by a creditor, the trustee of a regulated debtor's estate must convene a meeting of the creditors for the purpose of determining either or both of the following:

- whether there is to be a committee of inspection for the estate;
- if there is, or is to be, a committee of inspection—who are to be appointed members of the committee. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 80, section 80-5]*

4.153 The creditors of a regulated debtor's estate may, by resolution, determine that there is to be a committee of inspection in relation to the administration of the estate. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 80, section 80-10]*

4.154 The creditors of a regulated debtor's estate may, by resolution appoint members of a committee of inspection in relation to the administration of the estate. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 80, subsection 80-15(1)]*

4.155 The creditors of a regulated debtor's estate may by resolution:

- remove a person appointed as a member of the committee under this section; and
- appoint another person to fill a vacancy in the office of a member of the committee appointed under this section. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 80, subsection 80-15(2)]*

4.156 A person is not entitled to vote on a resolution to appoint or remove members of a committee of inspection under this section if:

- the person, acting alone or with others, has appointed a person as a member of the committee under section 80-20; or

- the person, acting either alone or with others, has appointed a person as a member of the committee under section 80-25. *[Schedule 2, Part 3, Division 30, subsection 80-15(3)]*

4.157 A creditor representing at least 10% in value of the creditors, or a group of creditors who together represent at least 10% in value of the creditors, of a regulated debtor's estate may appoint a person as a member of a committee of inspection in relation to the administration of the estate *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 80, subsection 80-20(1)]*

4.158 If a creditor or a group of creditors appoints a person as a member of a committee of inspection under this section, the creditor or group of creditors may by resolution:

- remove the person as a member of the committee; and
- appoint another person to fill a vacancy in the office of that member of the committee. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 80, subsection 80-20(2)]*

4.159 A creditor, acting either alone or with others, is not entitled to appoint a person as a member of the a committee of inspection under subsection 80-20(1) if:

- a resolution has already passed under subsection 80-15(1) appointing members of the committee; or
- the creditor, acting either alone or with others has already appointed a member of the committee under subsection 80-25(1); or
- the creditor, acting either alone or with others, has already appointed a member of the committee under subsection 80-20(1). *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 80, subsection 80-20(3)]*

4.160 Either:

- an employee of the regulated debtor; or
- the employee of the regulated debtor;

representing at least 50% in value of amounts owed to or in respect of employees by the regulated debtor in respect of services rendered to or for the regulated debtor may appoint a person as a member of a committee of inspection to represent the employees. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 80, Subsection 80-25(1)]*

4.161 If an employee or a group of employees appoints a person under section 80-25, the employee or group of employees may be resolution:

- remove the person as a member of the committee; and
- appoint another person to fill a vacancy in the office of that member of the committee. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 80, subsection 80-25(2)*]

4.162 An employee, acting either alone or with others, is not entitled to appoint a person as a member of a committee of inspection under subsection 80-25(1) if:

- a resolution has already passed under subsection 80-15(1) appointing members of the committee; or
- the employee, acting either alone or with others, has already appointed a member of the committee under subsection 80-20(1); or
- the employee, acting either alone or with others, has already appointed a member of the committee under subsection 80-25(1.) [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 80, subsection 80-25(3)*]

4.163 A committee of inspection may determine its own rules subject to any Insolvency Practice Rules that provide for and in relation to committees of inspection. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 80, subsections 80-30(1) and (2)*]

4.164 Without limiting subsection 80-30(2) the Insolvency Practice Rules may provide for and in relation to:

- eligibility to be appointed as a member of a committee of inspection; and
- the convening of, conduct of, and procedure and voting at, meetings; and
- resignation and removal of members; and
- vacancies in membership. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 80. subsection 80-30(2)*]

4.165 A committee of inspection has the following functions:

- to advise and assist the trustee of the regulated debtor's estate;

- to give directions to the trustee of the regulated debtor's estate;
- to monitor the conduct of the administration of the estate;
- such other functions as are conferred on the committee by the Bankruptcy Act;
- to do anything incidental or conducive to the performance of any of the above functions. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 80, subsection 80-35(1)*]

4.166 The trustee of a regulated debtor's estate must have regard to any directions given to the trustee by the committee of inspection, but the trustee is not required to comply with such directions. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 80, subsection 80-35(2)*]

4.167 If the trustee of a regulated debtor's estate does not comply with a direction, the trustee must make a written record of that fact, along with the trustee's reasons for not complying with the direction [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 80, subsection 80-35(3)*]

4.168 A committee of inspection may request the trustee of a regulated debtor's estate to:

- give information; or
- provide a report; or
- produce a document

to the committee. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 80, subsection 80-40(1)*]

4.169 The trustee must comply with the request unless:

- the information, report or document is not relevant to the administration of the regulated debtor's estate; or
- the trustee would breach his or her duties in relation to the administration of the regulated debtor's estate if the trustee complied with the request; or
- it is otherwise not reasonable for the trustee to comply with the request. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 80, subsection 80-40(2)*]

4.170 The Insolvency Practice Rules may prescribe circumstances in which it is, or is not, reasonable for a trustee to comply with a request of a kind mentioned in subsection 80-40(3). *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 80, subsection 80-40(3)]*

4.171 The Insolvency Practice Rules may provide for and in relation to the obligations of trustees of regulated debtors' estates:

- to give information; and
- to provide reports; and
- to provide documents

to committees of inspection. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 80, subsection 80-45(1)]*

4.172 Without limiting subsection 80-55(1) the Insolvency Practice Rules may provide for and in relation to:

- other circumstances in which the trustee must give information, provide a report or produce a document to a committee of inspection; and
- the manner and form in which information is to be given, a report provided or a document produced; and
- the timeframes in which information is to be given, a report provided or a document produced; and
- who is to bear the cost of giving information, providing a report or producing a document. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 80, subsection 80-45(2)]*

4.173 The Insolvency Practice Rules may:

- Make different provision in relation to different classes of regulated debtor, or regulated debtor's estates and
- Provide that specified requirements imposed under the Insolvency Practice Rules may be replaced or modified, by resolution, by
 - (i) the creditors; or
 - (ii) the committee of inspection *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 80, subsection 80-45(3)]*.

4.174 A committee of inspection may resolve that a member of the committee obtain, on behalf of the committee, such advice or assistance as the committee considers desirable in relation to the conduct of the administration of the regulated debtor's estate. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 80, subsection 80-50(1)]*

4.175 The committee of inspection must obtain the approval of the trustee of the regulated debtor's estate or the Court before expenses are incurred in obtaining the advice or assistance. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 80, subsection 80-50(2)]*

4.176 To avoid doubt, an expense incurred under subsection 30-30(2) is to be taken to be an expense of the administration of the estate. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 80, subsection 80-50(3)]*

4.177 A member of a committee of inspection must not directly or indirectly derive any profit or advantage from the administration of the regulated debtor's estate. To avoid doubt, a member of a committee of inspection is taken to derive a profit or advantage from the administration of the regulated debtor's estate if:

- the member directly or indirectly derives a profit or advantage from a transaction (including a sale or purchase) entered into for on account of the estate;
- the member directly or indirectly derives a profit or advantage from a creditor of the estate; or
- a related entity of the member directly or indirectly derives a profit or advantage from the administration of the estate. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 80, subsection 80-55(1) and (2)]*

4.178 Subsection 80-55(1) does not apply if the creditors resolve otherwise. A member of the committee who is seeking to profit or advantage from the estate is not entitled to vote on a resolution that seeks to have the profit or advantage approved by the creditors. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 80, subsection 80-55(3) and (4)]*

4.179 Subsection 80-55(1) does not apply to the extent that another provision of the Bankruptcy Act, or of another law, requires or permits the member of the committee of inspection to derive the profit or advantage; or the Court gives leave to the member of the committee to derive the profit or advantage. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 80, subsection 80-55(5)].*

4.180 Subsection 80-55 does not apply to the extent that:

- the profit or advantage arises because the trustee employs or engages a person to provide services in connection with the administration of the regulated debtor’s estate; and
- the person is a related entity of a member of the committee of inspection; and
- one of the following applies:
 - (i) the member does not know, and could not reasonably be expected to know, that the person employed or engaged by the trustee is a related entity of the member;
 - (ii) the member discloses to the trustee and the committee that the person employed or engaged by the trustee is a related entity of the member, and does so as soon as is practicable after the member becomes aware that the entity is a related entity and has been employed or engaged by the trustee;
 - (iii) the creditors consent to the related entity being employed or engaged. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 80, subsection 80-55(6)]*

4.181 A person commits an offence of strict liability with a penalty of 50 penalty units if the person is subject to a requirement under subsection 80-55(1) and the person fails to comply with the requirement. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Division 80, subsection 80-55(7)]*

4.182 A transaction, sale, purchase or any other arrangement entered into in contravention of section 80-55 may be set aside by the Court on the application of a creditor. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 80, subsection 80-55(8)]*

4.183 Subsection 80-60(1) applies if a creditor representing at least 10% in value of the creditors of a regulated debtor’s estate appoints a person under section 80-20 as a member of the committee of inspection in relation to the administration of the estate. A creditor who falls into this category must not directly or indirectly become the purchaser of any part of the regulated debtor’s estate. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 80, subsections 80-60(1) and (2)]*

4.184 Subsection 30-36(2) does not apply if the creditors resolve otherwise. The creditor in question is not entitled to vote on a resolution that seeks to approve their purchase of part of the regulated debtor’s

estate. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 80, subsections 80-60(3) and (4)]*

4.185 Subsection 80-60 does not apply to the extent that another provision of the Bankruptcy Act, or of another law, requires or permits the creditor to purchase the property or the Court gives leave to the creditor to purchase the property. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 80, subsection 80-60(5)]*

4.186 A person commits an offence of strict liability with a penalty of 50 penalty units if the person is subject to a requirement under subsection 80-60(2) and the person fails to comply with the requirement. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 80, subsection 80-60(6)]*

4.187 A transaction or any other arrangement entered into in contravention of this section may be set aside by the Court. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 80 subsection 80-60(7)]*

4.188 The Inspector-General is entitled to attend any meeting of a committee of inspection. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 80, subsection 80-65]*

4.189 The Court may inquire into the conduct of a committee of inspection and make such orders as it thinks fit to ensure the proper conduct of the committee. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 80, subsection 80-70]*

4.190 Division 31 applies to the Official Trustee in the same way as it applies to the trustee of a regulated debtor's estate. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 85, section 85-2]*

4.191 The creditors may, by resolution, give directions to the trustee of a regulated debtor's estate in relation to the administration of the estate. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 85, subsection 85-5(1)]*

4.192 The trustee must have regard to any directions mentioned in subsection 80-10(1), but the trustee is not required to comply with such directions. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 85, subsection 85-5(2)]*

4.193 If the trustee does not comply with a direction, the trustee must make a written record of that fact, along with the trustee's reasons for not complying with the direction. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 85, subsection 85-5(3)]*

4.194 If there is a conflict between directions given by the creditors under subsection 85-5(1) and by the committee of inspection under section 85-5, directions given by the creditors override any directions

given by the committee [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 85, subsection 85-5(4)*].

Review of the administration of a regulated debtor's estate

4.195 Subdivision B of Division 90 applies to the Official Trustee in the same way as it applies to the trustee of a regulated debtor's estate [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 90, Subdivision B, subsection 90-2*].

4.196 The Court may, on its own initiative during proceedings before the Court inquire into the administration of a regulated debtor's estate. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 90, Subdivision B, subsection 90-5(1)*]

4.197 The Court may, for the purposes of such an inquiry, require a person who is or has at any time been the trustee of the regulated debtor's estate to:

- give information; or
- provide a report; or
- produce a document;

to the Court in relation to the administration of the estate. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 90, Subdivision B, subsection 90-5(2)*]

4.198 Section 90-5 does not limit the Court's powers under any other provision of the Bankruptcy Act, or under any other law. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 90, Subdivision B, subsection 90-5(3)*]

4.199 The Court may on the application of the following persons inquire into the administration of the estate:

- a creditor on his or her own behalf;
- if the committee of inspection (if any) so resolves-a creditor, on behalf of the committee;
- the regulated debtor;
- the trustee of the regulated debtor's estate;
- any other person with a financial interest in the administration of the regulated debtor's estate;

- the Inspector-General. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 90, Subdivision B, subsection 90-10(1) and (2)*]

4.200 The Court may, for the purposes of such an inquiry, require a person who is or has at any time been the trustee of the regulated debtor's estate to:

- give information; or
- provide a report; or
- produce a document

to the Court in relation to the administration of the estate. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 90, Subdivision B, subsection 90-10(3)*]

4.201 If an application is made on behalf of a creditor on behalf of a committee of inspection the reasonable expenses associated with the application are to be taken to be expenses of the administration of the estate. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 90, Subdivision B, subsection 90-10(4)*]

4.202 Section 90-10 does not limit the Court's powers under any other provision of the Bankruptcy Act, or under any other law. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 90, Subdivision B, subsection 90-10(5)*]

4.203 The Court may make such orders as it thinks fit in relation to the administration of a regulated debtor's estate. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 90, Subdivision B, subsection 90-15(1)*]

4.204 The Court may exercise the power under subsection 90-15(1):

- on its own initiative; or
- on application under section 90-20. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 90, Subdivision B, subsection 90-15(2)*]

4.205 Without limiting subsection 90-15(1), those orders may include any one or more of the following:

- an order determining any question arising in the administration of the estate;
- an order that a person cease to be the trustee of the estate;

- an order that another person be appointed as trustee of the estate;
- an order in relation to the costs of an action (including court action) taken by the trustee of the estate or another person in relation to the administration of the estate;
- an order in relation to any loss that the estate has sustained because of a breach of duty by the trustee;
- an order in relation to remuneration, including an order requiring a person to repay to the estate of a regulated debtor, or the creditors of a regulated debtor, remuneration paid to the person as a trustee. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 90, Subdivision B, subsection 90-15(3)*]

4.206 Without limiting the matters which the Court may take into account when making order, the Court may take into account:

- whether the trustee has faithfully performed, or is faithfully performing the trustee's duties;
- whether an action or failure to act by the trustee is in compliance with the Bankruptcy Act and the Insolvency Practice Rules;
- whether an action or failure to act by the trustee is in compliance with an order of the Court;
- whether the regulated debtor's estate or any person has suffered, or is likely to suffer, loss or damage because of an action or failure to act by the trustee; and
- the seriousness of the consequences of any action or failure to act by the trustee, including the effect of that action or failure to act on public confidence in registered trustees as a group. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 90, Subdivision B, subsection 90-15(4)*]

4.207 Without limiting subsection 90-15(1), an order in relation to the costs of an action (including court action) taken by the trustee of the estate or another person in relation to the administration of the estate may include an order that:

- The trustee or another person is personally liable for some or all of those costs; and

- The trustee or another person is not entitled to be reimbursed by the regulated debtor's estate or creditors in relation to some or all of those costs. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 90, Subdivision B, subsection 90-15(5)*]

4.208 Without limiting subsection 90-15(1), an order in relation to any loss that the estate has sustained because of a breach of duty by the trustee may include an order that:

- the trustee is personally liable to make good some or all of the loss; and
- the trustee is not entitled to be reimbursed by the regulated debtor's estate or creditors in relation to the amount made these good. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 90, Subdivision B, subsection 90-15(6)*]

4.209 Subsection 90-15(1) does not limit the Court's powers does not limit the Court's powers under any other provision of the Bankruptcy Act, or under any other law. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 90, Subdivision B, subsection 90-15(7)*]

4.210 Each of the following provisions may apply for an order under section 90-15:

- a creditor, on his or her own behalf;
- if the committee of inspection (if any) so resolves-a creditor, on behalf of the committee;
- the regulated debtor;
- the trustee of the regulated debtor's estate
- any other person with a financial interest in the administration of the regulated debtor's estate;
- the Inspector-General. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 90, Subdivision B, subsection 90-20(1)*]

4.211 If an application is made by a person referred to in paragraph 90-20(1)(b) the reasonable expenses associated with the application are to be taken to be the expenses of the administration of the estate. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 90, Subdivision B, subsection 90-20(2)*]

Review of remuneration

4.212 The Inspector-General may carry out a review of the remuneration received by the trustee of a regulated debtor's estate for services performed by the trustee in relation to the administration of the estate. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 32, Subdivision C, subsection 90-21(1)]*

4.213 The Inspector-General may carry out a review under Subdivision C of Division 90 on his or her own initiative or on application by the regulated debtor or a creditor. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 90, Subdivision C, subsection 90-21(2)]*

4.214 The trustee, the regulated debtor or a creditor of the regulated debtor may apply to the Court for an order in relation to the decision of the Inspector-General in relation to the review. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 90, Subdivision C, subsection 90-21(3)]*

4.215 The Insolvency Practice Rules may provide for and in relation to reviews under Subdivision C of Division 90. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 90, Subdivision C, subsection 90-22(1)]*

4.216 Without limiting subsection 90-22(1) the Insolvency Practice Rules may provide for and in relation to any or all of the following matters:

- the giving of notice to the trustee before beginning a review, or making an application under Subdivision C of Division 90;
- the powers and duties of the Inspector-General in carrying out a review;
- the decisions that may be made by the Inspector-General in relation to the review;
- the repayment of remuneration by the trustee as a consequence of a review under subdivision C of Division 90. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 90, Subdivision C, subsection 90-22 (2)]*

Removal by creditors

4.217 Subdivision D of Division 90 applies to the Official Trustee in the same way it applies to the trustee of a regulated debtor's estate. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 90, Subdivision D, subsection 90-30]*

4.218 The creditors may:

- by resolution at a meeting, remove the trustee of a regulated debtor's estate; and
- by resolution at the same or a subsequent meeting, appoint another person as trustee of the regulated debtor's estate. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 90, Subdivision D, subsection 90-35(1)]*

However the creditors may not remove a trustee unless at least 5 business days' notice of the meeting is given to all persons who are entitled to receive notice of creditors' meetings. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 90, Subdivision D, subsection 90-35(2)]*

4.219 A person (the **former trustee**) who has been removed as trustee of the regulated debtor's estate by resolution of the creditors may apply to the Court to be reappointed as trustee of the regulated debtor's estate. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 90, Subdivision D, subsection 90-35(3)]*

4.220 If the former trustee makes such an application, the former trustee must:

- record all costs incurred by the former trustee and the debtor's estate in relation to the application; and
- do so in a way that separates those costs from the costs incurred by the former trustee and the regulated debtor's estate in relation to other matters. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 32, Subdivision D, subsection 32-35(4)]*

4.221 The Court may order that the former trustee be reappointed as trustee of the regulated debtor's estate if the Court is satisfied that the removal of the former trustee was an improper use of the powers of one or more creditors. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 32, Subdivision D, subsection 32-35(5)]*

4.222 An example of an "improper use" would be if one or more creditors removed the former trustee to prevent him or her from investigating the regulated debtor and/or their financial relationship with the regulated debtor.

4.223 The Court may make such other orders in relation to the application as it thinks fit. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 3, Division 32, Subdivision D, subsection 32-35(6)]*

Other matters

4.224 Applications may be made to the Administrative Appeals Tribunal for review of any of the following decisions:

- a decision of a committee under section 20-20 in relation to an application for registration as a trustee;
- a decision of a committee under section 20-55 in relation to an application for the variation or removal of a condition of registration;
- a decision of the Inspector-General to suspend the registration of a person as a trustee under section 40-25;
- a decision of the Inspector-General to cancel the registration of a person as a trustee under section 40-30;
- a decision of a committee under section 40-55 (disciplinary action by a committee).
- A decision of a committee under section 40-85 in relation to an application to lift or shorten a suspension of a person's registration as a trustee [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 4, Division 96, subsection 96-1*]

4.225 Division 100 applies to the Official Trustee in the same way as it applies to the trustee of a regulated debtor's estate. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 4, Division 100, subsection 100-1*]

4.226 Subject to the following exceptions the trustee of a regulated debtor's estate may assign any right to sue that is conferred on the trustee by the Bankruptcy Act:

- if the trustee's action has already begun, the trustee cannot assign the right to sue unless the trustee has the approval of the Court;
- before assigning any right the trustee must give written notice to the creditors of the proposed assignment. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 4, Division 100, subsection 100-5(1), (2) and (3)*]

4.227 If a right is assigned under section 100-5, a reference in the Bankruptcy Act to the trustee in relation to the action is taken to be a reference to the person to whom the right has been assigned. [*Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 4, Division 100, subsection 100-5(4)*]

Insolvency Practice Rules

4.228 The Minister may, by legislative instrument, make rules providing for matters:

- required or permitted by the Bankruptcy Act to be provided; or
- necessary or convenient to be provided in order to carry out or give effect to the Bankruptcy Act. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 4, Division 105, subsection 105-1(1)]*

4.229 Rules made under subsection 105-1(1) may include offences but the penalties for such offences must not be more than 50 penalty units for an individual or 250 penalty units for a body corporate. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 4, Division 105, subsection 105-1(2) and (3)]*

4.230 References in section 105-1-5 to “this Act” do not include the regulations or rules made under section 46-5. *[Schedule 2 Insolvency Practice Schedule (Bankruptcy), Part 4, Division 105, subsection 105-1(4)]*

Application and transitional provisions

4.231 Part 3 of the Schedule applies in relation to a new administration of a regulated debtor’s estate. Part 3 of the Schedule applies in relation to an ongoing administration of a regulated debtor’s estate in accordance with Division 3 of Schedule 1. *[Schedule 1, Part 3, Division 3, Subdivision B, section 128]*

4.232 Subdivision B of Division 60 of the Schedule applies in relation to a trustee of a regulated debtor’s estate under ongoing administration who is appointed, or who consents to act, on or after the commencement day. *[Schedule 1, Part 3, Division 3, Subdivision C, section 129]*

4.233 Despite the repeal of sections 161B and 162 of the old Act by the Schedule, those sections (other than subsections 162(5A), (6) and (6A)) continue to apply in relation to the remuneration of a trustee of an estate of a bankrupt who is appointed, or who consents to act, before the commencement day. *[Schedule 1, Part 3, Division 3, Subdivision C, section 130]*

4.234 Sections 60-20 and 60-25 of the Schedule apply in relation to a trustee of a regulated debtor’s estate under ongoing administration, whether or not the trustee is appointed, or consents to act, before, on or after the commencement day. However, those sections do not apply in relation to arrangements made before the commencement day. Despite the

repeal of section 165 of the old Act by the Schedule, section 165 will continue to apply in relation to arrangements made before the commencement day. *[Schedule 1, Part 3, Division 3, Subdivision C, Sections 131]*

4.235 Section 60-26 of the Schedule applies in relation to a trustee of a regulated debtor's estate under ongoing administration, whether or not the trustee is appointed, or consents to act, before, on or after the commencement day except where payments are received before the commencement day. Despite the repeal of section 162 of the old Act by the Schedule, subsection 162(6) continues to apply in relation to payments received before the commencement day. *[Schedule 1, Part 3, Division 3, Subdivision C, Section 132]*

4.236 Section 60-30 of the Schedule applies in relation to a trustee of a regulated debtors' estate if both the former and the new trustee mentioned in the section are appointed, or consent to act, on or after the commencement day. *[Schedule 1, Part 3, Division 3, Subdivision C, subsection 133(1)]*

4.237 If:

- (a) a person ceases to be the trustee of a regulated debtor's estate and another person becomes the new trustee of the estate; and
- (b) both those persons were appointed, or consented to act, as trustee of the estate before the commencement day;

then despite the repeal of section 164 of the old Act by this Schedule, that section continues to apply in relation to the remuneration of those trustees to the extent that the section would have applied in relation to those trustees if it had not been repealed. *[Schedule 1, Part 3, Division 3, Subdivision C, subsection 133(2)]*

4.238 If:

- (a) a person (the former trustee) ceases to be the trustee of a regulated debtor's estate and another person (the new trustee) becomes the new trustee of the estate; and
- (b) the former trustee was appointed, or consented to act, as trustee of the estate on or after the commencement day;

then subsection 60-30(3) of the Schedule applies but the creditors are taken to have made a resolution under section 162 of the old Act (instead of a determination under section 60-10 of the Schedule fixing the agreed remuneration as the remuneration that the former trustee is entitled to

receive for the work. *[Schedule 1, Part 3, Division 3, Subdivision C, subsection 133(3)]*

4.239 Section 60-35 of the Schedule applies in relation to a trustee of a regulated debtor's estate under ongoing administration whether or not the trustee is appointed, or consents to act, before, on or after the commencement day. *[Schedule 1, Part 3, Division 3, Subdivision C, section 134]*

Funds Handling

4.240 Division 65 of the Schedule applies in relation to an ongoing administration of a regulated debtor's estate. *[Schedule 1, Part 3, Division 3, Subdivision D, section 135]*

4.241 If, immediately before the commencement day, a person has an account that complies with the requirements (if any) specified in the old regulations in relation to the administration of an estate of a bankrupt; or more than one estate of a bankrupt or bankrupts, the account is taken on and after the commencement day to be the administration account for the relevant estate for the purposes of section 65-5 of the Schedule and subsection 280(5) of the Bankruptcy Act. *[Schedule 1, Part 3, Division 3, Subdivision D, section 136]*

4.242 Sections 65-10 and 65-15 of the Schedule do not apply in relation to money received before the commencement day. Despite the repeal, subsection 169(2) of the old Act continues to apply in relation to money received before the commencement day. *[Schedule 1, Part 3, Division 3, Subdivision D, Section 137]*

4.243 Section 65-25 of the Schedule does not apply in relation to money paid out of an administration account before the commencement day. *[Schedule 1, Part 3, Division 3, Subdivision D, section 138]*

4.244 Section 65-32 of the Schedule does not apply in relation to money received, or payments made, in relation to a regulated debtor's estate before the commencement day. *[Schedule 1, Part 3, Division 3, Subdivision D, section 139]*

4.245 Section 65-35 of the Schedule does not apply in relation to money paid into or out of an administration account for a regulated debtor's estate before the commencement day. Despite its repeal by the Schedule, section 171 of the old Act continues to apply in relation to payments into, or made out of, an estate of a bankrupt before the commencement day. *[Schedule 1, Part 3, Division 3, Subdivision D, Section 140]*

4.246 Section 65-40 of the Schedule does not apply in relation to negotiable instruments and other securities received before the commencement day. *[Schedule 1, Part 3, Division 3, Subdivision D, section 141]*

4.247 A review of a bill of costs for services in relation to the administration of a regulated debtor's estate may be carried out in accordance with regulations made for the purposes of section 65-46 of the Schedule whether or not the service was provided before, on or after the commencement day. *[Schedule 1, Part 3, Division 3, Subdivision D, subsection 142(1)]*

4.248 Subitems (3) and (4) of 142 apply if a review in accordance with regulations made for the purposes of subsection 167(2) of the old Act starts before the commencement day. Nothing in this Act affects the review; or the powers or any decisions of the Inspector General in relation to the review; or any appeal or review in relation to the review. The old Act will continue to apply on and after the commencement day in relation to the review despite the amendments and repeals made by this Act. *[Schedule 1, Part 3, Division 3, Subdivision D, subsection 142(2), (3) and (4)]*

Information

4.249 Division 70 of the Schedule applies in relation to an ongoing administration of a regulated debtor's estate. *[Schedule 1, Part 3, Division 3, Subdivision E, section 143]*

4.250 Section 70-5 (annual administration return) of the Schedule applies in relation to the financial year starting on 1 July 2016 and later financial years. The repeal of section 170A by the Schedule applies in relation to the financial year starting on 1 July 2016 and later financial years. *[Schedule 1, Part 3, Division 3, Subdivision E, section 144]*

4.251 Section 70-10 and 70-11 of the Schedule does not apply in relation to events that occur before the commencement day; and in respect of which, or because of which, entries or minutes are to be made. Despite the repeal of sections 173 and 174 of the old Act by the Schedule, section 173 continues to apply in relation to events that occur before the commencement day; and in respect of which, or because of which, accounts and records must be kept. *[Schedule 1, Part 3, Division 3, Subdivision E, sections 145 and 146]*

4.252 Sections 70-15 to 70-25 of the Schedule apply to books relating to an ongoing administration of a regulated debtor's estate whether or not the books are kept under a provision of the old Act or of the Schedule. Despite the repeal of section 175 of the old Act by the Schedule, audits may be continued under that section in relation to accounts under section 173 as if the old Act continued to apply. Despite the amendment of

paragraph 109(1)(a) of the old Act made by the Schedule, that section continues to apply in relation to the payment of costs of audits under section 175 of the old Act as if that amendment had not been made.

[Schedule 1, Part 3, Division 3, Subdivision E, section 147]

4.253 Section 70-30 of the Schedule applies in relation to a person who ceases to be the trustee of a regulated debtor's estate on or after the commencement day. *[Schedule 1, Part 3, Division 3, Subdivision E, Section 148].*

4.254 For the avoidance of doubt, sections 70-35 and 70-36 of the Schedule apply to books relating to an ongoing administration of a regulated debtor's estate whether or not the books are kept under a provision of the old Act or of the Schedule. If an administration of an estate of a bankrupt or debtor ends before the commencement day; and immediately before that day, a person was required under the old Act to retain books relating to the estate for a period; and but for the repeal of section 312 by the Schedule, that period would have ended on or after the commencement day; section 312 of the old Act will continue to apply on and after the commencement day in relation to the person for the remainder of that period. However, subsection 312(4) of the old Act applies as if the reference to 15 years were instead a reference to 7 years. If a person is entitled under section 312 of the old Act to destroy or return books then (despite section 70-35 of the Schedule) those books may be destroyed or returned. *[Schedule 1, Part 3, Division 3, Subdivision E, Section 149]*

4.255 Subdivision D of Division 70 of the Schedule applies whether or not the information, report or document referred to in subsection 70-40(1), 70-45(1), or 70-50(1) of the Schedule was obtained or generated, was made or prepared; or is in respect of actions or events that occurred; before, on or after the commencement day. *[Schedule 1, Part 3, Division 3, Subdivision E, Section 150].*

4.256 Section 70-55 and 70-56 of the Schedule applies whether or not the information, report or document referred to in subsection 70-55(2) and 70-56(1) was obtained or generated; or was made or prepared; or is in respect of actions or events that occurred; before, on or after the commencement day. *[Schedule 1, Part 3, Division 3, Subdivision E, sections 151 and 152].*

4.257 Section 70-60 of the Schedule applies whether or not the information, report or document referred to in subsection 70-60(1) was obtained or generated; or was made or prepared; or is in respect of actions or events that occurred; before, on or after the commencement day. *[Schedule 1, Part 3, Division 3, Subdivision E, section 153]*

Meetings

4.258 Division 75 of the Schedule applies in relation to an ongoing administration of a regulated debtor's estate. However, Division 28 of the Schedule does not apply in relation to meetings convened or held before the commencement day. [*Schedule 1, Part 3, Division 3, Subdivision F, section 154*]

4.259 Section 75-15 of the Schedule does not apply in relation to requests made before the commencement day; or directions given before the commencement day; or resolutions passed before the commencement day [*Schedule 1, Part 3, Division 3, Subdivision F, section 155*]

4.260 If a trustee is required to convene, or has already called, a meeting of creditors under the old Act; and as at the commencement day, the meeting has not been held; then the old Act continues to apply on and after the commencement day in relation to the meeting. [*Schedule 1, Part 3, Division 3, Subdivision F, section 156*]

Committees of Inspection

4.261 Division 80 of the Schedule applies to a committee of inspection for an ongoing administration of a regulated debtor's estate that is appointed under that Division on or after the commencement day. Division 80 of the Schedule also applies to a committee of inspection for an ongoing administration of a regulated debtor's estate that is appointed under a provision of the old Act but is taken to be a committee of inspection under subitem 158(1). However, Division 30 of the Schedule does not apply in relation to meetings of, or related to, the committee of inspection convened or held before the commencement day. [*Schedule 1, Part 3, Division 3, Subdivision G, section 157*]

4.262 If there is, in relation to the administration of a regulated debtor's estate, a committee of inspection validly appointed under section 70 of the old Act, then on and after the day specified in subitem (2), the committee is taken for the purposes of the Schedule to be a committee of inspection established under section 80-10 of the Schedule in relation to the administration of the estate. For the purposes of subitem (1), the day is in the case of a committee appointed on or before the commencement day—the commencement day; or in the case of a committee appointed on a day that is after the commencement day in accordance with a provision of this Division—that later day. [*Schedule 1, Part 3, Division 3, Subdivision G, section 158*]

4.263 The members appointed to the committee under section 70 of the old Act are the members of a continued committee. If a person is a member of a continued committee, then despite their repeal by the

Schedule, subsections 70(3) and (4) and section 71 of the old Act continue to apply in relation to the person. Sections 80-15 to 80-25 of the Schedule and the Insolvency Practice Rules made under section 80-30 of the Schedule that relate to membership of a committee of inspection do not apply in relation to members of a continued committee [*Schedule 1, Part 3, Division 3, Subdivision G, section 159*]

4.264 Sections 80-35 and 85-5 of the Schedule apply whether or not the direction is given before, on or after the commencement day. [*Schedule 1, Part 3, Division 3, Subdivision G, section 160*]

4.265 Section 80-40 of the Schedule (Committee of inspection may request information) applies whether or not the information, report or document referred to in subsection 80-40(1) was obtained or generated, or was made or prepared, or is in respect of actions or events that occurred before, on or after the commencement day. [*Schedule 1, Part 3, Division 3, Subdivision G, section 161*]

4.266 Sections 80-55 and 80-60 of the Schedule apply to arrangements made on or after the commencement day. [*Schedule 1, Part 3, Division 3, Subdivision G, section 162*]

Review of the administration of a regulated debtor's estate

4.267 Division 90 of the Schedule applies in relation to an ongoing administration of a regulated debtor's estate whether or not the matter to be reviewed occurred before, on or after the commencement day. [*Schedule 1, Part 3, Division 3, Subdivision H, section 163*]

4.268 Reviews under Subdivision C of Division 90 of the Schedule may be carried out whether or not the remuneration is paid or payable; or the cost or expense is incurred or paid; or the funds were withdrawn or proposed to be withdrawn; before, on or after the commencement day. If a review in accordance with regulations for the purposes of subsection 167(1) of the old Act starts before the commencement day, subitems (3) and (4) will apply. Nothing in the Act affects the review; or the powers of or any decision made by the Inspector General in relation to the review; or any requirement for a trustee to repay an amount of remuneration; or any appeal or review in relation to the review. The old Act continues to apply on and after the commencement day in relation to the review despite the amendments and repeals made by the Transitionals Act. [*Schedule 1, Part 3, Division 3, Subdivision H, section 164*].

4.269 This item applies if a court makes an order in relation to a person or the administration of an estate of a bankrupt under the old Act (the old Act order). The old Act order does not cease to have effect because a provision of the old Act under which it was made has been

amended or repealed by this Act. If the old Act order is inconsistent with a provision of the Bankruptcy Act that is amended or inserted by the Transitionals Act; or a provision dealing with matters of an application, saving or transitional nature relating to amendments made by this Act; then, subject to this Part, the provision does not apply to the extent that it is inconsistent with the old Act order. *[Schedule 1, Part 3, Division 3, Subdivision H, section 165]*

4.270 If civil and criminal proceedings, inquiries by the court, enforcement processes and any other processes are brought under the old Act in a court in relation to the administration of a regulated debtor's estate, either by way of application or on the initiative of the court (either before the commencement day; or on or after the commencement day in accordance with this Division), then subject to Part 3, nothing in the Transitionals Act affects the proceedings; or the power of the court to make orders in relation to the proceedings; or any orders made by the court in relation to the proceedings; or any enforcement in relation to, or as a result of, the proceedings (including giving effect to any court orders). Similarly subject to Part 3, nothing in the Act affects any appeal or review in relation to the proceedings. Subject to Part 3, the old Act continues to apply on and after the commencement day in relation to the proceedings despite the amendments and repeals made by the Act. *[Schedule 1, Part 3, Division 3, Subdivision H, section 166].*

4.271 For the avoidance of doubt, sections 90-5 and 90-10 of the Schedule apply whether or not the information, report or document mentioned in subsections 90-5(2) and 90-10(3) was prepared before, on or after the commencement day. Paragraph 90-15(3)(f) of the Schedule applies whether or not the remuneration is paid or payable before, on or after the commencement day. Subsection 90-15(4) of the Schedule applies whether or not the action or failure to act occurred before, on or after the commencement day. *[Schedule 1, Part 3, Division 3, Subdivision H, section 167].*

4.272 For the avoidance of doubt, section 90-35 of the Schedule applies whether or not the trustee was appointed before, on or after the commencement day. *[Schedule 1, Part 3, Division 3, Subdivision H, section 168]*

Administrative Review

4.273 A 'reviewable provision' means section 155A, 155F or 155I of the old Act. If an application is made to the Administrative Appeals Tribunal under a reviewable provision for review of a decision (the reviewable decision) under that provision either before the commencement day; or on or after the commencement day (in accordance with a provision of this Part), then subject to Part 3, nothing in the Act affects any proceedings before the Administrative Appeals Tribunal in relation to the reviewable decision; or the powers of the Administrative

Appeals Tribunal in relation to the reviewable decision; or any enforcement in relation to, or as a result of, a decision of the Administrative Appeals Tribunal in relation to the reviewable decision; or any appeal or review in relation to a decision of the Administrative Appeals Tribunal in relation to the reviewable decision. Subject to Part 3, the old Act continues to apply on and after the commencement day in relation to the proceedings despite the amendments and repeals made by the Act. Despite the repeal of a reviewable provision by the Schedule, applications may be made to the Administrative Appeals Tribunal under the reviewable provision. [*Schedule 1, Part 3, Division 4, section 169*]

Chapter 5

Introduction — Insolvency Practice Schedule (Corporations)

Outline of chapter

5.1 Schedule 2 to the Bill inserts the Insolvency Practice Schedule (Corporations) (the Schedule) as Schedule 2 to the Corporations Act.

5.2 Part 1 of the Schedule contains an Introduction to the Schedule which sets out the object of the Schedule, a simplified outline of the Schedule and the Dictionary of definitions.

Context of amendments

5.3 Two of the key objectives of the Bill are to align and modernise the registration and disciplinary frameworks that apply to registered liquidators and registered trustees and also to align and modernise a range of specific rules relating to the handling of corporate external administrations and personal bankruptcy. This is achieved by introducing new Schedules into the Bankruptcy Act and the Corporations Act containing common rules in relation to these subject matters.

Summary of new law

5.4 The Schedule has three objectives:

- to ensure that any person registered as a liquidator:
 - has an appropriate level of expertise;
 - behaves ethically; and
 - maintains sufficient insurance to cover his or her liabilities in practising as a registered liquidator;
- to regulate the external administration of companies consistently, unless there is a clear reason to treat a matter

that arises in relation to a particular kind of external administration differently; and

- to regulate the external administration of companies to provide creditors with a greater ability to protect their interests.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
Provides an overview of Schedule 2 and definitions and a dictionary to be applied in the Schedule.	There is no corresponding law.
<p>A company is taken to be under <i>external administration</i> if:</p> <ul style="list-style-type: none"> • the company is under administration ; or • a deed of company arrangement has been entered into in relation to the company; or • a liquidator has been appointed in relation to the company; or • a provisional liquidator has been appointed in relation to the company. 	The existing definition of an <i>externally –administered body corporate</i> which also includes a company in respect of property of which a receiver, or receiver or manager has been appointed or that has entered into a compromise or arrangement is repealed and replaced by the label a <i>Chapter 5 body corporate</i> .
The Minister may make the <i>Insolvency Practice Rules</i> by legislative instrument for matters required or permitted by the Schedule to be made.	The Minister does not have the power to make such rules.

Detailed explanation of new law

5.5 The Insolvency Practice Schedule (Corporations) (the Schedule) is inserted into the Corporations Act. [*Schedule 2, Part 1, item 1, section 600K*]

5.6 The Dictionary defines terms used in the Schedule. In some cases, the definition is a signpost to another provision in the Schedule in which the meaning of the term is explained. [*Schedule 2, item 2, Schedule 2 to the Act, Part 1, section 5-1*]

5.7 A company is taken to be under *external administration* if:

- the company is under administration;

- a deed of company arrangement has been entered into in relation to the company;
- a liquidator has been appointed in relation to the company; or
- a provisional liquidator has been appointed in relation to the company. [Schedule 2, item 2, Schedule 2 to the Act, Part 1, sections 5-5 and 5-15]

5.8 A company is not under *external administration* for the purposes of the Schedule merely because a receiver, receiver and manager, or other controller has been appointed in relation to property of the company. [Schedule 2, item 2, Schedule 2 to the Act, Part 1, note to section 5-15]

5.9 A person is an *external administrator* of a company if the person is:

- the administrator of the company;
- the administrator under a deed of company arrangement that has been entered into in relation to the company;
- the liquidator of the company; or
- the provisional liquidator of the company. [Schedule 2, item 2, Schedule 2 to the Act, Part 1, sections 5-5 and 5-20]

Consequential amendments

5.10 The definition of *externally-administered body corporate* is deleted and replaced by the label *Chapter 5 body corporate*. The current label of *externally-administered body corporate* is very similar to the label *external administration* of a company which is defined for the purposes of the Schedule. An *external administration* of a company is a smaller subset of the types of administration referred to in the definition of a *Chapter 5 body corporate*. [Schedule 2, Part 2, items 61 and 64, section 9]

Application and transitional provisions

5.11 The *commencement day* for the Schedule means the day on which Part 1 of Schedule 2 to the *Insolvency Law Reform Act 2014* commences. [Schedule 2, item 2, Part 3, section 1551]

Chapter 6

Registration and discipline of registered liquidators

Outline of chapter

6.1 The Insolvency Practice Schedule (Corporations) introduces new rules relating to the registration, regulation, discipline and deregistration of registered liquidators. These rules are common with the corresponding rules in relation to registered trustees which are introduced by the Insolvency Practice Schedule (Bankruptcy).

Context of amendments

6.2 The regulation of insolvency practitioners, particularly corporate insolvency practitioners, has been the subject of a number of reviews in the past two decades by a range of bodies including the Australian Law Reform Commission in 1988 (the *General Insolvency Inquiry* (commonly known as the Harmer Report)); the *Working Party to review the regulation of corporate insolvency practitioners* in 1997; the Parliamentary Joint Committee on Corporations and Financial Service in 2004; and most recently the Senate Economics References Committee (Senate Committee) that released its report, *The regulation, registration and remuneration of insolvency practitioners in Australia: the case for a new framework* in September 2010 (the Senate Inquiry Report).

6.3 The Senate Inquiry was established to consider the practices of liquidators in conducting external administrations, including their remuneration, as well as the role of ASIC in overseeing the corporate insolvency profession. Submissions to the Senate Inquiry identified a wide range of regulatory failures in relation to the regulation of liquidators, and in particular expressed concerns regarding: the process for the registration of new liquidators; the process for the discipline and deregistration of insolvency practitioners who had engaged in misconduct; and the regulatory tools available to ASIC, and the obligations of ASIC, to actively oversee the profession.

6.4 The Senate Inquiry Report was critical of a number of areas of the current regulatory framework for corporate insolvency, including the current registration and discipline frameworks, insurance obligations, and remuneration of registered liquidators. The Senate Committee was also

critical of ASIC's performance in the regulatory oversight of registered liquidators. The Senate Inquiry gave voice to creditor discontent following recent high profile cases of fraud and negligence by members of the corporate insolvency industry.

6.5 Australia has always had separate personal and corporate insolvency systems. This includes separate laws, regulators, agencies responsible for policy development, and ministerial responsibility. The Senate Inquiry Report highlighted the current divergence between the regulatory systems for corporate and personal insolvency and expressed a desire for greater harmonisation of the two.

6.6 The Government recognises that providing for greater alignment of the laws that govern insolvency administration and insolvency practitioner regulation would benefit insolvency practitioners, creditors, shareholders, regulators and other stakeholders.

Summary of new law

6.7 The Schedule introduces a new framework in relation to the regulation of registered liquidators:

- the application to ASIC to be registered as a liquidator;
- the referral of an application by ASIC to a committee for consideration which will assess the application against specified criteria;
- the registration of the application by ASIC, which may be subject to conditions;
- a requirement that a registered liquidator lodge an annual return with ASIC;
- a requirement that a registered liquidator must give ASIC notice if the person's circumstances change or if certain specified events occur;
- ASIC's powers in circumstances where a registered liquidator fails to lodge a document or give information;
- ASIC's powers to suspend or cancel a liquidator's registration in certain circumstances;

- ASIC's powers to give a show-cause notice and if no sufficient explanation is given, ASIC's powers to take further disciplinary action on the decision of a committee;
- a committee's powers to take disciplinary action and ASIC's obligation to give effect to the committee's decision;
- the Court's powers to make orders in relation to a registered liquidator;
- a right given to industry bodies to notify ASIC where they suspect there are grounds for disciplinary action to be taken against a registered liquidator.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
ASIC must work cooperatively with the Inspector-General in Bankruptcy in performing its functions and exercising its powers under this Act in relation to persons who are, have been or may become both registered liquidators and registered trustees under this Act and the Bankruptcy Act.	There is currently no corresponding law.
ASIC must establish and maintain a Register of Liquidators. The Insolvency Practice Rules may provide for and in relation to the Register of Liquidators.	ASIC must cause a Register of Liquidators to be kept for purposes of the Corporations Act.

<i>New law</i>	<i>Current law</i>
<p>An individual may apply to ASIC to be registered as a liquidator. If the application is properly made and the fee for lodgment paid, ASIC must convene a committee to consider the application within 3 months of receiving the application. The committee will consist of ASIC, a registered liquidator chosen by a prescribed body (ARITA) and a person appointed by the Minister.</p> <p>The committee must interview the applicant and may require the applicant to sit for an exam. The committee must decide whether the applicant should be registered or not within 45 days after interviewing the applicant. The committee must decide that the applicant should be registered as a liquidator if the applicant satisfies the prescribed criteria under the Schedule and Insolvency Practice Rules. The committee may decide that the applicant’s registration be subject to conditions.</p> <p>When the committee decides that an applicant should be registered, ASIC must register the person upon the payment of the prescribed fee and the production of evidence that the person has taken out appropriate insurance.</p> <p>The Insolvency Practice Rules may prescribe conditions applying to the registration of all registered liquidators or registered liquidators of a specified class.</p> <p>The registration has effect for three years.</p>	<p>An individual may apply to ASIC to be registered as a liquidator. If the application is properly made, and fee paid, ASIC will consider whether the applicant satisfies the prescribed criteria under the Act.</p> <p>A registered liquidator will not be able to conduct court-ordered liquidations, provisional liquidations, or cross-border insolvency matters unless registered as an ‘official liquidator’</p> <p>There is no capacity for ASIC to place conditions on the registration of a registered liquidator.</p> <p>A registered liquidator remains registered until that registration is cancelled by CALDB, the Court or the registered liquidator resigns.</p>

<i>New law</i>	<i>Current law</i>
<p>A registered liquidator whose registration has conditions imposed on it may apply to ASIC to have those conditions varied. The application must be considered by a committee convened for that purpose and the committee must within 20 business days after interviewing the applicant decide whether the condition should be varied or removed.</p> <p>The committee must give the applicant and ASIC a report setting out the committee's decision and the reasons for the decision. The condition is varied or removed in accordance with that decision.</p>	<p>There is currently no corresponding law.</p>
<p>Where a registered liquidator wishes to continue practicing after the current registration period, the individual must apply to have their registration renewed. ASIC must renew the registration where the application is properly made, evidence is provided to ASIC in writing that the applicant maintains adequate and appropriate insurance and that the applicant has complied with any condition dealing with continuing professional education.</p> <p>The renewed registration has effect for 3 years.</p>	<p>There is currently no corresponding law.</p>
<p>A person commits an offence if the person represents that he or she is a registered liquidator and the representation is false.</p>	<p>There is currently no corresponding law.</p>

<i>New law</i>	<i>Current law</i>
<p>A registered liquidator must maintain adequate and appropriate professional indemnity and fidelity insurance. If a registered liquidator fails to comply he or she commits an offence. Where the registered liquidator intentionally or recklessly fails to comply, the maximum penalty is 1,000 penalty units, otherwise the penalty is 60 penalty units.</p> <p>ASIC may, by legislative instrument, determine what constitutes adequate and appropriate professional indemnity and fidelity insurance.</p>	<p>A registered liquidator must maintain adequate and appropriate professional indemnity and fidelity insurance. If a registered liquidator fails to comply, he or she commits an offence. The offence is strict liability and the penalty is 5 penalty units.</p>
<p>A registered liquidator must lodge in an approved form an annual return in relation to his or her practice during that year. A registered liquidator commits an offence, punishable by 5 penalty units, if the liquidator fails to do so.</p>	<p>A registered liquidator must lodge an annual return in relation to his or her practice during that year. A registered liquidator commits an offence, punishable by 5 penalty units, if they fail to do so.</p>
<p>A registered liquidator must notify ASIC, in the approved form, where specified events occur that would affect the ability of the registered liquidator to continue to practice. Where a practitioner intentionally or recklessly fails to notify ASIC within 5 business days after the person could reasonably be expected to be aware that the event has occurred, the person commits an offence punishable by 100 penalty units.</p> <p>A registered liquidator must notify ASIC, in the approved form, if information, prepared by or on behalf of the liquidator, and included in an annual liquidator return or in an annual administration return, is or becomes inaccurate in a material particular. A registered liquidator must also notify ASIC if any prescribed event occurs. Failure to notify ASIC within 5 business days after the registered liquidator could reasonably be expected to be aware that the event has occurred commits an offence punishable by a maximum penalty of 5 penalty units.</p>	<p>A registered liquidator must inform ASIC about a change to their name, registered address, or the firm for which they work.</p>

<i>New law</i>	<i>Current law</i>
<p>ASIC may direct a registered liquidator to lodge documents or provide information required under this Act or to correct any information required under this Act.</p> <p>Where the document or information is not provided or corrected within 10 business days after the direction has been given, ASIC may give a direction that the registered liquidator not accept any further appointments or apply to the Court for an order that the registered liquidator comply with ASIC' direction.</p>	<p>There is currently no corresponding law.</p>
<p>The registration of a person as a liquidator is automatically cancelled if the person becomes an insolvent under administration or if the person dies.</p>	<p>If a registered liquidator becomes an insolvent under administration, ASIC may cancel the registration of the liquidator.</p>
<p>ASIC may, suspend or cancel the registration of a liquidator where the registered liquidator:</p> <ul style="list-style-type: none"> • is disqualified from managing companies; • ceases to have adequate and appropriate professional indemnity or fidelity insurance; • has his or her registration as a trustee under the Bankruptcy Act either cancelled or suspended; • fails to repay remuneration in accordance with an order of the Court; • is convicted of an offence involving fraud or dishonesty; or • makes a request to have his or her registration suspended or cancelled. 	<p>ASIC may cancel the registration of a registered liquidator who is insolvent under administration, is disqualified from managing a company, or has failed to maintain adequate and appropriate insurance.</p>

<i>New law</i>	<i>Current law</i>
<p>ASIC may issue a show cause notice to a registered liquidator and make a referral to a Committee where, in the opinion of the regulator:</p> <ul style="list-style-type: none"> • the liquidator no longer has the qualifications, experience, knowledge and abilities required for purposes of registration; • the liquidator has committed an act of bankruptcy, within the meaning of the Bankruptcy Act or a corresponding law of an external Territory or a foreign country; • the liquidator is disqualified from managing corporations under Part 2D.6 of the Corporations Act, or under a law of an external Territory or a law of a foreign country; • the liquidator has ceased to have adequate and appropriate professional indemnity or fidelity insurance against the liabilities that the person may incur working as a registered liquidator; • the liquidator has breached a current condition imposed on the liquidator; • the liquidator has contravened a provision of the Corporations Act; • the liquidator has failed to properly perform the duties of a reviewing liquidator; • the liquidator’s registration as a trustee under the Bankruptcy Act has been cancelled or suspended, other than in compliance with a written request by the liquidator to cancel or suspend the registration; • the liquidator fails to repay remuneration in accordance with an order of the Court; • the liquidator has been convicted of an offence involving fraud or dishonesty; • the liquidator is permanently or 	<p>Where ASIC believes that a liquidator has breached his or her obligations under the Corporations Act, ASIC would refer the matter to CALDB.</p>

<i>New law</i>	<i>Current law</i>
<p>temporarily unable to perform the functions and duties of a liquidator because of physical or mental incapacity;</p> <ul style="list-style-type: none"> • the liquidator has failed to carry out adequately and properly the duties of a liquidator or any other duties or functions that under a law of the Commonwealth or of a State or Territory, or the general law that a registered liquidator is required to carry out; • The liquidator is not a fit and proper person; or • The liquidator is not resident in Australia. <p>ASIC may refer a registered liquidator to a committee ASIC has convened where ASIC has given the liquidator a show cause notice and ASIC either:</p> <ul style="list-style-type: none"> • does not receive an explanation within 20 business days; or • is not satisfied by the explanation. <p>The committee must consist of ASIC, a registered liquidator chosen by a prescribed body (ARITA) and a person appointed by the Minister.</p>	
<p>Where ASIC has referred a registered liquidator to a committee, the committee must decide one or more of the following:</p> <ul style="list-style-type: none"> • that the liquidator should continue to be registered; • that the liquidator's registration should be cancelled; • that the liquidator's registration should be suspended for a period, or until the occurrence of an event, specified in the decision; • that ASIC should direct the liquidator not to accept any further appointments as liquidator, or not to accept any further appointments as liquidator during 	<p>A liquidator's registration may be cancelled or suspended where CALDB determines that the practitioner:</p> <ul style="list-style-type: none"> • has failed to carry out or perform their duties and functions; • is not otherwise a fit and proper person; • has failed to lodge an annual statement; • is disqualified from managing corporations; • is no longer residing in Australia; • is incapable, because of mental infirmity, of managing his or her affairs.

<i>New law</i>	<i>Current law</i>
<p>the period specified in the decision;</p> <ul style="list-style-type: none"> • that the liquidator should be publicly admonished or reprimanded; • that a condition specified in the decision should be imposed on the liquidator; • that a condition should be imposed on all other registered liquidators that they must not allow the liquidator to carry out any of the functions or duties , or exercise any of the powers of a registered liquidator on their behalf for a period specified in the decision of no more than 10 years; • that ASIC should publish specified information in relation to the committee’s decision and the reasons for that decision. <p>The committee must give the registered liquidator and ASIC a report which sets out the committee’s decision, the reasons for the decision, and details of any conditions that it has imposed on the liquidator or on all other registered liquidators in relation to the liquidator.</p> <p>ASIC must give effect to the committee’s decision in relation to a registered liquidator.</p>	
<p>A person whose registration has been suspended may apply to ASIC for the suspension to be lifted or for the period of the suspension to be shortened. ASIC must refer the application to a committee to consider the application. The committee must report to the applicant and ASIC whether it has decided to lift or shorten the period of the suspension.</p>	<p>Where a registration has been suspended, CALDB may on the application by the person or of its own motion, terminate the suspension.</p>

<i>New law</i>	<i>Current law</i>
<p>An industry body (which will be prescribed in the Insolvency Practice Rules) may give ASIC an ‘industry notice’ stating that the industry body reasonably suspects that there are grounds for ASIC to take disciplinary action in relation to a registered liquidator.</p> <p>ASIC is required to notify the industry body whether or not it has decided to take action in relation to the matters in the industry notice.</p> <p>An industry body is not liable civilly, criminally or under any administrative process if the body acted in good faith and its suspicion in relation to the subject of the notice is a reasonable suspicion.</p> <p>A person who makes a decision in good faith as a result of which an industry body gives a notice is not liable civilly, criminally or under any administrative process. Similarly, a person who in good faith provides information or gives a document which is included in an industry notice, or a copy of which is included, is not liable civilly, criminally or under any administrative process.</p>	<p>There is currently no corresponding law.</p>
<p>ASIC must appoint another registered liquidator to conduct an external administration of a company if the registration of a liquidator conducting an external administration of the company is suspended or cancelled.</p>	<p>There is currently no corresponding law.</p>
<p>On the application of a registered liquidator or ASIC, or on its own initiative, the Court may make any such orders it sees fit in relation to the registered liquidator. Without limiting the matters that the Court may take into account, the Court may take into account:</p> <ul style="list-style-type: none"> • whether an action or failure by the registered liquidator may affect public confidence in registered 	<p>There is currently no corresponding law.</p>

<i>New law</i>	<i>Current law</i>
<p>liquidators as a whole; and</p> <ul style="list-style-type: none"> whether any proposed Court order would promote public confidence in registered liquidators as a whole. <p>The Court may also make orders in relation to a registered liquidator that deal with the costs of a matter considered by the Court including that the registered liquidator is personally liable for some or all of those costs and that the liquidator is not entitled to be reimbursed by a company or its creditors .</p>	
<p>Common rules are set out for committees established under Part 2. Persons appointed to a committee by a prescribed body must have the prescribed knowledge or experience or if no requirements are prescribed, the knowledge and experience necessary to carry out the functions to be performed.</p> <p>If the Minister appoints a person to a committee, that person must have knowledge or experience in one or more of the fields of business, law (including the law relating to corporate insolvency), economics, accounting, public policy relating to corporate insolvency and administration of companies, including insolvent companies.</p> <p>The Minister may delegate the Minister’s powers to appoint a person to a committee to ASIC, a member of ASIC and a senior staff member of ASIC.</p> <p>A single committee may consider more than one matter. The consideration of a matter is not affected by a change in the membership of the committee. A matter may be adjourned or transferred to another committee. The Insolvency Practice Rules may</p>	<p>CALDB is established under Part 11 of the ASIC Act with powers and functions provided in Part 9.2 of the Corporations Act.</p> <p>The primary role of CALDB is to act as an expert disciplinary tribunal to consider applications from ASIC or APRA for the cancellation or suspension of the registration of auditors or liquidators.</p> <p>CALDB consists of a Chairperson, a Deputy Chairperson, 6 accounting members and 6 business members.</p> <p>The Chairperson and the Deputy Chairperson must each be enrolled as a barrister, as a solicitor or as a legal practitioner of the High Court, any Federal Court or the Supreme Court of a State or Territory and must have been so enrolled for a period of at least five years.</p> <p>Accounting members are required to be a resident of Australia and a member of a professional accounting body or any other body prescribed by regulation.</p> <p>Business members are required to have qualifications , knowledge or experience in business or commerce, the administration of companies, financial markets, financial products</p>

<i>New law</i>	<i>Current law</i>
<p>prescribe procedures and make other rules for committees.</p> <p>The remuneration of a member of a committee is determined by the Remuneration Tribunal and if there is no determination in operation, by the Minister.</p> <p>The use and disclosure of information given to a member of the committee is restricted to specified purposes.</p>	<p>and services, economics or law.</p> <p>The Chairperson, the Deputy Chairperson and each of the other members are appointed by the Minister on a part-time basis.</p> <p>The provisions of the ASIC Act and the Corporations Act provide for the essential procedures for CALDB. CALDB hearings are conducted by a panel of board members.</p>

Detailed explanation of new law

Working cooperatively with the Inspector-General in Bankruptcy

6.8 ASIC must work cooperatively with the Inspector-General in Bankruptcy in relation to persons who are, have been or may become both registered liquidators under the Corporations Act and registered trustees under the Bankruptcy Act. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, section 10-5]*

Register of liquidators

6.9 ASIC must establish and maintain a Register of Liquidators which may be kept in any form that ASIC considers appropriate.

6.10 The Insolvency Practice Rules may provide for the Register of Liquidators including the details to be entered on the Register and the parts of the Register that are to be made available to the public.

6.11 Without limiting the details to be entered in the Register, it may include details of any disciplinary action recommended by a committee against a registered liquidator and the details of persons who have had their registration suspended or cancelled. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, subsections 15-1(1),(2),(3),(4) and (5)]*

Registration

6.12 An individual may apply to ASIC to be registered as a liquidator. An application is properly made if it is lodged with ASIC in the approved form. *[Schedule 2, item 150, Schedule 2 to the Act, Part 2, section 8-10]*

6.13 If an application is properly made ASIC must convene a committee to consider an application if it is properly made. The committee must consist of ASIC, a registered liquidator chosen by a prescribed body (ARITA) and a person appointed by the Minister. ASIC must convene a committee to consider an application within three months of receiving the application. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, sections 20-10 and 20-15]*

6.14 The committee must consider an application referred to it by ASIC and must interview the applicant for purposes of its consideration. The committee may also require the applicant to sit for an exam. *Schedule 2, item 150, Schedule 2 to the Act, Part 2, subsections 20-20(1) and (2)*

6.15 Within 45 business days after interviewing the applicant, the committee must decide whether the applicant should be registered as a liquidator or not. The committee must decide that the applicant should be registered if it is satisfied that the applicant:

- has the qualifications, experience, knowledge and abilities prescribed in the Insolvency Practice Rules;
- will take out adequate and appropriate professional indemnity and fidelity insurance;
- has not been convicted, within 10 years before making the application, of an offence involving fraud or dishonesty;
- is not, and has not been within 10 years before making the application, an insolvent under administration;
- has not had his or her registration as a liquidator under this Act cancelled within 10 years before making the application, other than in response to a written request by the applicant to have the registration cancelled;
- has not had his or her registration as a trustee under the Bankruptcy Act cancelled within 10 years before making the application, other than in response to a written request by the applicant to have the registration cancelled;
- is not disqualified from managing corporations under this Act, or under a law of an external Territory or a law of a foreign country;
- is otherwise a fit and proper person; and
- is resident in Australia. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, subsections 20-20(3) and (4)]*

6.16 The committee may decide that the applicant should be registered even if the committee is not satisfied that the applicant has the qualifications, experience, knowledge and abilities prescribed in the Insolvency Practice Rules or is not resident in Australia, provided that the committee is satisfied that the applicant would be suitable to be registered if the applicant complied with conditions specified by the committee. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, subsection 20-20(5)]*

6.17 The committee may decide that the applicant's registration is to be subject to any other conditions specified by the committee. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, subsection 20-20(6)]*

6.18 The registration requirements do not affect the operation of Part VIIC of the *Crimes Act 1914* which in certain circumstances relieves a person from disclosing spent convictions. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, subsection 20-20(7)]*

6.19 The committee must give the applicant and ASIC a report setting out the committee's decision on the application, its reasons for the decision and if the committee decides that the registration should be subject to conditions:

- the condition; and
- the committee's reasons for imposing the condition. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, section 20-25]*

6.20 When the committee decides that an applicant should be registered, ASIC must register the person upon the payment of the prescribed fee and the production of evidence that the person has taken out adequate and appropriate professional indemnity and fidelity insurance against the liabilities that the person may incur working as a registered liquidator. The registration would be subject to the current conditions imposed on the registered liquidator. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, subsections 20-30(1) and (2)]*

6.21 ASIC registers an applicant by entering on the Register of Liquidators the details relating to the applicant prescribed in the Insolvency Practice Rules. After registering a person, ASIC must give the person a certificate of registration which may be given electronically. The registration has effect for 3 years. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, subsections 20-30(2), (4), (5) and (6)]*

6.22 The Insolvency Practice Rules may prescribe conditions applying to the registration of all registered liquidators or registered liquidators of a specified class. A condition may be imposed limiting the kinds of activity in which a liquidator may engage, either for the duration

of the registration or for a shorter period. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, section 20-35]*

6.23 A registered liquidator whose registration has conditions imposed on it may apply to ASIC to have those conditions varied. However, an application cannot be made if the person's registration as a liquidator is suspended; the condition is of a prescribed kind or in prescribed circumstances. The application must be lodged with ASIC in the approved form. A single application by a registered liquidator may deal with more than one condition. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, section 20-40]*

6.24 Within 3 months of receiving an application to vary a condition, ASIC must refer the application to a committee which ASIC has convened for that purpose. The committee must consist of ASIC, a registered liquidator chosen by a prescribed body (ARITA) and a person appointed by the Minister. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, sections 20-45 and 20-50]*

6.25 If an application to vary or remove a condition is referred to a committee, the committee must within 20 business days after interviewing the applicant decide whether the condition should be varied or removed and if the condition is to be varied, specify the way in which it is to be varied. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, section 20-55]*

6.26 The committee must give the applicant and ASIC a report setting out the committee's decision and the reasons for the decision. If the committee decides that a condition should be varied, the committee must set out the variation that is to be made. The condition is varied or removed in accordance with that decision. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, sections 20-60 and 20-65]*

6.27 If a registered liquidator wishes to continue practising after the current registration period, the individual must apply to have their registration renewed. The application must be lodged with ASIC in the approved form and must be made before the applicant's registration as a liquidator ceases to have effect unless it is made before the time specified in a Court order. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, section 20-70]*

6.28 ASIC must renew the registration where the application is properly made, evidence is provided to ASIC in writing that the applicant maintains adequate and appropriate professional indemnity and fidelity insurance and that the applicant has complied with any conditions dealing with continuing professional education. The renewed registration is subject to the current conditions imposed on the registered liquidator. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, subsections 20-75(1) and(3)]*

6.29 ASIC renews the registration by entering or maintaining in the Register of Liquidators the details relating to the applicant which are prescribed in the Insolvency Practice Rules. After renewing the registration, ASIC must give the person a certificate of registration which may be given electronically. The renewed registration has effect for 3 years. [Schedule 2, item 2, Schedule 2 to the Act, Part 2, subsections 20-75(2), (4), (5) and (6)]

6.30 A person commits an offence if the person represents that he or she is a registered liquidator and the representation is false. The penalty for contravention is 30 penalty units. [Schedule 2, item 2, Schedule 2 to the Act, Part 2, section 20-80]

Insurance

6.31 A registered liquidator must maintain adequate and appropriate professional indemnity and fidelity insurance. If a registered liquidator fails to comply with this requirement, he or she commits an offence. Where the registered liquidator intentionally or recklessly fails to comply, the maximum penalty is 1,000 penalty units, otherwise there is a strict liability offence with a maximum penalty of 60 penalty units. [Schedule 2, item 2, Schedule 2 to the Act, Part 2, subsections 25-1(1), (3) and (4)]

6.32 ASIC may, by legislative instrument, determine what constitutes adequate and appropriate professional indemnity and fidelity insurance, in relation to either or both of the following:

- specified circumstances;
- one or more specified classes of registered liquidators. [Schedule 2, item 2, Schedule 2 to the Act, Part 2, subsection 25-1(2)]

Annual liquidator returns

6.33 A registered liquidator during all or part of a **return year** for the person must, within 1 month after the end of that year, lodge with ASIC an annual return. [Schedule 2, item 2, Schedule 2 to the Act, Part 2, subsection 30-1(1)]

6.34 A **return year** for a person who is registered as a liquidator is:

- the period of 12 months beginning on the day on which that registration first began; and
- each subsequent period of 12 months. [Schedule 2, item 2, Schedule 2 to the Act, Part 2, subsection 30-1(2)]

6.35 A return must be in the approved form and include evidence that the person has, during the whole of any period of the year during which the person was registered as a liquidator, maintained adequate and appropriate professional indemnity and fidelity insurance against the liabilities that the person may incur working as a registered liquidator. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, subsection 30-1(5)(3)]*

6.36 On the application of the registered liquidator, provided it is made before the end of the period for lodging a return, ASIC may extend that period. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, 30-1(4)]*

6.37 A registered liquidator commits a strict liability offence, with a penalty of 5 penalty units, if the liquidator fails to lodge a return. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, subsection 30-1(5)]*

Notice requirements

6.38 A registered liquidator must notify ASIC, in the approved form, where any of the following events occur that would affect the ability of the registered liquidator to continue to practice:

- the liquidator becomes an insolvent under administration;
- a bankruptcy notice is issued under the Bankruptcy Act in relation to the liquidator as a debtor, or a corresponding notice is issued in relation to the liquidator as debtor under a law of an external Territory or a law of a foreign country;
- the liquidator is convicted of an offence involving fraud or dishonesty;
- the liquidator is disqualified from managing corporations under the Act, or under a law of an external Territory or a law of a foreign country;
- the liquidator ceases to have adequate and appropriate professional indemnity insurance or fidelity insurance against the liabilities that the liquidator may incur working as a registered liquidator;
- the liquidator is issued with a show-cause notice under the Bankruptcy Act in relation to the liquidator's registration as a trustee under that Act;
- the liquidator's registration as a trustee under the Bankruptcy Act is suspended or cancelled;

- any other prescribed event. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, subsection 35-1(1)]*

6.39 The notice must be lodged by the registered liquidator within 5 business days after the liquidator could reasonably be expected to be aware that the event has occurred. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, subsection 35-1(1)]*

6.40 Where a liquidator intentionally or recklessly fails to notify ASIC that a specified event has occurred, the liquidator commits an offence punishable by a maximum penalty of 100 penalty points. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, subsection 35-1(2)]*

6.41 A registered liquidator must notify ASIC, in the approved form, if information, prepared by or on behalf of the liquidator, and included in an annual liquidator return or in an annual administration return, is or becomes inaccurate in a material particular. A registered liquidator must also notify ASIC if any prescribed event occurs. Failure to notify ASIC within 5 business days after the registered liquidator could reasonably be expected to be aware that the event has occurred commits an offence punishable by a maximum penalty of 5 penalty points. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, section 35-5]*

Disciplinary and other action

Direction to comply

6.42 ASIC may give a registered liquidator a direction in writing to comply with a requirement under this Act to lodge documents or provide information required under this Act within 10 business days after the direction is given. On the application of the registered liquidator, ASIC may extend that period. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, subsections 40-5(1), (2) and (3)]*

6.43 Where the document or information is not provided within 10 business days after the direction has been given (or that period as extended), ASIC may give a direction that the registered liquidator not accept any further appointments or apply to the Court for an order that the registered liquidator comply with ASIC's direction. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, subsection 40-5(4)]*

6.44 Where ASIC reasonably suspects that any information that a registered liquidator is required under this Act to give to ASIC is incomplete or incorrect in any particular, ASIC may direct the liquidator to do one or more of the following within 10 business days after the direction:

- confirm to ASIC that the information is complete and correct;
- complete or correct the information;
- notify any person specified by ASIC in the direction of the addition or correction. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, subsections 40-10(1), (2) and (3)]*

6.45 Where the registered liquidator does not comply within the period of 10 business days (or the period as extended), ASIC may give a direction that the registered liquidator not accept further appointments or apply to the Court for an order directing the liquidator to comply with the requirement within such time specified in the order. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, subsections 40-10(1), (2), and (3)]*

6.46 ASIC may, in writing, direct a registered liquidator not to accept any further appointments under Chapter 5 of the Act or not to accept any further appointments under Chapter 5 for a period specified in the direction if:

- the liquidator has failed to comply with a direction to remedy failure to lodge documents, or give information or documents; or
- the liquidator has failed to comply with a direction to correct inaccuracies; or
- a committee has decided that ASIC should direct a liquidator not to accept any further appointments as liquidator, or not to accept any further appointments as liquidator during the period specified in the direction; or
- the liquidator has failed to comply with a direction to give relevant information to ASIC. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, subsection 40-15(1)]*

6.47 If ASIC gives a direction not to accept further appointments, it is a condition of the liquidator's registration that the liquidator must comply with the direction. ASIC may withdraw a direction not to accept further appointments and the condition is removed from the liquidator's registration. ASIC's power to direct a registered liquidator not to accept further appointments, does not limit the operation of any other provision of this Act, or any other law, relating to the lodgement of a document or a person giving incomplete or incorrect information. Nor does it affect any matter relating to a decision by a committee in relation to ASIC giving a direction that a liquidator not to accept further appointments. ASIC's power to apply to a Court for an order that a registered liquidator comply

with a direction to give relevant material is also not affected. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, subsections 40-15(2), (3),(4), (5), (6) and (7)]*

Automatic cancellation

6.48 The registration of a registered liquidator is automatically cancelled if:

- the person becomes an insolvent under administration; or
- the person dies.

6.49 The cancellation takes effect on the day that the person becomes an insolvent under administration or the day that the person dies. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, section 40-20]*

ASIC may suspend or cancel registration

6.50 ASIC may suspend or cancel the registration of a registered liquidator if:

- the person is disqualified from managing corporations under Part 2D.6 of the Corporations Act, or under a law of an external Territory or a law of a foreign country;
- the person ceases to have adequate and appropriate professional indemnity and fidelity insurance against the liabilities that the person may incur working as a registered liquidator;
- the person's registration as a trustee under the Bankruptcy Act has been cancelled or suspended, other than in compliance with a written request by the person to cancel or suspend the registration;
- the person fails to repay remuneration in accordance with an order of the Court;
- the person has been convicted of an offence involving fraud or dishonesty;
- the person lodges a request with ASIC in the approved form to have the registration suspended or cancelled. *[Schedule 2, item 2, Schedule to the Act, Part 2, subsections 40-25(1) and 40-30(1)]*

6.51 The powers given to ASIC to suspend or cancel a person's registration as a liquidator does not affect the operation of Part VIIC of

the *Crimes Act 1914* which in certain circumstances relieves a person from disclosing spent convictions. [*Schedule 2, item 2, Schedule 2 to the Act, Part 2, subsections 40-25(2) and 40-30(2)*]

6.52 Where ASIC decides to suspend or cancel a person's registration as a liquidator, ASIC must, within 10 days of making the decision, give the person a written notice setting out the decision and the reasons for the decision. The decision comes into effect on the day after the notice is given to the person. However, a failure by ASIC to give the notice within 10 business days, does not affect the validity of the decision. [*Schedule 2, item 2, Schedule 2 to the Act, section 40-35*]

Disciplinary action by committee

6.53 ASIC may issue a show cause notice to a registered liquidator where, in ASIC's opinion:

- the liquidator no longer has the qualifications, experience, knowledge and abilities required for purposes of registration;
- the liquidator has committed an act of bankruptcy, within the meaning of the Bankruptcy Act or a corresponding law of an external Territory or a foreign country;
- the liquidator is disqualified from managing corporations under Part 2D.6 of the Corporations Act, or under a law of an external Territory or a law of a foreign country;
- the liquidator has ceased to have adequate and appropriate professional indemnity or fidelity insurance against the liabilities that the person may incur working as a registered liquidator;
- the liquidator has breached a current condition imposed on the liquidator;
- the liquidator has contravened a provision of the Corporations Act;
- the liquidator has failed to properly perform the duties of a reviewing liquidator;
- the liquidator's registration as a trustee under the Bankruptcy Act has been cancelled or suspended, other than in compliance with a written request by the liquidator to cancel or suspend the registration;

- the liquidator fails to repay remuneration in accordance with an order of the Court;
- the liquidator has been convicted of an offence involving fraud or dishonesty;
- the liquidator is permanently or temporarily unable to perform the functions and duties of a liquidator because of physical or mental incapacity;
- the liquidator has failed to carry out adequately and properly the duties of a liquidator or any other duties or functions that under a law of the Commonwealth or of a State or Territory, or the general law that a registered liquidator is required to carry out;
- the liquidator is not a fit and proper person; or
- the liquidator is not resident in Australia. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, subsection 40-40(1)]*

6.54 A show cause notice issued by ASIC is not a legislative instrument. *[Schedule 2, item 150, Schedule 2 to the Act, Part 2, subsection 40-40(2)]*

6.55 ASIC's powers to issue a show cause notice do not affect the operation of Part VIIC of the *Crimes Act 1914* which in certain circumstances relieves a person from disclosing spent convictions. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, subsection 40-40(3)]*

6.56 ASIC may refer a registered liquidator to a committee which it has convened if ASIC has given a show cause notice to the liquidator and either:

- ASIC does not receive an explanation within 20 business days after the notice is given; or
- ASIC is not satisfied by the explanation given by the liquidator. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, Subsection 40-45(1) and section 40-50]*

6.57 The committee convened by ASIC must consist of ASIC, a registered liquidator chosen by a prescribed body (ARITA) and a person appointed by the Minister. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, section 40-45]*

6.58 Where a registered liquidator is referred to a committee, the committee must decide one or more of the following:

- that the liquidator should continue to be registered;
- that the liquidator's registration should be cancelled;
- that the liquidator's registration should be suspended for a period, or until the occurrence of an event, specified in the decision;
- that ASIC should direct the liquidator not to accept any further appointments as liquidator, or not to accept any further appointments as liquidator during the period specified in the decision;
- that the liquidator should be publicly admonished or reprimanded;
- that a condition specified in the decision should be imposed on the liquidator;
- that a condition should be imposed on all other registered liquidators that they must not allow the liquidator to carry out any of the functions or duties, or exercise any of the powers of a registered liquidator on their behalf for a period specified in the decision of no more than 10 years;
- that ASIC should publish specified information in relation to the committee's decision and the reasons for that decision.*[Schedule 2, item 2, Schedule 2 to the Act, Part 2, section 40-55]*

6.59 The conditions imposed by a committee on a liquidator may include one or more of the following:

- a condition that the liquidator engage in, or refrain from engaging in, specified conduct;
- a condition that the liquidator engage in, or refrain from engaging in, specified conduct except in specified circumstances;
- a condition that the liquidator publish specified information;
- a condition that the liquidator notify a specified person or class of persons of specified information;
- a condition that the liquidator publish a specified statement;

- a condition that the liquidator make a specified statement to a specified person or class of persons. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, subsection 40-55(2)]*

6.60 In making its decision, the committee may have regard to:

- any information provided to the committee by ASIC;
- any explanation given by the liquidator;
- any other information given by the liquidator to the committee;
- if the liquidator is or was also a registered trustee under the Bankruptcy Act – any information in relation to the liquidator given to the committee by the Inspector-General in Bankruptcy or a committee convened under the Insolvency Practice Schedule (Bankruptcy); and
- any other matter that the committee considers relevant. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, subsection 40-5(3)]*

6.61 The committee is required to give the registered liquidator and ASIC a report setting out:

- the committee’s decision in relation to the liquidator;
- the committee’s reasons for that decision;
- if the committee decides that the liquidator should be registered subject to a condition:
 - the condition; and
 - the committee’s reasons for imposing the condition; and
- if the committee decides that a condition should be imposed on all other registered liquidators in relation to the liquidator:
 - the condition; and
 - the committee’s reasons for the decision. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, section 40-60]*

6.62 ASIC is required to give effect the committee’s decision. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, section 40-60]*

Lifting or shortening suspension

6.63 A person whose registration as a liquidator has been suspended may apply to ASIC in the approved form for the suspension to be lifted or for the period of the suspension to be shortened. ASIC must refer an application to a committee which ASIC has convened within 3 months after receiving the application. The committee must consist of ASIC, a registered liquidator chosen by a prescribed body (ARITA) and a person appointed by the Minister. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, sections 40-70, 40-75 and 40-80]*

6.64 The committee must consider the application referred to it and, unless the applicant otherwise agrees, the committee must interview the applicant for the purposes of considering the application. Within 10 business days after the interview the committee must decide whether the suspension should be lifted, or the period of the suspension shortened, and if it is to be shortened, specify when the suspension is to end. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, section 40-85]*

6.65 The committee must give the applicant and ASIC a report setting out the committee's decision, the committee's reasons for the decision and if the committee has decided that the period of suspension should be shortened, when the suspension is to end. *[Schedule 2, item 2, Schedule 2 to the Act, section -84A]*

6.66 If the committee decides that a suspension should be lifted or the period of suspension shortened, the lifting or shortening of the suspension comes into effect in accordance with the decision. *[Schedule 2, item 150, Schedule 2 to the Act, Part 2, section 40-95]*

Action initiated by industry body

6.67 An industry body (prescribed in the Insolvency Practice Rules) may lodge a notice (an **industry notice**) stating that the body reasonably suspects that there are grounds for ASIC to take disciplinary action against a registered liquidator. The industry body must identify the registered liquidator and include the information and copies of any documents upon which the suspicion is grounded. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, subsection 40-100(1)]*

6.68 ASIC must consider the information and documents included in the industry notice and take action as follows:

- if ASIC decides to take no action ASIC, must give the industry body a notice within 45 business days after the industry notice is lodged;

- however, such a notice does not preclude ASIC from taking action based wholly or partly on the basis of information in the industry notice of the following kind:
 - suspending or cancelling the registration of the registered liquidator;
 - giving the registered liquidator a show cause notice; or
 - imposing a condition on the registered liquidator;
- if ASIC does take action based wholly or partly on the information included in an industry notice, ASIC must give the industry body notice of that fact. [*Schedule 2, item 2, Schedule 2 to the Act, Part 2, subsections 40-100(2), (3), (4),(5) and (6)*]

6.69 An industry notice is not a legislative instrument. [*Schedule 2, item 2, Schedule 2 to the Act, Part 2, subsection 40-100(7)*]

6.70 An industry body is not liable civilly, criminally or under any administrative process for giving an industry notice if the body acted in good faith and the suspicion that the body holds in relation to the subject of the notice is a reasonable suspicion. A person who makes a decision in good faith as a result of which an industry body gives an industry notice is not civilly, criminally or under any administrative process for making the decision. A person who gives information or a document in good faith which is included, or a copy of which is included, in an industry notice is not liable civilly, criminally or under any administrative process for giving the information or document. [*Schedule 2, item 2, Schedule 2 to the Act, Part 2, section 40-105*]

Consequences of certain disciplinary and other action

6.71 ASIC must appoint another registered liquidator to conduct an external administration of a company if the registration of a registered liquidator who is conducting the external administration of the company is suspended or cancelled. This obligation imposed on ASIC does not apply to a liquidator appointed by the Court, a winding up ordered by ASIC under section 489EA or to a members' voluntary winding up. The registered liquidator appointed by ASIC must consent to his or her appointment. [*Schedule 2, item 2, Schedule 2 to the Act, Part 2, section 40-111*]

Court oversight of registered liquidators

6.72 Without limiting the Court's powers under provisions of the Act or under any other law, the Court may make such orders as it thinks fit in relation to a registered liquidator. The Court may exercise this power on

its own initiative or on the application of the registered liquidator or ASIC. Without limiting the matters the Court may take into account, the Court may take into account:

- whether an action or failure to act by the registered liquidator may affect public confidence in registered liquidators as a group; and
- whether an order that the Court proposes to make would promote public confidence in registered liquidators as a group. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, section 45-1]*

6.73 The Court may also make orders in relation to a registered liquidator that deal with the costs of a matter considered by the Court. The orders may order that the registered liquidator is liable for some or all of the costs and that the registered liquidator is not entitled to be reimbursed by a company or its creditors in relation to some or all of those costs. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, section 45-5]*

Committees under this Part

6.74 If a prescribed body appoints a person to a committee, that person must have the knowledge or experience prescribed in the Insolvency Practice Rules or if no knowledge is prescribed, the knowledge and experience necessary to carry out the functions to be performed. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, section 50-5]*

6.75 If the Minister appoints a person to a committee, that person must have knowledge or experience in one or more fields of business, law (including the law of corporate insolvency), economics, accounting, public policy relating to corporate insolvency and administration of companies, including insolvent companies. The Minister may delegate the Minister's powers to appoint a person to a committee to:

- ASIC;
- a member of ASIC; or
- a staff member of ASIC who:
 - is an SES employee or acting SES employee;
 - is an APS employee who holds, or is acting in, an Executive Level 2 position; or
 - holds, or is acting in, an office or position that is equivalent to an SES employee, or an Executive Level 2.

[Schedule 2, item 2, Schedule 2 to the Act, Part 2, subsections 50-10(1)(2) and (3)]

6.76 The delegate, in exercising powers under a delegation, must comply with any directions of the Minister. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, subsection 50-10(4)]*

6.77 A single committee may consider more than one matter relating to the application for registration of one or more applicants for registration as a liquidator and a matter or matters relating to one or more registered liquidators. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, section 50-15]*

6.78 The consideration of a matter is not affected by a change in the membership of the committee. A matter may be adjourned or transferred to another committee. The Insolvency Practice Rules may prescribe procedures and make rules for committees. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, sections 50-15 and 50-20]*

6.79 A member of a committee is entitled to receive the remuneration that is determined by the Remuneration Tribunal but if no determination by the Tribunal is in operation, the member is entitled to receive such remuneration as the Minister determines in writing. A member is entitled to receive such allowances as the Minister determines in writing. The operation of the requirements in relation to the remuneration of a member of a committee has effect subject to the *Remuneration Tribunal Act 1973* *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, section 50-30]*

6.80 A member of a committee commits an offence if information or a document is given to the member for the purposes of exercising powers or functions as a member of the committee and the member uses or discloses the information or document for any other purpose. The maximum penalty is 50 penalty units. *[Schedule 2, item 2, Schedule 2 to the Act, Part 2, subsection 50-35(1)]*

6.81 The restriction on the use of information or a document disclosed to a member of a committee does not apply if the information is disclosed:

- to the Inspector-General in Bankruptcy to assist the Inspector-General to exercise his or her powers or perform his or her functions under the Bankruptcy Act;
- to a committee convened under Part 2 of the Insolvency Practice Schedule (Bankruptcy) to assist the committee to exercise its powers or perform its functions under that Part;

- to another committee convened under this Part to assist the committee to exercise its powers or perform its functions under this Part;
- to enable or assist a prescribed body to perform its disciplinary function in relation to its members;
- in order to enable or assist an authority or person in a State or Territory or a foreign country to perform or exercise a function or power that corresponds, or is analogous, to any of the committee's or ASIC's functions and powers; or
- to a court or tribunal in relation to proceedings before the court or tribunal. [*Schedule 2, item 2, Schedule 2 to the Act, Part 2, subsection 50-35(2)*]

Consequential amendments

Australian Securities and Investments Commission Act 2001

6.82 Amendments are required consequential on the removal of the liquidator functions from CALDB. [*Schedule 2, Part 2, item 5, paragraph 1(1)(d), item 6, subsection 5(1)(definition of Disciplinary Board), item 22, Part 11(heading), item 23, subparagraph 203(2A)(b)(ii), item 24, paragraphs 210A(1)(b) and (c), item 25, paragraph 223(1)(b), item 26, paragraph 223(1)(b)*]

6.83 The confidentiality restrictions imposed on ASIC are amended to permit ASIC to provide certain information to a committee convened under Part 2 of Schedule 2 to the Act. [*Schedule 2, Part 2, item 17, paragraph 127(4)(a)*]

6.84 The confidentiality restrictions imposed on ASIC are amended :

- to permit ASIC to disclose information to a prescribed body (that is not a disciplinary body) that would enable or assist that body to perform a function in relation to registered liquidators; and
- to permit ASIC to provide information that will enable a committee convened under Part 2 of Schedule 2 to the Act to perform its functions under the corporations legislation. [*Schedule 2, Part 2, item 18, paragraph 127(4)(d)*]

6.85 The confidentiality restrictions imposed on the FRC, the AASB, the Office of the AASB, the AUASB and the Office of the AUASB are amended to permit these bodies to disclose information to a committee convened under Part 2 of Schedule 2 to the Act for the purposes of the

committee's functions under the corporations legislation. [*Schedule 2, Part 2, item 27, paragraph 237(2)(d)*]

6.86 A consequential amendment is necessary in order to provide protection to an officer or employee of an Agency or of an authority of the Commonwealth whose services are made available to a committee convened under Part 2 of Schedule 2 to the Corporations Act from liability for an action or other proceedings for damages for or in relation to an act done or omitted in good faith in performance or purported performance of any function or the exercise of any power conferred on the committee under the corporations legislation or a prescribed law of the Commonwealth, a State or Territory. [*Schedule 2, Part 2, item 28, paragraph 246(1)(k)*]

Banking Act 1959

6.87 An amendment had been made consequential on the removal of liquidator functions from CALDB. [*Schedule 2, Part 2, item 30, paragraph 18(1)(c)*]

Corporations Act 2001

6.88 Amendments are required consequential on the removal of the liquidator functions from CALDB. [*Schedule 2, Part 2, item 60, section 9 (definition of Board), item 217, subsections 1292(2) to (6), item 218, subsection 1292(7), item 219, subsection 1292(7), item 180, subsection 1292(8), item 221, subsection 1292(9), item 222, subsection 1292(9), item 223, subsection 1292(9), item 224, subsection 1292(9), item 225, subsection 1292(10), item 226, paragraph 1294(1)(a), item 228, subsection 1297(1), item 193, paragraph 1317, item 236, subsection 1317B(2), item 239, subsection 1317D(1)*]

6.89 The definition of *registered liquidator* is amended to refer to the definition in Schedule 2 to the Act consequential on the registration requirements for registered liquidators now being dealt with in Schedule 2. [*Schedule 2, Part 2, item 75, section 9 (definition of registered liquidator)*]

6.90 Paragraph 532(1)(b) is repealed because a person can no longer be registered as a liquidator in relation to a specific company. [*Schedule 2, Part 2, item 160, subsection 532(1)*]

6.91 Subsection 532(7) is repealed because the registration of a person who is insolvent under administration is automatically cancelled under Schedule 2 to the Act and a person who is not a registered liquidator cannot be appointed to act as a liquidator of a company under subsection 532(1). [*Schedule 2, Part 2, item 202, subsection 532(7)*]

6.92 An amendment is necessary to ensure that an application for registration as a liquidator under section 8-10 of Schedule 2 is not

available for public inspection. *[Schedule 2, Part 2, item 161, subparagraph 1274(2)(a)(i)]*

6.93 An amendment is necessary to ensure that annual liquidator returns lodged under section 12-5 of Schedule 2 or notices of significant events lodged under section 14-5 of Schedule 2 are not available for public inspection. *[Schedule 2, Part 2, item 203, subparagraph 1274(2)(a)(ii)]*

6.94 The heading to Part 9.2 and section 1279 refers only to the registration of auditors because the registration of liquidators is dealt with under Part 2 of Schedule 2 to the Act. *[Schedule 2, Part 2, item 204, Part 9.2 (heading), item 165, section 1279 (heading)]*

6.95 An amendment is necessary to limit section 1279 to the registration of auditors because the registration of liquidators is dealt with under Part 2 of Schedule 2 to the Act. *[Schedule 2, Part 2, item 206, subsection 1279(1)]*

6.96 Section 1282 is repealed and replaced by the provisions in Schedule 2 relating to the registration of liquidators. Section 1283 is repealed because there is no category of official liquidator. Section 1284 is repealed and replaced by requirements in Schedule 2 requiring a liquidator to maintain adequate insurance. *[Schedule 2, Part 2, item 207, sections 1282 to 1284]*

6.97 Section 1286 is repealed and replaced by provisions in Schedule 2 relating to the Register of Liquidators. *[Schedule 2, Part 2, item 208, section 1286]*

6.98 Subsection 1287(2) is repealed and replaced by the notice requirements imposed on registered liquidators in Schedule 2. Subsection 1287(3) has been repealed because there is no longer a category of a registered liquidator of a specified body corporate. *[Schedule 2, Part 2, item 209, subsections 1287(2) and (3)]*

6.99 The references to liquidators in section 1287(4) are repealed because requirements relating to the registration of liquidators are dealt with in Schedule 2. *[Schedule 2, Part 2, item 210, subsection 1287(4)]*

6.100 Section 1288 is repealed and replaced by the requirement in Schedule 2 for a registered liquidator to lodge an annual return. *[Schedule 2, Part 2, item 211, section 1288]*

6.101 The references to requests for cancellation of a person's registration as a liquidator, a liquidator of a specified body corporate and as an official liquidator are removed. A request for the cancellation of a person's registration as a liquidator is dealt with in Schedule 2 to the Act. *[Schedule 2, Part 2, items 212, 213 and 214, subsections 1290(1) and 1290(2)]*

6.102 Section 1290A is repealed and replaced by the rules in Schedule 2 relating to the cancellation of a liquidator's registration. Section 1291 is repealed because there is no separate category of official liquidator.

[Schedule 2, Part 2, item 215, sections 1290A and 1291]

6.103 The reference to liquidators is removed from the heading to section 1292 because CALDB no longer has functions in relation to liquidators. *[Schedule 2, Part 2, item 216, section 1292 (heading)]*

6.104 Section 1298 is repealed and replaced by a provision which only deals with the suspension of a person's registration as an auditor. The suspension of a person's registration as a liquidator is dealt with in Schedule 2 to the Act. *[Schedule 2, Part 2, item 229, section 1298]*

6.105 Section 1298A is repealed consequential on the requirement for the transfer of books of a liquidator whose registration is cancelled or suspended being dealt with in Schedule 2 to the Act. *[Schedule 2, Part 2, item 230, section 1298A]*

6.106 Subsection 1300(3) is amended consequential on the right of a former external administrator to inspect the books that have been transferred to the new external administrator now being dealt with in section 26-40 of Schedule 2. *[Schedule 2, Part 2, item 232, subsection 1300(3)]*

6.107 A note is inserted at the end of subsection 1300(3) to sign post that section 26-40 of Schedule 2 is about books relating to an external administrator. *[Schedule 2, Part 2, item 233, at the end of subsection 1300(3)]*

6.108 A decision made by a committee convened under Part 2 of Schedule 2 is reviewable by the AAT. *[Schedule 2, Part 2, item 235, at the end of subsection 1317B(1)]*

6.109 Subsection 1317D(1) is amended consequential on the removal of liquidator functions from CALDB. The decisions of a committee convened under Part 2 of Schedule 2 are reviewable by the AAT. *[Schedule 2, Part 2, item 239, subsection 1317D(1)]*

6.110 Section 1349 was inserted by the *Corporations Amendment (Insolvency) Act 2007* and was designed to address the consequences of the High Court's decision in *Rich v Australian Securities and Investments Commission* [2004] HCA 42. Prior to the High Court's decision, the use of banning or disqualification as a remedy for corporate misconduct was viewed as protective rather than penal in nature. However, in that case, the High Court found that a banning or disqualification order was a penalty and, as a direct consequence, allowed people to invoke the common law privileges protecting the disclosure of information that may expose a person to a penalty in a banning or disqualification proceeding.

6.111 Banning and disqualification orders and orders to cancel or suspend a licence under the Corporations Act are important tools for deterring corporate misconduct. They allow the removal of unwanted participants from the corporations and financial services market and thereby maintain the integrity of the market. One of their main benefits is that they allow for an expeditious response to corporate misconduct.

6.112 Subsection 1349(1) removed penalty privilege for proceedings where a disqualification, banning, suspension or cancellation order, or a declaration to that effect, is being sought. A person in such an administrative, civil or criminal proceeding will not be entitled to refuse or fail to comply with a requirement on the grounds that to do so might tend to make the person liable for a penalty by way of a disqualification, banning, suspension or cancellation order, or a declaration to that effect. The effect of subsection 1349(1) was to restore the longstanding position that penalty privilege does not apply to these types of proceedings.

6.113 Three of the penalties covered by subsection 1349(1) are cancellation or suspension under Division 3 of Part 9.2 (paragraph 1349(1)(j) refers) and a requirement to give an undertaking under paragraph 1292(9)(b) or (c) of the Corporations Act (paragraph 1349(1)(m) refers). Division 3 of Part 9.2 and paragraphs 1292(9)(b) and (c) deal with registered auditors and registered liquidators. All the rules about cancellation and suspension of liquidators and penalties that can be imposed on liquidators relating to the refraining from engaging in specified conduct (conduct penalties), are now dealt with in Schedule 2. It is therefore necessary for subsection 1349(1) to refer to the relevant provisions relating to liquidators in Schedule 2. The effect of these consequential amendments is simply to continue existing policy. *[Schedule 2, Part 2, item 242, after paragraph 1349(1)(n)]*

6.114 Subsection 1349(3) removes penalty privilege in relation to a person complying with a statutory requirement under the Corporations Act or the ASIC Act on the grounds that to do so might tend to make the person liable for a penalty by way of a disqualification, banning, suspension or cancellation order, or a declaration to that effect. The policy rationale underlying section 1349 is explained above.

6.115 Three of the penalties covered by subsection 1349(3) are cancellation or suspension under Division 3 of Part 9.2 (paragraph 1349(3)(j) refers) and a requirement to give an undertaking under paragraph 1292(9)(b) or (c) of the Corporations Act (paragraph 1349(3)(k) refers). Division 3 of Part 9.2 and paragraphs 1292(9)(b) and (c) deal with registered auditors and registered liquidators. All the rules about cancellation and suspension of liquidators and penalties that can be imposed on liquidators relating to the refraining from engaging in specified conduct (conduct penalties), are now dealt with in Schedule 2. It

is therefore necessary for subsection 1349(3) to refer to the relevant provisions relating to liquidators in Schedule 2. The effect of these consequential amendments is simply to continue existing policy. [*Schedule 2, Part 2, item 242, after paragraph 1349(3)(l)*]

6.116 Subsection 1349(4) ensures that when ASIC receives information during an investigation pursuant to its powers in Part 3 of the ASIC Act or from a Court examination in relation to an external administration over which penalty privilege is claimed, ASIC may make use of this information in the proceedings for a disqualification, banning, suspension or cancellation order, or a declaration to that effect.

6.117 Three of the penalties covered by subsection 1349(4) are cancellation or suspension under Division 3 of Part 9.2 (paragraph 1349(4)(g) refers) and a requirement to give an undertaking under paragraph 1292(9)(b) or (c) of the Corporations Act (paragraph 1349(4)(h) refers). Division 3 of Part 9.2 and paragraphs 1292(9)(b) and (c) deal with registered auditors and registered liquidators. All the rules about cancellation and suspension of liquidators and penalties that can be imposed on liquidators relating to the refraining from engaging in specified conduct (conduct penalties), are now dealt with in Schedule 2. It is therefore necessary for subsection 1349(4) to refer to the relevant provisions relating to liquidators in Schedule 2. The effect of these consequential amendments is simply to continue existing policy. [*Schedule 2, Part 2, item 243, after paragraph 1349(4)(i)*]

Insurance Act 1973

6.118 The amendment is consequential on the removal of liquidator functions from CALDB. [*Schedule 2, Part 2, item 263, paragraph 48(1)(c)*]

6.119 The amendments are consequential on there no longer being a category of official liquidator. [*Schedule 2, Part 2, items 267 and 268, subsections 92(4) and (5)*]

Life Insurance Act 1995

6.120 The amendment is consequential on the removal of liquidator functions from CALDB. [*Schedule 2, Part 2, item 269, paragraph 125(1)(c)*]

Private Health Insurance Act 2007

6.121 The amendment is consequential on there no longer being a category of official liquidator. [*Schedule 2, Part 2, item 293, paragraph 217-10(2)(a)*]

Application and transitional provisions

Australian Securities and Investments Commission Act 2001

6.122 The amendment of section 203 of the Act which removes the knowledge and experience field of the ‘administration of companies’ applies to appointments made to CALDB on or after the commencement day. *[Schedule 2, Part 3, item 302, section 306]*

Corporations Act 2001

6.123 The general rule applying to a person registered as a liquidator before the commencement of the Insolvency Law Reform Act 2014 will continue to be registered and must comply with the requirements and duties under Part 2 of the Insolvency Practice Schedule (Corporations). *[Schedule 2, Part 3, item 303, section T11 Simplified outline of this Part]*

6.124 The general rule applying to a proceeding already begun in the Court or the AAT before the commencement of the amendments made by the Insolvency Law Reform Act 2014 will continue under the old Act. Orders of the Court under the old Act continue to have effect. *[Schedule 2, Part 3, item 303, section 1550 Simplified outline of this Part]*

6.125 Key definitions for the purposes of Part 3 include:

- ***new external administration*** means an external administration of a company that starts on or after the commencement day;
- ***old Act*** means the Corporations Act as in force immediately before the commencement day and includes the old regulations;
- ***ongoing external administration*** of a company means an external administration of a company that started before the commencement day ends after that day. *[Schedule 2, Part 3, item 303, section 1551 Definitions]*

6.126 If, before the commencement day, a person has applied to be registered as a liquidator and the application has not been refused but the person’s application has not been completed, the application is taken never to have been made and ASIC must refund any fee paid in relation to the application. *[Schedule 2, Part 3, item 303, section 1553]*

6.127 A person registered as a liquidator, or as a liquidator of a specified corporation under the old Act, immediately before the commencement day, continues to be registered as a liquidator under

Subdivision B of Division 8 of the Insolvency Practice Schedule (Corporations). Such a person is referred to as an *old Act registrant*. [Schedule 2, Part 3, item 303, subsections 1552(2), and 1553(1) and (4)]

6.128 A person who is registered under the old Act but whose registration is suspended and the period of the suspension does not expire before the commencement day is taken to be registered under the Insolvency Practice Schedule (Corporations) on the commencement day but the person is taken to be suspended for a period that ends when the suspension under the old Act would have ended. The person could, however, apply under Subdivision F of Division 40 of the Insolvency Practice Schedule (Corporations) to have the suspension lifted or shortened. [Schedule 2, Part 3, item 303, subsection 1553(2)]

6.129 A person who is registered as a liquidator, or as a liquidator of a specified body corporate, immediately before the commencement day but the person is an insolvent under administration or is dead, the person is not taken to be registered as a liquidator under the Insolvency Practice Rules (Corporations). [Schedule 2, Part 3, item 303, subsection 1553(3)]

6.130 ASIC must enter on the Register of Liquidators, in relation to each old registrant, the details prescribed under subsection 15-1(3) of the Insolvency Practice Schedule (Corporations) that relate to that old registrant. ASIC may use and disclose information it holds in relation to an old Act registrant before the commencement day for the purpose of establishing and maintaining the Register of Liquidators. [Schedule 2, Part 3, item 303, section 1554]

6.131 The registration of an old Act registrant under the Insolvency Practice Schedule (Corporations) is for a period ending on the first anniversary of the old registration day for that person that occurs on or after the commencement day. The old registration day is the day on which the registration under the old Act in relation to the person began. To avoid any doubt, the registration of an old Act registrant may be renewed in accordance with the Insolvency Practice Schedule (Corporations). [Schedule 2, Part 3, item 303, section 1555]

6.132 To avoid doubt, a condition may be imposed on an old Act registrant under the Insolvency Practice Schedule (Corporations) in accordance with that Schedule. [Schedule 2, Part 3, item 303, section 1556]

6.133 Where an old Act registrant has given an undertaking under paragraph 1292(9)(b) or (c) of the old Act and the undertaking is still in force immediately before the commencement day, it is a current condition of the old Act registrant's registration under the Insolvency Practice Schedule (Corporations) that the old Act registrant gives and complies with the undertaking. The requirements in the Insolvency Practice

Schedule (Corporations) applying to the variation or removal of a condition, imposed by a committee under the Insolvency Practice Schedule (Corporations), apply to a condition imposed on an old Act registrant. *[Schedule 2, Part 3, item 303, section 1557]*

6.134 Where an old registrant has given ASIC an undertaking under section 93AA of the ASIC Act to engage in, or refrain from engaging in, conduct as a liquidator, or as a liquidator of a specified body corporate, and the undertaking is in force immediately before the commencement day, then it is a current condition of the old Act registrant's registration under the Insolvency Practice Schedule (Corporations) that the old registrant should comply with the undertaking. The enforcement of an undertaking given under section 93AA of the ASIC Act is not affected by these new requirements. *[Schedule 2, Part 3, item 303, section 1558]*

6.135 There is no longer a category of a liquidator of a specified body corporate. The following rules apply to an old Act registrant who was registered as a liquidator of a specified body corporate immediately before the commencement day:

- it is a current condition of the old Act registrant's registration under the Insolvency Practice Schedule (Corporations) that the old registrant must not accept any further appointments as external administrator of a company;
- on the day immediately after the external administration of the body corporate ends, the old Act registrant is taken to have lodged a request to have his or her registration as a liquidator cancelled and ASIC is taken to have cancelled the registration. *[Schedule 2, Part 3, item 303, subsections 1559(1), (2) and (3)]*

6.136 The special rules applying to an old Act registrant who was a liquidator of a specified body corporate do not apply where the old Act registrant applies to be registered as a liquidator under section 20-5 of the Insolvency Practice Schedule (Corporations). *[Schedule 2, Part 3, item 303, subsection 1559(4)]*

6.137 Where an old Act registrant does not apply for renewal of his or her registration under the Insolvency Practice Schedule (Corporations) before his or her period of registration ends (the expiry day), then the following special rules apply:

- the old Act registrant is taken to be registered under the Insolvency Practice Schedule (Corporations) on the current condition that he or she must not accept any further appointments as external administrator of a company;

- on the day immediately after all the external administrations that the old Act registrant is entitled to carry out ends, the old Act registrant is taken to have lodged a request to have his or her registration as a liquidator cancelled and ASIC is taken to have cancelled the registration. [*Schedule 2, Part 3, item 303, section 1560*]

6.138 The obligation to lodge an annual liquidator return in accordance with section 30-1 of the Insolvency Practice Schedule (Corporations) applies to an old Act registrant. For purpose of working out the return year for an old Act registrant under subsection 30-1(2), ‘the day on which that registration first began’ means the ‘old registration day’ as defined under section 1555 [*Schedule 2, Part 3, item 303, subsections 1561(1) and (2)*]

6.139 The repeal of section 1288 (annual statements by registered liquidators) applies in relation to return years beginning on or after the commencement day. [*Schedule 2, Part 3, item 303, subsection 1561(3)*]

6.140 Specific notification rules apply to an old Act registrant in relation to significant events mentioned in subsection 35-1(1) of the Insolvency Practice Schedule (Corporations) where the old Act registrant has not already notified ASIC in writing of the event before the commencement day:

- the significant even must have occurred within two years before the commencement day;
- if the old Act registrant is or could reasonably be expected to be aware of the event before the commencement day, the old Act registrant must lodge with ASIC a notice, in the approved form, within one month after the commencement day;
- if the old Act registrant is or could reasonably be expected to be aware of the event after the commencement day, the old Act registrant must lodge with ASIC a notice, in the approved form, within one month after the first day on which the old Act registrant is or could reasonably be expected to be aware of the event;
- a person who intentionally or recklessly fails to comply with the notice requirements is guilty of an offence punishable with a maximum penalty of 100 penalty units. [*Schedule 2, Part 3, item 303, section 1562*]

6.141 ASIC may not cancel the registration of a liquidator or a liquidator of a specified body corporate under section 1290 where the

person has requested, before the commencement day, to have his her registration cancelled and no decision by ASIC to cancel the registration has come into effect before the commencement day. However, for purposes of paragraph 40-30(1)(f), the person is taken to have made a request to have his or her registration cancelled under the Insolvency Practice Schedule (Corporations). [*Schedule 2, Part 3, item 303, subsections 1563(1),(2) and (3)*]

6.142 The amendments of section 1290, removing the references to a liquidator, liquidator of a specified body corporate and an official liquidator, apply in relation to requests made to ASIC under 1290 on or after the commencement day. [*Schedule 2, Part 3, item 303, subsection 1563(4)*]

6.143 Where ASIC has made a decision before the commencement day to cancel the registration of a person as a liquidator or as a liquidator of a specified body corporate but the decision has not come into effect before the commencement day, then the following rules apply:

- on the commencement day, ASIC is taken to have cancelled the registration of the person as a liquidator under section 40-30 of the Insolvency Practice Schedule (Corporations);
- the notice obligations imposed on ASIC under section 40-35 of the Insolvency Practice Schedule (Corporations) apply in relation to the decision as if the decision were made on the commencement day. [*Schedule 2, Part 3, item 303, section 1564*]

6.144 Where an application has been made to CALDB under section 1292 before the commencement day and CALDB has not, before the commencement day, made an order in relation to the person's registration as a liquidator under subsections 1292(2), (3), (4), (6) or (7) of the old Act or dealt with the person under subsection 1292(9), then the following rules apply:

- CALDB must cease its consideration of the matter on the commencement day without making such an order or dealing with the person under subsection 1292(9);
- if CALDB has ceased to consider a matter and a conference has been convened in relation to the matter under subsection 1294A(1) of the old Act, but not yet held, then:
 - the Chairperson of CALDB need not give notice of the conference under subsection 1294A(3) and the conference need not be held;

- the fact that CALDB has ceased to consider a matter does not preclude the matter, or any aspect of the matter, from being dealt with under Division 40 of the Insolvency Practice Schedule (Corporations); and
- to avoid doubt, these rules do not affect any right or obligation that any person has before the commencement day, including any right to review, in relation to the application or the consideration of the matter by CALDB. *[Schedule 2, Part 3, item 303, section 1565]*

6.145 Where an application has been made to CALDB under section 1292 before the commencement day and CALDB has, before the commencement day, made an order in relation to the person's registration as a liquidator under subsections 1292(2), (3), (4), (6) or (7) of the old Act or dealt with the person under subsection 1292(9), then the following rules apply:

- the old Act continues to apply in relation to the decision to refuse to make the order under subsections 1292(2),(3),(4),(5),(6) or (7) or deal with the matter under subsection 1292(9) in response to the application; and
- the same matter may not be dealt with under the Insolvency Practice Schedule (Corporations). *[Schedule 2, Part 3, item 303, section 1566]*

6.146 Where an application has been made to CALDB under section 1292 before the commencement day and CALDB has, before the commencement day, refused to make an order in relation to the person's registration as a liquidator under subsections 1292(2), (3), (4), (6) or (7) of the old Act or dealt with the person under subsection 1292(9), then the following rules apply:

- the old Act continues to apply in relation to the decision to refuse to make the order under subsections 1292(2),(3),(4),(5),(6) or (7) or deal with the matter under subsection 1292(9) in response to the application; and
- the same matter may not be dealt with under the Insolvency Practice Schedule (Corporations). *[Schedule 2, Part 3, item 303, section 1567]*

6.147 Where an application has been made under section 1295 of the old Act to terminate the suspension of the registration of a person as a liquidator and CALDB has neither refused the application nor by order, terminated the suspension before the commencement day, then CALDB

must cease its consideration of the matter on the commencement day without making such an order. [*Schedule 2, Part 3, item 303, section 1568*]

6.148 Where CALDB under section 1295 of the old Act is considering on its own motion whether to terminate the suspension of the registration of a person registered as a liquidator and CALDB has not, by order, terminated the suspension before the commencement day, then CALDB must cease its consideration of the matter on the commencement day without making such an order. [*Schedule 2, Part 3, item 303, subsection 1568(2)*]

6.149 The fact that CALDB has ceased to consider the matter under section 1295 of the old Act does not preclude the matter from being dealt with under Division 40 of the Insolvency Practice Schedule (Corporations). [*Schedule 2, Part 3, item 303, subsection 1568(3)*]

6.150 ASIC's power to require a registered liquidator to lodge a document or give information under Subdivision B of Division 40 of the Insolvency Practice Schedule applies whether or not a requirement mentioned in that Subdivision to lodge a document or give information arises before, on or after the commencement day. [*Schedule 2, Part 3, item 303, section 1570*]

6.151 ASIC may suspend a person's registration as a liquidator under subsection 40-25 of the Insolvency Practice Schedule (Corporations) on the basis of a number of specified grounds. The general rule is that ASIC's power to suspend a person's registration as a liquidator applies whether or not an event mentioned in subsection 16-35(1) occurs before, on or after the commencement day. However, the general rule does not apply in relation to the cancellation of the registration of a person as a trustee under the Bankruptcy Act, as in force at any time before the commencement day. The reason for this exception to the general rule is that ASIC has no power under the legislation, prior to the commencement day, to suspend a person's registration as a liquidator on the grounds that the person's registration as a trustee under the Bankruptcy Act has been cancelled. [*Schedule 2, Part 3, item 303, section 1571*]

6.152 ASIC may cancel a person's registration as a liquidator under subsection 40-30 of the Insolvency Practice Schedule (Corporations) on the basis of a number of specified grounds. The general rule is that ASIC's power to suspend a person's registration as a liquidator applies whether or not an event mentioned in subsection 40-30(1) occurs before, on or after the commencement day. However, the general rule does not apply in relation to the cancellation of the registration of a person as a trustee under the Bankruptcy Act, as in force at any time before the commencement day. The reason for this exception to the general rule is that ASIC has no power under the legislation, prior to the commencement day, to cancel a person's registration as a liquidator on the grounds that

the person's registration as a trustee under the Bankruptcy Act has been cancelled. *[Schedule 2, Part 2, item 2, section 1572]*

6.153 ASIC may give a registered liquidator a written notice under subsection 40-40(1) on the Insolvency Practice Schedule (Corporations) asking the liquidator to give ASIC a written explanation why the liquidator should continue to be registered where ASIC believes that certain specified circumstances exist. Subdivision E of Division 40 of the Insolvency Practice Schedule (Corporations) applies whether or not an event mentioned in subsection 40-40(1) occurs before, on or after the commencement day. *[Schedule 2, Part 2, item 303, section 1573]*

6.154 Subdivision F of Division 40 of the Insolvency Practice Schedule (Corporations) deals with the lifting or shortening of a person's registration as a liquidator. The Subdivision applies whether or not a person's registration as a liquidator is suspended under a provision of the old Act or of the Insolvency Practice Schedule (Corporations). *[Schedule 2, Part 2, item 303, section 1574]*

6.155 An industry body can give ASIC notice of possible grounds for disciplinary action under section 40-100 of the Insolvency Practice Schedule (Corporations). The industry body may give ASIC such a notice whether or not the grounds to which a notice relates arise because of an action, a failure to act or circumstance that occurs before, on or after the commencement day. *[Schedule 2, Part 2, item 303, section 1575]*

6.156 The Court is given powers under section 45-1 of the Insolvency Practice Schedule (Corporations) to make orders in relation to registered liquidators. The Court may exercise these powers whether or not an event in relation to which, or because of which the order is made occurs before, on or after the commencement day. *[Schedule 2, Part 2, item 303, section 1576]*

6.157 Where as a result of the continued application of the old Act, a relevant body (including ASIC, the AAT and the Court) would have the power to register a person, suspend or cancel the registration of a person as a liquidator or as a liquidator of a specified body corporate under the old Act, the relevant body is expressly given the power:

- to register the person, or suspend or cancel the registration of the person, as a liquidator under the Insolvency Practice Schedule (Corporations); and
- for this purpose, by order, modify the application of the Insolvency Practice Schedule (Corporations). *Schedule 2, Part 2, item 303, section 1577]*

Chapter 7

General rules relating to external administrations

Outline of chapter

7.1 The Insolvency Practice Schedule (Corporations) introduces new general rules that set out the requirements for conducting external administrations. These rules are common with the corresponding rules in relation to registered trustees which are introduced by the Insolvency Practice Schedule (Bankruptcy).

7.2 The main provisions deal with:

- the remuneration of the external administrator;
- the duties of the external administrator in handling the money and other property of the company;
- conflicts of interest;
- the duties of the external administrator to keep appropriate records, to report to ASIC and to give information, documents and reports to creditors, members of the company and others, including the facilitation of electronic communication;
- creditor and company meetings;
- the creation and conduct of a committee to monitor the external administration (called a committee of inspection);
- the rights of creditors to review the external administration;
- the rights of creditors to remove the external administrator and appoint another external administrator; and
- the review of the external administration by the Court.

7.3 There are additional rules that apply to companies under external administration in Chapter 5 of the Act (for example, about the appointment of external administrators).

7.4 These rules do not apply to companies in receivership (see generally Part 5.2 of the Act).

Context of amendments

7.5 Complaints made during the Senate Inquiry regarding the high cost of, and the feeling of general creditor powerlessness during external administrations reflected deeper concerns regarding the efficiency and effectiveness of corporate insolvency administration governance, including the areas of:

- the approval of the remuneration of external administrators;
- practitioners' and stakeholders rights and responsibilities to communicate with each other; and
- the removal and replacement of practitioners from specific administrations.

7.6 The Productivity Commission in the Commission's 2010 *Annual review of Regulatory Burdens on Business: Business and Consumer Services* found that different regulatory treatment of the administration of corporate and personal insolvency imposes an unnecessary regulatory burden on insolvency practitioners and is impeding the efficient conduct of the insolvency regime.

7.7 Consultation with industry participants and other stakeholders, further reflected the concerns with the current corporate regulation in these areas.

7.8 A persistent concern during the Senate Inquiry is that there appears to be little indication of active price based competition occurring between corporate insolvency practitioners. This reflects issues around the law and practice involving the approval of remuneration for practitioners, as well as the difficulty and costliness of removing poorly performing practitioners.

7.9 With the removal of the official liquidator as part of the current reforms, the current inefficiency for obtaining approval of minimal remuneration for insolvency practitioners in an assetless administration or low-asset administration may derive greater importance. While a liquidator is currently able to draw down up to \$5,000 where he or she has called a meeting of creditors but failed to obtain approval for remuneration because of a lack of quorum, the liquidator (and ultimately the administration) is required to incur the expense of convening a

creditors' meeting, regardless of the potential for achieving a quorum. In contrast, registered trustees in personal insolvency are able to draw down up to \$5,000 without approval. This figure reasonably reflects the essential tasks which every trustee or liquidator must undertake.

7.10 The corporate and personal insolvency regulatory frameworks currently provide procedural rules regarding: the treatment of estate monies; the obligation on registered liquidators and registered trustees to lodge, and have audited, a range of reports and documents with ASIC and AFSA respectively; the keeping of books and the period of time for which those books must be retained. The current divergence in rules and requirements for personal and corporate insolvency create unnecessary complexity and costs for creditors and insolvency practitioners, making it difficult for creditors of individuals as well as companies to understand how the different regimes apply without an in-depth knowledge of both frameworks. This lack of knowledge and expertise is not something that creditors can easily address and it imposes both financial and time costs on creditors to obtain the information they need to protect their interests in a corporate or personal insolvency.

7.11 The divergence also limits the ability for practitioners to easily move between corporate and personal insolvencies as the different approaches to account and record keeping increases costs and the administrative burden on practitioners.

7.12 Information asymmetry interferes with the efficiency of the insolvency market and contributes to the risk of misconduct by market participants. The current regulatory barriers to creditors obtaining information entrenches the inherent problems creditors face in assessing the quality of the insolvency services provided.

7.13 Creditors and members in a corporate insolvency currently possess limited opportunities to remove a liquidator or administrator once they are appointed, regardless of poor performance or misconduct. Other than in limited predetermined circumstances, only the Court may remove a liquidator or administrator. Applications to, and hearings before, a Court represent a significant cost barrier to the possible removal of liquidators or administrators from an administration.

7.14

Summary of new law

7.15 While the majority of the rules in relation to remuneration will not be affected by the reforms, the current rights of practitioners to claim

remuneration in relation to a given administration will be consolidated, substantially aligned and simplified across personal and corporate insolvency. The capacity for the Court to review remuneration determinations will also be consolidated into a single section and aligned.

7.16 Both personal and corporate insolvency practitioners would be prevented, without the prior approval of creditors, from: directly or indirectly deriving a profit or advantage from a transaction, sale or purchase for or on account of the estate; or conferring upon a related entity a profit or advantage from a transaction, sale or purchase for or on account of the estate. Insolvency practitioners would also be prevented from accepting gifts and benefits, giving up part of their remuneration to another person or acquiring property from the insolvency administration.

7.17 The reforms substantially align the rules for: handling administration or estate funds across all forms of insolvency administration; and keeping, auditing and destroying administration or estate records.

7.18 The obligations on insolvency practitioners administering corporate and personal insolvencies to report to their respective regulators on those administrations would be aligned, adopting the current bankruptcy requirement for a single return covering all administrations or estates to be lodged annually.

7.19 The reforms align and enhance the creditors' rights to request information, as well as regarding meetings during an external administration or bankruptcy. Creditors, and members with a financial interest, would be able to make reasonable requests for information that practitioners would be obliged to meet. Reporting obligations regarding the debtor affairs and administrations will be prescribed by the Insolvency Practice Rules.

7.20 The reforms will also enable creditors to require an insolvency practitioner to convene a meeting of the creditors whenever: resolved or requested by the creditors or a committee of inspection in certain specified circumstances. In order to maintain a common approach to the drafting of the Corporations Act and Bankruptcy Act provisions, the rules regarding meetings of creditors in both corporate and personal insolvency will now be prescribed by the Insolvency Practice Rules. The law would also be aligned to the current personal insolvency position, which allows resolutions without meetings for all kinds of resolution.

7.21 The reforms substantially align the rules governing committees of inspection in liquidations, voluntary administrations, deeds of company arrangement, bankruptcies, controlling trusteeships and personal insolvency agreements. This includes the rules regarding the functions

afforded to committees of inspection and their potential membership. Many of the detailed rules relating to committees of inspection will be set out in the Insolvency Practice Rules. Each of the following have rights to appoint members to a committee of inspection:

- the creditors by resolution;
- a single creditor who is owed, or a group of creditors who together are owed, a large amount (representing at least 10 per cent in value of the creditors); and
- a single employee who is owed, or a group of employees who together are owed, a large amount.

7.22 The reforms will allow for ASIC and the Court to appoint a registered liquidator to undertake a review and report on all or part of an external administration. The terms of such a review would be determined on a case-by-case basis. Creditors, ASIC and the Court will also have the power to appoint a cost assessor to assess and report on the reasonableness of the remuneration and costs incurred during a portion or all of an administration. This reform is Corporations Act specific, given the extensive powers available to the Inspector-General to undertake these functions under the Bankruptcy Act.

7.23 Finally, the reforms align the rights of creditors to resolve to remove an insolvency practitioner and appoint a replacement without recourse to the Court. The powers to the Court to inquire and make orders, including for the removal of a practitioner, have also been aligned across all forms of insolvency administration.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
<i>Remuneration and other benefits received by external administrators</i>	
<p>The external administrator of a company is entitled to receive remuneration for the necessary and proper work performed by the external administrator in relation to the external administration.</p> <p>The amount of remuneration will usually be set under a remuneration determination. Remuneration determinations are made by:</p> <ul style="list-style-type: none"> • in a members' voluntary winding up – the members; • in most other cases – the creditors or the committee of inspection (if there is one). If a determination is not made by either the creditors or the committee of inspection, then the determination may be made by the Court. <p>However, if there is no remuneration determination, the external administrator will be entitled to receive a reasonable amount for the work. The maximum amount that the external administrator may receive in this way is \$5,000 (exclusive of GST and indexed).</p> <p>Where a practitioner's remuneration is determined on a time-cost basis, the practitioner must seek a cap of that portion of the remuneration. The initial cap will be able to be increased with the approval of the creditors, a committee of inspection or the Court.</p> <p>The Court may review the remuneration determination of the external administrator of a company and may also make orders about remuneration (including ordering repayment of remuneration).</p>	<p>The remuneration of a liquidator must be approved by the creditors, the committee of inspection or the court.</p> <p>The creditors are taken to have passed a resolution determining that the liquidator is entitled to remuneration of \$5,000, where: the administration is a winding-up; the practitioner has convened a meeting; but the resolution did not pass due to a lack of quorum.</p>

<i>New law</i>	<i>Current law</i>
The remuneration of provisional liquidators is determined by the Court.	The remuneration of a provisional liquidator is determined by the Court.
ASIC may determine the remuneration of a liquidator when winding up an abandoned company.	ASIC may appoint, and determine the remuneration, of a liquidator of an abandoned company.
The external administrator must not give up remuneration to another person.	There is currently no corresponding law.
<p>The external administrator of a company must not:</p> <ul style="list-style-type: none"> • employ a related entity without the creditors' consent; • purchase any assets of the company; or • get any other benefits or profits from the administration. 	<p>An external administrator is a company officer, and is therefore subject to the officers' duties. An external administrator must not therefore improperly use his or her position to gain an advantage.</p>
<i>Funds handling</i>	
<p>The external administrator of a company must:</p> <ul style="list-style-type: none"> • promptly pay all company money (within 5 days after receipt) into an account (called an administration account); • promptly deposit negotiable instruments and other securities with the bank at which the account is held; • keep the money separate and not pay any money that is not company money into the account; and • only pay money out of the account if it is for a legitimate purpose. <p>The external administrator may keep a single account for a group of related companies (called a pooled group).</p> <p>People with a financial interest in the external administration of a company (such as creditors) may ask the Court to give directions to the external administrator about the way money and other property of the company is</p>	<p>A liquidator must open an administration account, and pay into the account any administration funds received within 7 days of receipt.</p> <p>A breach of these requirements is an offence punishable by 5 penalty units.</p>

<i>New law</i>	<i>Current law</i>
<p>handled.</p> <p>If an external administrator fails to comply with the requirements relating to funds handling, the possible consequences for the administrator include:</p> <ul style="list-style-type: none"> • the payment of penalties (including penalty interest); • be paid less remuneration; or • be removed as external administrator. 	
Information	
<p>The external administrator of a company must give ASIC an annual report of each administration (called an annual administration return). The annual administration return must be lodged with ASIC within 3 months after the end of the financial year.</p> <p>Where the external administration of a company ends during a financial year the external administrator must lodge with ASIC an end of administration return (instead of an annual administration return) within one month after the end of the financial year.</p>	<p>A liquidator must lodge a prescribed form showing the receipts and payments for each company that the liquidator has administered during the year.</p>
<p>An external administrator must keep proper books in relation to the external administration of the company.</p> <p>ASIC or the Court may cause the books to be audited. ASIC may do so on its own initiative or at the request of the company, creditor or contributory.</p> <p>Where an external administrator is replaced, the books of the administration are to be transferred to the new external administrator.</p> <p>Where a new external administrator has not been appointed, ASIC may require the books relating to the external administration to be transferred to ASIC.</p>	<p>A liquidator must keep proper books.</p> <p>ASIC may appoint an auditor to audit a liquidator's account for an administration.</p> <p>A practitioner must retain administration books for a period of 5 years after the deregistration of the company, unless the consent of ASIC is obtained.</p>

<i>New law</i>	<i>Current law</i>
An external administrator must retain administration books for five years unless the external administrator obtains the required consents to destroy the books before the retention period.	
<p>Creditors may by resolution, or an individual, may request the external administrator of a company to give information, or provide a report or produce a document to the creditors.</p> <p>Members of a company in a members' voluntary winding up, or an individual member have similar powers to request information from an external administrator.</p> <p>The external administrator must comply with such a request unless the information has already provided, the external administrator would breach his or her duties if the information was provided or if it would be otherwise not reasonable to comply with the request.</p>	There is no corresponding law to enable creditors or members in a members' voluntary winding up to make ad hoc requests for information from an external administrator.
The Commonwealth Government department or agency responsible for the Fair Entitlements and Redundancy Scheme (FEG) may request an external administrator to provide specified information, reports or documents in relation to an external administration.	There is currently no corresponding law.
A liquidator in a creditors' voluntary winding up is required to send specified information to creditors within 10 business days after the day of the meeting of the company at which the resolution for voluntary winding up is passed. The liquidator is not required to convene an initial meeting of creditors.	A liquidator in a creditors' voluntary winding up is required to convene a meeting of creditors' within 11 days after the day of the meeting of the company at which the resolution for voluntary winding up is passed.
As soon as the affairs of a company are fully wound up in a creditors' voluntary liquidation, the liquidator must make up an account and lodge the account with ASIC. There is no requirement for a final meeting of	The liquidator must make up an account and convene a meeting of creditors.

<i>New law</i>	<i>Current law</i>
creditors.	
<p>To facilitate electronic communication a sender (the external administrator) of a notice or document will be able to provide the information on a website unless the recipient has notified the sender that the recipient does not have access to the internet.</p>	<p>A person authorized or required to send a notice or other document to another person (the recipient) may make the information available on a website provided the recipient has notified the sender that the sender can provide the information on a website.</p>
<i>Review of the external administration of a company</i>	
<p>The creditors may resolve by majority of creditors in both value and number, or the external administrator may agree, to appoint a reviewer to review and report on the reasonableness of the remuneration and costs incurred in an external administration.</p> <p>ASIC and the Court may also appoint a reviewer to review and report on reasonableness of the remuneration and costs incurred, or any other matter relating to an external administration.</p> <p>The purpose of the report is to provide information for interested parties to exercise their rights in relation to the administration, such as to remove the liquidator or challenge the liquidator’s remuneration. The review is not determinative of the issues considered.</p> <p>The costs of the review will form part of the expenses of the administration, unless so agreed with the liquidator. The Court may make any orders it deems fit in relation to the review.</p> <p>The reviewer must be a registered liquidator. The Insolvency Practice Rules may prescribe, amongst other things, the duties of a reviewer.</p>	<p>There is currently no corresponding law.</p>
<p>Creditors may remove an insolvency practitioner through a resolution. Creditors may also resolve to appoint a replacement.</p>	<p>In a voluntary administration, the administrator may be removed: at the first meeting of creditors held within 8 days after the commencement of the administration; or upon the decision</p>

<i>New law</i>	<i>Current law</i>
	<p>of the creditors to enter into a deed of company arrangement or wind up the company in insolvency.</p> <p>There is no ability for creditors to remove an official liquidator appointed in a court-ordered winding up without an order of the Court</p>
<i>Other matters</i>	
<p>An insolvency practitioner may assign their statutory rights to commence proceedings. Where the action that the practitioner seeks to assign has already commenced, the approval of the Court is necessary</p>	<p>A liquidator of a company may sell or otherwise dispose, of in any manner, property of the company.</p> <p>Common law rights of action, vesting in the liquidator, are considered to be property of the company.</p>

Detailed explanation of new law

Remuneration and other benefits received by external administrators

7.24 The general rules relating to the remuneration of external administrators are set out in Subdivision B of Division 60 of the Insolvency Practice Schedule (Corporations). The rules relating to the remuneration for provisional liquidators are set out in Subdivision C and the remuneration of liquidators appointed by ASIC under section 489EC are set out in Subdivision D. [*Schedule 2, item 2, Schedule 2 to the Act, Part 3, section 60-2*]

7.25 An external administrator of a company is entitled to receive remuneration for the necessary and proper work performed by the external administrator in relation to the external administration in accordance with the remuneration determination (if any) for the external administrator. If no remuneration is made, the administrator is entitled to receive reasonable remuneration for the work but that remuneration must not exceed the maximum default amount (see below). [*Schedule 2, item 2, Schedule 2 to the Act, Part 3, section 60-5*]

7.26 A remuneration determination (other than for a members' voluntary winding up) may be made by:

- resolution of the creditors; or
- if the creditors do not make a determination, by the committee of inspection; or

- it neither the creditors not the committee of inspection makes a determination, by the Court. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsection 60-10(1)]*

7.27 A remuneration determination that an external administrator of a company in a members' voluntary winding up is entitled to may be made by resolution of the company at a general meeting. The Court may make the determination if the general meeting of the company does not make a determination. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsection 60-10(2)]*

7.28 A remuneration determination may specify that the remuneration that an external administrator is entitled to receive may be either or both by way of specifying an amount of remuneration or by specifying a method for working out of remuneration. If the determination specifies that the remuneration is to be worked out wholly or partly on a time-cost basis, the determination must include a cap on the amount of the remuneration that the external administrator is entitled to receive. The initial cap will be able to be increased with the approval of the creditors, a committee of inspection or the Court. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsections 60-10(3) and (4)]*

7.29 More than one determination may be made in relation to a particular administrator of a company and a particular external administration of a company. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsection 60-10(5)]*

7.30 The Court may review a remuneration determination for an external administrator on the application of:

- ASIC;
- the external administrator;
- a person with a financial interest in the external administration;
- if the company is under administration – an officer of the company. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsections 60-11(1) and (2)]*

7.31 After reviewing the remuneration determination, the Court must:

- affirm the remuneration determination; or
- vary the remuneration determination; or

- set aside the remuneration determination and substitute another remuneration determination. [*Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsection 60-11(4)*]

7.32 Where the Court has made a remuneration determination, only the Court may review the determination. [*Schedule, item 2, Schedule 2 to the Act, Part 3, subsection 60-11(5)*]

7.33 Where the Court makes or reviews a determination, the Court must have regard to whether the remuneration is reasonable, taking into account any or all of the following matters:

- the extent to which the work performed or likely to be performed by the external administrator was, or is likely to be necessary or proper;
- the period during which the work was, or is likely to be performed by the external administrator;
- the quality of the work performed, or likely to be performed, by the external administrator;
- the complexity (or otherwise) of the work performed or likely to be performed;
- the extent (if any) to which the external administrator was, or is likely to be required to deal with extraordinary issues;
- the extent (if any) to which the external administrator was, or is likely to be, required to accept a higher level of risk or responsibility than is usually the case;
- the value and nature of any property dealt with, or likely to be dealt with by the external administrator;
- the number, attributes and conduct, or the likely number, attributes and conduct of the creditors;
- if the remuneration is worked out wholly or partly on a time-cost basis – the time properly taken, or is likely to be properly taken, by the external administrator in performing the work;
- whether the external administrator was, or is likely to be required to deal with one or more receivers or one or more receivers and managers;

- if a review has been undertaken by another registered liquidator into a matter relating to an external administration and that matter is, or includes, remuneration of the external administrator, the contents of the report on the review; and
- any other relevant matters.*[Schedule 2, item 2, Schedule 2 to the Act, Part 3, section 60-25]*

7.34 The maximum default amount that an external administrator may receive is \$5,000 (exclusive of GST) and indexed with reference to increases in the CPI. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, section 60-30]*

7.35 A provisional liquidator is entitled to receive such remuneration, by way of percentage or otherwise as is:

- determined by the Court; or
- if there is no determination by the Court and there is a committee of inspection, as agreed between the liquidator and the committee of inspection; or
- if there is no determination by the Court and no agreement between the liquidator and the committee of inspection, then by resolution of the creditors.*[Schedule 2, item 2, Schedule 2 to the Act, Part 3, section 60-16]*

7.36 If ASIC orders that an abandoned company be wound up under section 489EA, ASIC may determine the remuneration that the liquidator is entitled to receive. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, section 22-34]*

7.37 The general rule is that an external administrator of a company must not directly or indirectly derive any profit or advantage from the external administration of the company.

- The general rule does not apply to the extent:
 - that another provision of the Act, or another law, requires or permits the external administrator to derive the profit or advantage. For example, the general rule would not prevent an external administrator from recovering remuneration for the necessary and proper work performed by the external administrator in relation to the external administration of the company, as the external administrator is permitted to do so under other provisions of the Act; or

- the Court gives leave to the external administrator to derive the profit or advantage. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsections 60-20(1) and (3)]*

7.38 To avoid doubt, an external administrator is taken to derive a profit or advantage from the external administration of the company if:

- the external administrator directly or indirectly derives a profit or advantage from a transaction (including a sale or purchase) entered into for or on account of the company; or
- the external administrator directly or indirectly derives a profit or advantage from a creditor or member of the company; or
- a related entity of the external administrator directly or indirectly derives a profit or advantage from the external administration of a company;
 - a related entity in relation to an individual is defined in the Dictionary for purposes of the Insolvency Practice Schedule (Corporations) as having the same meaning as in the Bankruptcy Act where the term is defined in section 5 of that Act. *[Schedule 2, item 2, Schedule 2 to the Act, Part 1, section 5-5 and Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsection 60-20(2)]*

7.39 The general rule also does not apply to the extent that the profit or advantage is a payment that:

- is made to the external administrator by or on behalf of the Commonwealth or an agency or authority of the Commonwealth (for example a payment by ASIC to a liquidator under the Assetless Administration Fund); and
- is of a kind that is prescribed under the Insolvency Practice Rules. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsection 60-20(5)]*

7.40 A person who contravenes the general rule relating to deriving profit or advantage from the company commits a strict liability offence with a penalty of 50 penalty units. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsection 60-20(6)]*

7.41 A transaction or arrangement that contravenes the general rule against the external administrator deriving a profit or advantage from the company may be set aside by the Court. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsection 60-20(7)]*

7.42 The rule in relation to a related entity of the external administrator does not apply to the extent that the profit or advantage arises because the external administrator employs or engages a person, who is a related entity, to provide services in connection with the external administration of the company and either:

- the external administrator does not know, and could not reasonably be expected to know, that the person employed or engaged is a related entity of the external administrator; or
- the creditors consent to the related entity being employed or engaged. [*Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsection 60-20(4)*]

7.43 The external administrator of a company must not give up to any other person any or all of the remuneration to which the external administrator is entitled. A person, who contravenes this requirement, is guilty of a strict liability offence with a penalty of 50 penalty units. [*Schedule 2, item 2, Schedule 2 to the Act, Part 3, section 60-20*]

7.44 An external administrator of a company must not directly or indirectly become a purchaser of any asset of a company, except with the leave of the Court. A person, who contravenes this requirement, is guilty of a strict liability offence with a penalty of 50 penalty units. [*Schedule 2, item 2, Schedule 2 to the Act, Part 3, section 60-20*]

Funds handling

7.45 The external administrator must maintain a bank account in relation to the administration of the company. The bank account must comply with any requirements prescribed in the Insolvency Practice Rules and is called the administration account for the company. [*Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsections 65-5(1), (2) and (3)*]

7.46 An external administrator may keep a single administration account for a pooled group that complies with the requirements prescribed in the Insolvency Practice Rules in relation to a pooled group. [*Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsection 65-5(4)*]

7.47 The external administrator of a company does not comply with the requirements in relation to an administration account (including the requirements relating to a pooled group) if the external administrator maintains the account in relation to the company and one or other persons. [*Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsection 65-5(5)*]

7.48 If the Court gives a direction that is inconsistent with the requirements relating to an administration account, those requirements do

not apply to the extent of the inconsistency. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsection 65-5(6)]*

7.49 An external administrator who fails to comply with the requirements relating to the maintenance and operation of an administration account commits an offence of strict liability with a penalty of 50 penalty units. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsection 65-5(7)]*

7.50 The external administrator must pay all money received by the external administrator on behalf of, or in relation to, the company into the administration account for the company within 5 days after receipt. If the Court gives a direction that is inconsistent with this requirement, the requirement does not apply to the extent of the inconsistency. An external administrator who fails to comply with this requirement commits an offence of strict liability with a penalty of 50 penalty units. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, section 65-10]*

7.51 The external administrator must not pay any money into the administration account for the company if it is not received on behalf of, or in relation to the company, or if the company is a member of a pooled group, another member of the company. If the Court gives a direction that is inconsistent with this requirement, the requirement does not apply to the extent of the inconsistency. An external administrator who fails to comply with this requirement commits an offence of strict liability with a penalty of 50 penalty units. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, section 65-15]*

7.52 An external administrator is liable to pay penalty interest to the Commonwealth at the rate of 20 per cent per year, or another rate that is prescribed in the Insolvency Practice Rules, in the following circumstances:

- the external administrator has failed to pay money into the administration account in accordance with the requirements and the amount exceeds \$50 or another amount prescribed in the Insolvency Practice Rules;
- the penalty interest is calculated on the amount of the excess above \$50 or the amount that is prescribed and for the period during which the external administrator fails to comply with this requirement;
- the external administrator is not covered by the exception where the Court, on the application of the external administrator, is satisfied that the external administrator had sufficient reason for failing to comply with the requirement in relation to the amount; and

- the external administrator is personally liable for the payment of the interest and is not entitled to be reimbursed out of the property of the company. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, section 65-20]*

7.53 The external administrator must not pay any money out of the administration account for the company otherwise than:

- for purposes related to the external administration of the company; or
- in accordance with the Corporations Act; or
- in accordance with a direction of the Court. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsection 65-25(1)]*

7.54 Failure to comply with the requirements in relation to paying money out of the administration account is a strict liability offence with a penalty of 50 penalty units. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsection 24-10(2)]*

7.55 A payment out of the administration account for a company may be made by cheque or by electronic transfer. A cheque must have the name of the company written on it and be signed by the external administrator of the company. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, section 65-30]*

7.56 The following requirements apply in relation to receipts for payments into and out of the administration account:

- an external administrator must issue a receipt for a payment into the administration account for the company if asked to do so by the person making the payment; and
- an external administrator must, whenever possible, obtain a receipt for a payment made out of the administration account for the company. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, section 65-35]*

7.57 An external administrator must deposit in the bank with which the administration account for the company is held the negotiable instruments and any other securities that are payable to the company or the external administrator as soon as practicable after they are received by the external administrator. This requirement does not apply if the Court gives a direction that is inconsistent with the requirement, to the extent of the inconsistency. An external administrator who fails to comply with this requirement commits a strict liability offence with a penalty of 5 penalty

units. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsections 65-40(1), (2) and (3)]*

7.58 The negotiable instruments or other security must be delivered out by the bank on the signed request of the external administrator.
[Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsection 65-40(3)]

7.59 On the application of a creditor, the company, the external administrator or any other person with a financial interest in the external administration of the company, the Court may give directions:

- regarding the payment, deposit or custody of money and negotiable instruments and other securities that are payable to, or held by, an external administrator of a company;
 - authorising the external administrator of a company to make payments into and out of a special bank account. Without limiting the Court's power, the Court may:
 - authorise the payments for the time and on the terms it thinks fit; and
 - order the special account to be closed if at any time the Court thinks the account is no longer required. A copy of the order that the account be closed must be served on the bank with which the special bank account was opened.
- [Schedule 2, item 2, Schedule 2 to the Act, Part 3, section 65-45]*

7.60 The Insolvency Practice Rules may provide for and in relation to the following matters where an external administrator contravenes or fails to comply with the requirements relating to funds handling:

- the payment by an external administrator of a company of interest at such rate, on such amount and in respect of such period as is prescribed;
 - disallowance of all or such part as is prescribed of the remuneration of an external administrator;
 - the removal from office of an external administrator of a company by the Court; and
 - the payment by an external administrator of a company of any expenses occasioned by reason of his or her default.
- [Schedule 2, item 2, Schedule 2 to the Act, Part 3, section 65-50]*

Information

Administration returns

7.61 An external administrator of a company must lodge in the approved form an annual administration return with ASIC in relation to the external administration of each company by the external administrator during the year or part of the year (as the case requires) within 3 months after the end of the financial year. For the purposes of this requirement it should be noted that:

- for the purposes of the Insolvency Practice Schedule (Corporations) the definition of *financial year* in the Acts Interpretation Act applies and means ‘a period of 12 months starting on 1 July’. This is achieved by the amendment of the definition of *financial year* in the Corporations Act (see consequential amendments below);
- if two or more companies are members of a pooled group, then the returns for those companies may be set out in the same document; and
- the requirement does not apply if the external administration of the of the company ends during the financial year and the person is the external administrator of the company when the external administration of the company ends. In such a case, the external administrator must instead lodge an end of administration return. [*Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsections 70-5(1), (2), (3), (4) and (6)*]

7.62 The external administrator must give notice that the annual administration return has been lodged when next forwarding any report, notice of meeting, notice of call or dividend:

- in a members’ voluntary winding up – to the members of the company;
- in a creditors’ voluntary winding up – to the creditors and contributories; and
- in a court-ordered winding up – to the creditors and contributories;
- if the external administrator is appointed as a provisional liquidator – to the Court; and

- if the company is under administration or has executed a deed of company arrangement – to the company. [*Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsection 70-5(5)*]

7.63 The external administrator of a company when the administration ends (the last administrator) must lodge with ASIC in the approved form an end of administration form within one month after the end of the financial year. If two or more companies are members of a pooled group, then the end of administration returns for those companies may be set out in the same document. [*Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsections 70-6(1), (2), (3) and (7)*]

7.64 The last external administrator must give notice that the return has been lodged to a person mentioned below who has requested in writing that the last external administrator give the person such a notice:

- in a members' voluntary winding up - to the members of the company;
- in a creditors' voluntary winding up - to the creditors and contributories; and
- in a court-ordered winding up - to the creditors and contributories;
- if the external administrator is appointed as a provisional liquidator - to the Court; and
- if the company is under administration or has executed a deed of company arrangement - to the company. [*Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsections 70-6(5) and (6)*]

Record-keeping

7.65 An external administrator of a company must keep proper books in relation to the external administration of the company:

- the external administrator must cause to be made entries or minutes of proceedings at meetings relating to the external administration and such other entries as are necessary to give a complete and correct record of the external administrator's administration of the company's affairs;
- the external administrator must ensure that the books are available at the external administrator's office for inspection and permit a creditor or contributory, or another person acting on their behalf, to inspect the books at all reasonable times; and

- failure by the external administrator to comply with these requirements is a strict liability offence with a penalty of 5 penalty units. It is a defence if the external administrator can show that he or she had a reasonable excuse for not complying with the requirements. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, section 70-10]*

7.66 ASIC may cause the books referred to in sections 70-5 (annual administration returns), 70-6 (end of administration return) or 70-10 (administration books) to be audited by a registered company auditor. The audit may be conducted on ASIC's own initiative, at the request of the company or at the request of a creditor or contributory. The costs of an audit must be determined by ASIC and form part of the expenses of the external administration of the company. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsections 70-15(1), (2) and (5)]*

7.67 The auditor must prepare a report on the audit. The auditor has qualified privilege in relation to the report. ASIC must give a copy of the report prepared by the auditor to:

- the external administrator of the company; and
- the person who requested the report (if any). *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsections 70-15(3) and (4)]*

7.68 The Court may order that the books referred to in sections 70-5 (annual administration returns), 70-6 (end of administration return) or 70-10 (administration books) to be audited by a registered company auditor. The order may be made on application of any person with a financial interest in the external administration of the company. The Court may make such orders in relation to the audit as it thinks fit, including:

- the preparation and provision of a report on the audit; and
- orders as to the costs of the audit. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, section 70-20]*

7.69 Unless the external administrator has a reasonable excuse, the external administrator must give the auditor such books, information and assistance as the auditor reasonably requires. Failure to provide such assistance is a strict liability offence with a penalty of 5 penalty points. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, section 70-25]*

7.70 Unless ASIC has issued a notice under section 26-42, where a person ceases to be the external administrator of a company (the former administrator), the former administrator must transfer to the external administrator who is appointed as external administrator instead (the new administrator), within 5 business days after the new administrator is

appointed, any books relating to the external administration of the company that are in the former administrator's possession or control. The former administrator may take a copy of any part of the books before transferring them to the new administrator. After the books are transferred, the new administrator must allow the former administrator to inspect them at any reasonable time and take a copy of any part of the books. A person who fails to comply with these requirements relating to the transfer of books commits a strict liability offence with a penalty of 5 penalty units. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, section 70-30]*

7.71 ASIC may give a person who has ceased to be the external administrator of a company a notice (which is not a legislative instrument) requiring the external administrator to transfer any books in his or her possession or control relating to the external administration to ASIC or to notify ASIC that he or she does not have any such books in their control or possession. This ensures that ASIC can secure control or possession of the books of the company when a new administrator has not been appointed. Failure by the external administrator to comply with these requirements is a strict liability offence with a penalty of 5 penalty units. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsections 70-31(1), (2) and (7)]*

7.72 Where the books relating to an external administration of a company have been transferred to the control or possession of ASIC then:

- ASIC must transfer as soon as practicable those books to a person who becomes the new external administrator of the company;
- if the company ceases to be a company under external administration, ASIC must as soon as practicable transfer the books to the company. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsections 70-31(3) and (4)]*

7.73 A person is not entitled to claim a lien on the books as against ASIC or the new administrator but the lien is not otherwise prejudiced. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsections 70-31(5) and (6)]*

7.74 The requirements relating to the retention and destruction of the books of the company and of the external administration of the company that are relevant to the affairs of the company are as follows:

- the last external administrator of the company must retain the books in his or control or possession for a period of 5 years from the end of the external administration (the retention period). This requirement does not apply if the external administrator has a reasonable excuse for not complying;

- provided ASIC consents, the last administrator may destroy the books within the retention period:
 - in the case of a members’ voluntary winding up – as the company by resolution directs;
 - in the case of a creditors’ voluntary winding up or a court-ordered winding up – as the committee of inspection (if there is a committee) or the creditors direct; and
 - if the external administrator is appointed as a provisional liquidator – as the Court directs;
- the external administrator may destroy the books at the end of the retention period;
- if the external administrator intentionally or recklessly fails to comply with any of these requirements he or she commits an offence with a penalty of 50 penalty units; and
- the circumstances under which an external administrator may destroy the books does not apply to the extent that the external administrator is under an obligation to retain the book, or part of the books, under another provision of the Corporations Act or under any other law. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, section 70-35]*

7.75 As between the contributories of a company in external administration, all books of the company and of the external administration of the company are prima facie evidence of the truth of all matters purporting to be recorded in those books. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, section 70-36]*

Giving information etc. to creditors and others

7.76 The creditors may by majority resolution by value and number of creditors request the external administrator to:

- give information to the creditors;
- provide a report to creditors; or
- produce a document to the creditors. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsection 70-40(1)]*

7.77 The external administrator must comply with the request from the creditors unless:

- the information, report or document is not relevant to the external administration of the company; or
- the external administrator would breach his or her duties in relation to the external administration of the company if the external administrator complied with the request; or
- it is otherwise not reasonable for the external administrator to comply with the request. The Insolvency Practice Rules may prescribe circumstances in which it is, or is not, reasonable for an external administrator of a company to comply with a request to give information, provide a report or produce a document. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsections 70-40(2) and (3)]*

7.78 A creditor may request the external administrator to:

- give information to the creditor;
- provide a report to the creditor; or
- produce a document to the creditor. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsection 70-45(1)]*

7.79 The external administrator must comply with the request from the creditor unless:

- the information, report or document is not relevant to the external administration of the company; or
- the external administrator would breach his or her duties in relation to the external administration of the company if the external administrator complied with the request; or
- it is otherwise not reasonable for the external administrator to comply with the request. The Insolvency Practice Rules may prescribe circumstances in which it is, or is not, reasonable for an external administrator of a company to comply with a request to give information, provide a report or produce a document. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsections 70-45(2) and (3)]*

7.80 The members of a company may by resolution request the external administrator of a company in a members' voluntary winding up to:

- give information to the members;

- provide a report to the members; or
- produce a document to the members. [*Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsections 70-46(1) and (2)*]

7.81 The external administrator must comply with the request from the members unless:

- the information, report or document is not relevant to the external administration of the company; or
- the external administrator would breach his or her duties in relation to the external administration of the company if the external administrator complied with the request; or
- it is otherwise not reasonable for the external administrator to comply with the request. The Insolvency Practice Rules may prescribe circumstances in which it is, or is not, reasonable for an external administrator of a company to comply with a request to give information, provide a report or produce a document. [*Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsections 70-46(3) and (4)*]

7.82 The member of a company may request the external administrator of a company in a members' voluntary winding up to:

- give information to the member;
- provide a report to the member; or
- produce a document to the member. [*Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsection 70-47(1) and (2)*]

7.83 The external administrator must comply with the request from the member unless:

- the information, report or document is not relevant to the external administration of the company; or
- the external administrator would breach his or her duties in relation to the external administration of the company if the external administrator complied with the request; or
- it is otherwise not reasonable for the external administrator to comply with the request. The Insolvency Practice Rules may prescribe circumstances in which it is, or is not, reasonable for an external administrator of a company to comply with a request to give information, provide a report or produce a

document. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsections 70-47(1) and (2)]*

7.84 The Insolvency Practice Rules may provide for the obligations of external administrators of companies:

- to give information to creditors or members;
- to provide reports to creditors or members;
- to produce reports to creditors or members. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsection 70-50(1)]*

7.85 The Insolvency Practice Rules, for purposes of reporting to creditors and members, may include:

- other circumstances in which the external administrator must give information, provide a report or produce a document to a creditor or member; and
- the manner and form in which information is to be given, a report provided or a document produced; and
- the timeframe in which information is to be given, a report provided or a document produced; and
- who is to bear the cost of giving information, providing a report or producing a document. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsection 70-50(2)]*

7.86 For purposes of reporting to creditors and members, the Insolvency Practice Rules may also:

- make different provision in relation to different kinds of external administration; and
- provide that specified requirements imposed under the Insolvency Practice Rules may be replaced or modified by resolution, by:
 - the creditors; or
 - the members; or
 - if there is a committee of inspection – the committee. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsection 70-50(2) and (3)]*

7.87 It is currently proposed that the rule-making powers under sections 70-50-60 and 70-60 would be used to require an external administrator in a creditors' voluntary liquidation and a court liquidation to provide creditors and to lodge with ASIC an initial report to creditors. It is currently proposed that the timing for the initial report would be one month after the external administrator has received a report as to affairs from the directors or no later than three months after the commencement of the external administration. The initial report would be required to be in the approved form. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, sections 70-50 and 70-60]*

Other requests for information etc.

7.88 The Commonwealth may request the external administrator of a company under external administration to provide specified information, reports or documents in relation to the external administration where:

- a former employee of a company under external administration has made a claim for financial assistance from the Commonwealth in relation to unpaid employment entitlements; or
- the Commonwealth considers that such a claim is likely to be made. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsections 70-55(1) and (2)]*

7.89 The external administrator must comply with the request. The Insolvency Practice Rules may provide for and in relation to who is to bear the cost of providing the information, reports or documents. *Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsections 70-55(3) and (4)]*

Reporting to ASIC

7.90 The Insolvency Practice Rules may provide for and in relation to the obligations of an external administrator to:

- give information to ASIC;
- provide reports to ASIC;
- produce documents to ASIC.

7.91 For the purpose of ASIC exercising the power to request an external administrator to give, information, provide a report or produce documents, the Insolvency Practice Rules may provide for and in relation to:

- the manner and form in which information is to be given, a report provided or a document produced;
- the timeframes in which information is to be given, a report provided or a document produced;
- who is to bear the cost of giving information, providing a report or producing a document;
- the Insolvency Practice Rules may make different provision in relation to different kinds of external administration.
[Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsection 70-60(2) and (3)]

External administrator may be compelled to comply with requests for information etc.

7.92 If an external administrator refuses a request made under the Insolvency Practice Schedule (Corporations) or a rule made under the Insolvency Practice Rules to give information, provide a report or produce a document (the relevant material), ASIC may, in writing, direct the external administrator to give all or part of the relevant material to the person or persons who made the request for the relevant material within 5 business days after the direction is given.

- a direction by ASIC is not a legislative instrument;
- ASIC must notify the external administrator before giving such a direction;
- if the external administrator objects to giving the relevant material, ASIC must take into account the reasons for the external administrator's objections;
- ASIC must not give a direction if the external administrator is entitled not to comply with the request;
- ASIC may impose conditions on the use of relevant material by notice in writing to the person to whom the relevant material is given. Failure to comply with such a condition is a strict liability offence with a penalty of 10 penalty units or imprisonment for 3 months or both. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, sections 70-65, 70-70, 26-75, 70-80 and 70-85]*

7.93 The person or persons who made the request for the relevant material may apply to the Court for an order that the external administrator give the person or persons all or part of the relevant material. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsection 70-90(1)]*

7.94 If an external administrator does not comply with a direction by ASIC under section 70-70 in relation to all or part of the relevant material, ASIC may apply to the Court for an order that the external administrator comply with the direction. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsection 70-90(2)]*

7.95 The Court may on the application of ASIC or the person or persons who made the request:

- order the external administrator to give the person, or any or all of the persons who made the request for the relevant material all or part of that material; and
- make such other orders, including orders as to costs. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsection 70-90(3)]*

Meetings

7.96 Nothing in Division 75 of the Insolvency Practice Schedule (Corporations) limits the operation of any other provision of the Act, or any law, imposing an obligation to convene a meeting in relation to a company, or the external administration of a company. There are, for example, under Chapter 5 of the Act other instances where an external administrator is required to hold a meeting. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, section 75-5]*

7.97 The external administrator of a company may convene at any time a meeting of the creditors, or in the case of a members' voluntary winding up, a general meeting of the company. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, section 75-10]*

7.98 Unless the external administrator is a provisional liquidator or the external administrator is the administrator of the company and the company is under administration, the external administrator must convene a meeting of the creditors in the following circumstances:

- where there is a committee of inspection – the committee of inspection requests the external administrator to do so; or
- the creditors direct the external administrator to do so by resolution; or
- at least 25 per cent in value of the creditors direct the external administrator to do so in writing; or
- both of the following are satisfied:

- less than 25 per cent, but more than 10 per cent, in value of the creditors direct the external administrator to do so in writing;
- security for the cost of holding the meeting is given to the external administrator before the meeting is convened; or
- all of the following are satisfied:
 - the company is being wound up under a creditors’ voluntary winding up;
 - less than 25 per cent, but more than 5 per cent, in value of the creditors direct the external administrator to do so in writing;
 - none of the creditors who give the direction is a related entity in relation to the company;
 - the direction is given no more than 14 business days after the resolution for the voluntary winding up of the company is passed;
- for purposes of the above circumstances where the value of the creditors is referred to, the value is to be worked out by reference to the value of the creditors’ claims against the company that are known at the time the direction is given to the external administrator;
- the external administrator need not comply with a request or direction to convene a meeting if the request or direction is not reasonable. The Insolvency Practice Rules may prescribe circumstances in which a request or direction is, or is not reasonable. [*Schedule 2, item 2, Schedule 2 to the Act, Part 3, section 75-15*]

7.99 The reason why the circumstances under which the external administrator of a company must convene a meeting under section 26-15 do not apply where a company is under administration is because the existing requirements relating to the convening of the first and second meeting in a voluntary administration will in substance continue to apply, however the legislative architecture governing these requirements will change:

- section 436E relating to purposes and timing of the first meeting of creditors is repealed, however:

- section 80-6 of the Insolvency Practice Schedule (Corporations) requires the external administrator of a company under administration to convene a meeting of the creditors within 8 business days after the administration begins to determine whether there is to be a committee of inspection and if so, who are to be appointed members of the committee;
- subsections 436E(3) and (3A) will be replicated in the Insolvency Practice Rules, in line with the general approach that requirements for convening and holding meetings are set out in the Insolvency Practice Rules;
- subsection 436E(4) which gives the creditors the right to remove the administrator and appoint someone else, will also be replicated in the Insolvency Practice Rules using the rule-making powers under section 75-50 of the Insolvency Practice Schedule (Corporations);
- section 439A which requires the administrator to convene a second meeting of creditors will continue except that subsections 439A(3) and (4) are repealed (because they relate to requirements for convening meetings) and the provisions will be replicated in the Insolvency Practice Rules. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsection 75-15(5)]*

7.100 ASIC may in writing direct an external administrator of a company to convene a meeting of the creditors. In the direction, ASIC may include requirements to be complied with by the external administrator in notifying the creditors of the meeting and conducting the meeting. The external administrator must comply with ASIC's directions. A direction given by ASIC is not a legislative instrument. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, section 75-20]*

7.101 The external administrator of a company may, in writing, appoint a person to represent the external administrator at a meeting. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, section 75-25]*

7.102 ASIC is entitled to attend any meeting of creditors held under the Act and, subject to any provision of the Act (including in relation to voting) is entitled to participate in any meeting of creditors held under the Act. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, section 75-30]*

7.103 The Commonwealth may appoint a representative to attend a meeting of creditors or contributories where either a former employee of the company has made a claim under the Fair Entitlements Guarantee

Scheme or where the Commonwealth considers that such a claim is likely to be made. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, section 75-35]*

7.104 The external administrator may at any time put a proposal to the creditors or contributories for the proposal to be resolved without a meeting of the creditors or contributories as the case may be. The Insolvency Practice Rules may provide for and in relation to proposals to be resolved without a meeting. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, section 75-40]*

7.105 Sections 600A to 600E are repealed and the provisions have been moved to the meeting provisions in Division 75 of the Insolvency Practice Schedule (Corporations). To the extent that sections 600A, 600D and 600E relate to Chapter 5.1 bodies (arrangements and reconstructions) these matters are now covered in sections 415A to 415C of the Act. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, sections 75-41, 75-42, 75-43, 75-44, and 75-45]*

7.106 The Insolvency Practice Rules may provide for and in relation to meetings concerning companies under external administration. Requirements for convening and holding meetings (including notice, agenda, quorum, voting on proposals and costs are set out in the Insolvency Practice Rules. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, section 75-50]*

Committees of inspection

7.107 If requested by a creditor, the external administrator of a company must convene a meeting of creditors for the purpose of determining whether there is to be a committee of inspection and if there is, who are to be appointed members of the committee. This requirement does not apply if the company is a member of a pooled group for which there is a committee of inspection or if the company is under voluntary administration. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, section 80-5]*

7.108 Where a company is under voluntary administration, the external administrator of the company must convene a meeting of the creditors to determine whether there is to be a committee of inspection for the company and if there is to be a committee of inspection, who are to be appointed members of the committee. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, section 80-6]*

7.109 The creditors may by resolution determine that there is to be a committee of inspection in relation to the external administration of the company. However, this rule does not apply if the company is a member of a pooled group for which there is a committee of inspection. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, section 80-10]*

7.110 The following have rights to appoint members of a committee of inspection:

- the creditors may, by resolution appoint members of a committee of inspection and may remove a person they have appointed as a member and they may appoint another person to fill a vacancy in the office of a member who they appointed;
- a creditor representing at least 10 per cent in value of the creditors, or a group of creditors who together represent at least 10 per cent in value of the creditors may appoint a person as a member of a committee of inspection and they may remove the person they have appointed and they may appoint another person to fill a vacancy in the office of the member who they appointed;
- an employee or employees representing at least 50 per cent in value owed to or inspect of employees by the company may appoint a person as a member of a committee of inspection to represent the employees. The employee or group of employees can remove a person they have appointed and appoint another person to fill a vacancy in the office of that member of the committee.
- once a person has exercised a right in one capacity to appoint a member, the person cannot exercise a right in another capacity to do so;
- a person cannot exercise a right to appoint a person as a member of a committee of inspection if the company is a member of a pooled group for which there is a committee of inspection. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, sections 80-15, 80-20 and 80-25]*

7.111 If a company is in a related group of companies (called a pooled group), creditors of all the companies may decide together that there is to be a committee of inspection for the group and appoint members of the committee of inspection. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, section 80-26]*

7.112 A committee of inspection is to determine its own procedures and the Insolvency Practice Rules may provide for and in relation to committees of inspection. Without limiting this rule-making power, the Insolvency Practice Rules may provide for and in relation to:

- eligibility to be appointed as a member of a committee of inspection;
- the convening of, conduct of, and procedures and voting at, meetings; and
- resignation and removal of members; and
- vacancies in membership. [*Schedule 2, item 2, Schedule 2 to the Act, Part 3, section 80-30*]

7.113 A committee of inspection has the following functions:

- to advise and assist the external administrator of the company;
- to give directions to the external administrator of the company;
- to monitor the conduct of the external administration of the company;
- such other functions as are conferred on the committee by the Act;
- to do anything incidental or conducive to the performance of any of the above functions. [*Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsection 80-35(1)*]

7.114 An external administrator of a company must have regard to any directions given to the external administrator by the committee of inspection, but the external administrator is not required to comply with such directions. If an external administrator does not comply with a direction, the external administrator must make a written record of that fact, along with the external administrator's reasons for not complying with that direction. [*Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsections 80-35(2) and (3)*]

7.115 A committee of inspection may request the external administrator of a company to:

- give information to the committee;
- provide a report to the committee; or
- produce a document to the committee. [*Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsection 80-40(1)*]

7.116 The external administrator must comply with the request unless:

- the information, report or document is not relevant to the external administration of the company; or
- the external administrator would breach his or her duties in relation to the external administration of the company if the external administrator complied with the request; or
- it is otherwise not reasonable for the external administrator to comply with the request. The Insolvency Practice Rules may prescribe circumstances in which it is, or is not, reasonable for an external administrator of a company to comply with a request to give information, provide a report or produce a document. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsection 80-40(2)]*

7.117 The Insolvency Practice Rules may prescribe the specific circumstances in which it is or is not reasonable for an external administrator to comply with a request for information from a committee of inspection. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsection 80-40(3)]*

7.118 The Insolvency Practice Rules may provide for and relation to the obligations of external administrators of companies:

- to give information to committees of inspection;
- to provide reports to committees of inspection;
- to produce reports to committees of inspection. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsection 80-45(1)]*

7.119 The Insolvency Practice Rules, for purposes of reporting to committees of inspection, may include:

- other circumstances in which the external administrator must give information, provide a report or produce a document to a committee of inspection; and
- the manner and form in which information is to be given, a report provided or a document produced; and
- the timeframe in which information is to be given, a report provided or a document produced; and
- who is to bear the cost of giving information, providing a report or producing a document. *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsection 80-45(2)]*

7.120 The Insolvency Practice Rules may::

- make different provision in relation to different kinds of external administration; and
- provide that specified requirements imposed under the Insolvency Practice Rules may be replaced or modified by resolution, by:
 - the creditors; or
 - the committee of inspection. [*Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsection 80-45(3)*]

7.121 A committee of inspection may obtain specialist advice or assistance in relation to the conduct of the external administration. However, the committee of inspection must obtain the approval of the external administrator or the Court before expenses are incurred in obtaining the advice or assistance. To avoid any doubt, an expense incurred is to be taken to be an expense incurred by a person as a member of the committee. [*Schedule 2, item 2, Schedule 2 to the Act, Part 3, section 80-50*]

7.122 The general rule is that a member of a committee of inspection must not directly or indirectly derive any profit or advantage from the external administration of the company

- The general rule does not apply to the extent that:
 - the creditors resolve otherwise and the member of the committee is not entitled to vote on the resolution;
 - another provision of the Act, or another law, requires or permits the member to derive the profit or advantage; or
 - the Court gives leave to the to derive the profit or advantage.. [*Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsections 80-55(1), (3), (4) and(5)*]

7.123 To avoid doubt, a member of a committee of inspection is taken to derive a profit or advantage from the external administration of the company if:

- the member directly or indirectly derives a profit or advantage from a transaction (including a sale or purchase) entered into for or on account of the company; or
- the member directly or indirectly derives a profit or advantage from a creditor or member of the company; or

- a related entity of the member directly or indirectly derives a profit or advantage from the external administration of a company;
 - a related entity in relation to an individual is defined in the Dictionary for purposes of the Insolvency Practice Schedule (Corporations) as having the same meaning as in the Bankruptcy Act where the term is defined in section 5 of that Act. *[Schedule 2, item 2, Schedule 2 to the Act, section 5-5 and Schedule 2, item 2, Schedule 2 to the Act, Part 3, subsection 80-55(2)]*

7.124 The rule in relation to a related entity of the member does not apply to the extent that the profit or advantage arises because the external administrator employs or engages a person to provide services in connection with the external administration of the company who is a related entity of the member: and

- the member does not know, and could not reasonably be expected to know, that the person employed or engaged is a related entity of the member; or
- the member discloses to the external administrator and the committee that the person employed or engaged by the external administrator is a related entity of the member, and does so, as soon as practicable after he member becomes aware that the entity is a related entity and has been engaged or employed by the external administrator; or
- the creditors consent to the related entity being employed or engaged. *[Schedule 2, item 2, Schedule 2 to the Act, subsection 80-55(6)]*

7.125 A person who contravenes the general rule relating to deriving profit or advantage from the company commits a strict liability offence with a penalty of 50 penalty units. *Schedule 2, item 2, Schedule 2 to the Act, subsection 80-55(7)]*

7.126 A transaction or arrangement that contravenes the general rule against the member of a committee of inspection deriving a profit or advantage from the company may be set aside by the Court. *[Schedule 2, item 2, Schedule 2 to the Act, subsection 80-55(8)]*

7.127 The following obligations apply to a creditor representing at least 10 per cent in value of the creditors of a company who has appointed a person as a member of a committee of inspection under section 30-10B of the Insolvency Practice Schedule (Corporations):

- the creditor must not directly or indirectly become the purchaser of any part of the property of the company, but this does not apply if:
 - the creditors resolve otherwise and the creditor is not entitled to vote on the resolution;
 - another provision of the Act, or of another law, require or permits the creditor or to purchase the property;
 - the Court gives leave to the creditor to purchase the property;
- a person who fails to comply with this obligation commits a strict liability offence with a penalty of 50 penalty units;
- a transaction entered into in contravention of this obligation may be set aside by the Court. *Schedule 2, item 2, Schedule 2 to the Act, section 80-60]*

7.128 ASIC may attend meetings of a committee of inspection. *[Schedule 2, item 2, Schedule 2 to the Act, section 80-65]*

7.129 The Court may inquire into the conduct of a committee of inspection and make such orders as it thinks fit to ensure the proper conduct of the committee. *[Schedule 2, item 2, Schedule 2 to the Act, section 80-70]*

Directions by creditors

7.130 The external administrator of a company must have regard to directions given to the external administrator by the creditors of the company but is not obliged to comply with those directions. *[Schedule 2, item 2, Schedule 2 to the Act, sections 85-1 and 85-5]*

Review of the external administration of a company

Court powers to inquire and make orders

7.131 The Court may inquire into the external administration of a company either on its own initiative or on the application of the company, the external administrator, ASIC, a creditor or another person with a financial interest in the company:

- the Court may for the purposes of such an inquiry require the external administrator to give information, provide a report or produce a document to the Court in relation to the external administration of the company;

- the reasonable expenses associated with an application made to the Court by a creditor on behalf of a committee of inspection, are to be taken to be expenses incurred by a person as a member of the committee. [*Schedule 2, item 2, Schedule 2 to the Act, sections 90-5, 90-10 and 90-20*]

7.132 The Court has wide powers to make orders, including orders replacing the external administrator or dealing with losses resulting from a breach of duty by the external administrator. The Court may also make an order requiring a person to repay to a company, or the creditors of a company, remuneration paid to the person as external administrator of the company. [*Schedule 2, item 2, Schedule 2 to the Act, section 90-15*]

7.133 The Court may have regard to the wishes of the creditors or contributories and for this purpose may direct meetings of the creditors or contributories to be convened. [*Schedule 2, item 2, Schedule 2 to the Act, section 90-21*]

Review by another registered liquidator

7.134 ASIC, the Court, creditors or members of a company may appoint a registered liquidator to review the external administration of the company. Such a review may look at a range of matters, including whether the remuneration of the external administrator is reasonable and whether costs and expenses have been properly incurred. [*Schedule 2, item 2, Schedule 2 to the Act, sections 90-22, 90-23, 90-24, 90-25, 90-24, and 90-28*]

7.135 The Insolvency Practice Rules may set the powers and duties of a registered liquidator conducting such a review and may deal with issues relating to the review process. [*Schedule 2, item 2, Schedule 2 to the Act, section 90-29*]

Removal by creditors

7.136 The creditors of a company under external administration (other than a company for which a provisional liquidator has been appointed) may by resolution at a meeting, remove the external administrator of the company and appoint another. However, the external administrator may apply to the Court to be reappointed.

- The rule-making powers in relation to meetings under section 75-50 of the Insolvency Practice Rules would provide for rules relating to the conduct of the creditor's meeting at which creditors would vote on the removal of an external administrator. The resolution would need to be passed by majority in value and number of the creditors. [*Schedule 2, item 2, Schedule 2 to the Act, sections 90-30 and 90-35*]

Other matters

7.137 An external administrator may assign any right to sue under the Act. Where the action the external administrator seeks to assign has already commenced, the approval of the Court is necessary. *[Schedule 2, item 2, Schedule 2 to the Act, section 100-10]*

7.138 Forms are approved by ASIC. Provision is made for what may be required in the form or to accompany the form. *[Schedule 2, item 2, Schedule 2 to the Act, section 100-6]*

7.139 The Minister has the power to make rules to be called the Insolvency Practice Rules. *[Schedule 2, item 2, Schedule 2 to the Act, section 105-1]*

7.140 The new section 198G rationalises the requirements in the old Act dealing with the powers of the officers of a company under external administration. *[Schedule 2, Part 2, item 81, section 198G]*

Consequential amendments

Remuneration and other benefits received by external administrators

Corporations Act 2001

7.141 Consequential on the repeal of section 449E, subparagraph 9(a)(iii) of the definition of *declaration of indemnities* refers to section 60 -5 of the Insolvency Practice Schedule which deals with the remuneration to which an external administrator is entitled. *[Schedule 2, Part 2, item 63, section 9 (subparagraph (a)(iii) of the definition of declaration of indemnities)]*

7.142 Paragraph 443D(b) is repealed consequential on the repeal of section 449E which deals with the remuneration of an administrator. Paragraph 443D(b) now refers to Division 60 of Schedule 2 to the Act which sets out the requirements relating to the remuneration of external administrators. *[Schedule 2, Part 2, item 106, paragraph 443D(b)]*

7.143 The heading for Division 15 of Part 5.3A is repealed and replaced by a new heading which does not refer to 'remuneration' because the remuneration of external administrators is dealt with in Division 60 of Schedule 2 to the Act. *[Schedule 2, Part 2, item 119, Division 15 of Part 5.3A of Chapter 5 (heading)]*

7.144 Subsections 449E(1), (1A), (1C), (1D), (2), (3) and (4) which deal with remuneration of an administrator appointed under Part 5.3A of

the Act are replaced by provisions in Division 60 of Schedule 2 to the Act. Subsection 449E(1B) which provides that a creditors' resolution in relation to remuneration of an administrator must deal exclusively with remuneration will be replicated in the Insolvency Practice Rules which will be made under the rule-making power in section 75-50 of Schedule 2 to the Act. *[Schedule 2, Part 2, item 125, section 449E]*

7.145 Subsections 473(2) and (3) are repealed and covered by the requirements relating to the remuneration of external administrators which are set out in Division 60 of Schedule 2 to the Act. The remuneration of provisional liquidators is set out in section 60-16 of the Insolvency Practice Schedule (Corporations). Subsection 473(4) relating to a meeting of creditors to determine remuneration will be dealt with in the Insolvency Practice Rules made under section 75-50 of the Insolvency Practice Schedule (Corporations). *[Schedule 2, Part 2, item 133, section 473]*

7.146 Subsections 473(5), (6) and (10) which deal with the Court's powers to review remuneration are repealed and replaced by the provisions in Division 60 of the Insolvency Practice Schedule (Corporations) which set out the Court's powers to review a remuneration determination made in relation to an external administrator of a company. *Schedule 2, Part 2, item 125, sections 449D and 449E]*

7.147 Subsection 489EC(1) is repealed because the remuneration of a liquidator appointed by ASIC under this section is dealt with in Subdivision D of Division 60 of Schedule 2 to the Act. *[Schedule 2, Part 2, item 146, subsection 489EC(1)]*

7.148 Subsection 495(1) has been amended to remove the references to remuneration because rules about a liquidator's the remuneration is dealt with in Division 60 of Schedule 2 to the Act. Subsection 495(3) has also been amended insofar as it relates to remuneration because the remuneration of a liquidator is dealt with under Division 60 of Schedule 2 to the Act. *[Schedule 2, Part 2, item 147, section 495]*

7.149 Subsections 499(3), (3A), (6) and (7) are repealed because the rules relating to remuneration for external administrators are dealt with in Division 60 of Schedule 2 to the Act. *[Schedule 2, Part 2, item 151, subsections 499(3) to (7)]*

7.150 Section 504 is repealed and replaced by the Court's powers in Schedule 2 to review the remuneration of an external administrator. Section 60-11 of Schedule 2 deals with the Court's power to review a remuneration determination and section 22-25 sets out the matters the Court must have regard to when reviewing a remuneration determination. *[Schedule 2, Part 2, item 152, sections 502 to 505]*

Funds handling

Corporations Act 2001

7.151 Section 538 which provides for regulations to be made relating to money, negotiable instruments and other securities received by a liquidator is repealed because Division 65 of the Insolvency Practice Schedule (Corporations) covers funds handling requirements applying to an external administrator in relation to a company under external administration. Division 65 includes powers to prescribe rules in relation to funds handling in the Insolvency Practice Rules. *[Schedule 2, item 2, Part 2, item 164, section 538]*

7.152 Regulations 5.6.06, 5.6.07, 5.6.08 and 5.6.09 of the Corporations Regulations set out requirements relating to funds handling by a liquidator in a winding up. These requirements will be removed from the Corporations Regulation consequential on the introduction of Division 65 of the Insolvency Practice Schedule (Corporations). *[Schedule 2, item 2, Schedule 2 to the Act, Part 3, Division 65]*

Information

Australian Securities and Investments Commission Act 2001

7.153 Section 15 which deals with ASIC's power to investigate a matter referred to in a report lodged by a receiver or a liquidator is amended to cover an annual return by a receiver consequential on the insertion of section 422A of the Corporations Act requiring a receiver to lodge an annual return with ASIC. *[Schedule 2, item 2, Part 2, item 8, section 15]*

Corporations Act 2001

7.154 The definition of financial year is amended so that it does not apply to the Insolvency Practice Schedule (Corporations). *[Schedule 2, Part 2, item 65, section 9 (definition of financial year)]*

7.155 A person who is a receiver of property of a corporation during all or part of a financial year must lodge an annual return with ASIC in the approved form within 3 months after the end of the financial year. *[Schedule 2, item 2, Part 2, item 88, section 422A and item 89, paragraph 426(a)]*

7.156 Subsections 438E(1) and (2) are repealed because there is no longer an obligation imposed on an administrator of a company under administration to lodge six monthly accounts with ASIC. Subsections 438(3) to (7) have been replaced by requirements in the Insolvency Practice Schedule (Corporations) relating to the administration of administration books *[Schedule 2, item 2, Part 2, item 98, section 438E]*

7.157 Division 11A of Part 5.3A of Chapter 5 is repealed (section 445J is the only provision in Division 11A) because there is no longer an obligation imposed on the deed administrator to lodge six monthly reports. *[Schedule 2, item 2, Part 2, item 114, section 445J]*

7.158 Section 476 is repealed because the preliminary report by a liquidator in court liquidation would no longer be required given that it is proposed that the external administrator in a court liquidation will be required under the Insolvency Practice Rules to provide an initial report to creditors and to lodge the report with ASIC. *[Schedule 2, item 2, Part 2, item 136]*

7.159 Section 497 is repealed consequential on a liquidator in a creditors' voluntary winding up no longer being required to hold an initial meeting of creditors in a creditors' voluntary winding up. A revised section 497 has been substituted with the following requirements:

- the liquidator of the company must, within 10 business days after the day of the meeting of the company at which the resolution for winding up is passed send to each creditor:
 - a summary of the affairs of the company in the prescribed form; and
 - a list setting out the names of all creditors and the estimated amounts of their claims, as shown in the records of the company. The list must identify any creditors that are related entities of the company. Unless the Court orders otherwise, the liquidator is not required to send the list to a creditor whose debt does not exceed \$1,000;
- the liquidator is required to lodge a copy of the documents with ASIC;
- within 5 business days after the day of the meeting of the company at which the resolution for voluntary winding up is passed or such longer period as the liquidator allows, the directors of the company must give the liquidator a report, in the prescribed form, about the company's business, property, affairs and financial circumstances. Failure to comply with this requirement is an offence of strict liability; and
- the liquidator must, within 10 business days after receiving a report from the directors, lodge a copy of the report with ASIC. Unless the liquidator has a reasonable excuse, failure to comply with this requirement is a strict liability offence.

- the penalties for failure to comply with the obligations imposed under section 497 are set out in item 133 of Schedule 3 to the Act [*Schedule 2, item 2, Part 2, item 251, section 497 and item 210*]

7.160 Subsection 496(8) and section 498 are repealed consequential on the removal of the obligation imposed under section 497 for a liquidator to convene a meeting of creditors. [*Schedule 2, item 2, Part 2, items 148 and 150*]

7.161 Section 508 is repealed and replaced by the obligation imposed on an external administrator to lodge an annual administration return or an end of administration return under the Insolvency Practice Schedule (Corporations). [*Schedule 2, item 2, Part 2, item 155*]

7.162 Section 531 dealing with books to be kept by a liquidator is repealed because it has been replaced by section 70-10 of the Insolvency Practice Schedule (Corporations). [*Schedule 2, item 2, Part 2, item 120, section 511*]

7.163 Subsection 539(1) is repealed because the obligation on a liquidator to lodge six monthly accounts has been replaced by the requirements in Division 70 of the Insolvency Practice Schedule (Corporations) for an external administrator to lodge annual and end of administration returns. [*Schedule 2, item 2, Part 2, item 125, subsection 539(1)*]

7.164 Section 542 is repealed because the section has been replaced by sections 70-35 and 70-36 in the Insolvency Practice Schedule (Corporations). [*Schedule 2, item 2, Part 2, item 164, section 542*]

7.165 Paragraph 600G(1)(y) has been inserted in order to facilitate the use of electronic communication under a provision of the Insolvency Practice Schedule (Corporations) or the Insolvency Practice Rules where a person is authorised or required to give or send a notice or document to a person. [*Schedule 2, item 2, Part 2, item 188*]

7.166 Subsection 600G(4) is repealed and new provisions inserted to permit a person to send a notice or other document to another person (using the nominated electronic means or otherwise in writing) that the notice or other document is available on a website and providing the address of the website. This process does not apply if the recipient notifies the sender, before the time for giving or sending the notice or document expires, that the recipient does not have access to the internet. [*Schedule 2, item 2, Part 2, item 189*]

Meetings

Corporations Act 2001

7.167 The definitions of *resolution* and *special resolution* in section 9 of the Act are amended to allow the meaning of *resolution* and *special resolution* to be defined for purposes of relevant provisions of the Insolvency Practice Schedule (Corporations). The rule-making power in relation to meetings in section 75-50 of the Insolvency Practice Schedule (Corporations) provides, among other matters, for rules to be made in the Insolvency Practice Rules in relation to:

- motions;
- voting (including casting votes); and
- the circumstances in which a resolution or a special resolution put to creditors or contributories in a meeting is passed. [*Schedule 2, item 2, Part 2, items 76 and 77*]

7.168 Sections 415A, 415B and 415C are inserted consequential on the repeal of section 600A which applies to a Part 5.1 body and to a company under external administration. These sections replace section 600A in relation to that section's application to a Part 5.1 body. The provisions of section 600A in relation to their application to a company under external administration are dealt with in section 75-41 of the Insolvency Practice Schedule (Corporations). [*Schedule 2, item 2, Part 2, item 87*]

7.169 Subsections 439A(3) and (4) are repealed and will be replicated in the Insolvency Practice Rules made under the rule-making powers in relation to meetings in section 28-50 of the Insolvency Practice Schedule (Corporations). [*Schedule 2, item 2, Part 2, item 60*]

7.170 Section 439B is repealed and the provisions in the section relating to the conduct of a meeting will be dealt with by rules in the Insolvency Practice Rules made under the rule-making power in relation to meetings in section 75-50 of the Insolvency Practice Schedule (Corporations). [*Schedule 2, item 2, Part 2, item 100*]

7.171 Section 445F which deals with a meeting of creditors to consider a proposed variation or termination of deed of company arrangement is repealed and the requirements in section 445F will be replicated in the Insolvency Practice Rules. [*Schedule 2, item 2, Part 2, item 113*]

7.172 Section 449C sets out the requirements when there is a vacancy in the office of the administrator of a company. Subsection 449C(5) is repealed and the requirements relating to the convening of a creditors'

meeting will be replicated in the Insolvency Practice Rules. [*Schedule 2, item 2, Part 2, item 122*]

7.173 Subsection 449E(1B) providing that a resolution of the creditors relating to the remuneration of an administrator must not be bundled is repealed and will be replicated in the Insolvency Practice Rules. [*Schedule 2, item 2, Part 2, item 125*]

7.174 Subsections 473(4A) and (4B) which deal with when a resolution in relation to the remuneration of liquidators is taken to be passed are repealed and will be dealt with in the Insolvency Practice Rules in rules made under the rule-making power in section 75-50 of the Insolvency Practice Schedule (Corporations). [*Schedule 2, item 2, Part 2, item 133*]

7.175 Subsection 477(4) is repealed consequential on the removal of the requirement in section 497 for an initial meeting of creditors to be convened in a creditors' voluntary winding up. [*Schedule 2, item 2, Part 2, item 138*]

7.176 Subsection 479(2) is repealed because the right of a liquidator to call a meeting and the circumstances in which creditors may do so are dealt with in Division 75 of the Insolvency Practice Schedule (Corporations). [*Schedule 2, item 2, Part 2 item 140*]

7.177 Section 495 which deals with the appointment of a liquidator in a members' voluntary winding up at a general meeting of the company is repealed and a new section 495 has been substituted. The substituted section 495 reflects the following changes:

- the references to remuneration in subsections 495(1), (3) and (5) have been removed because remuneration of an external administrator is now dealt with in Division 60 of the Insolvency Practice Schedule (Corporations);
- subsection 495(2) of the repealed section which deals with the exercise of directors' powers is now dealt with in section 198G which consolidates the provisions in Chapter 5 relating to the powers of officers while a company is under external administration. [*Schedule 2, item 2, Part 2, item 147*]

7.178 Section 496 sets out the duties of a liquidator in a creditors' voluntary winding up when the company turns out to be insolvent. Subsection 496(8) is amended consequential on there no longer being a requirement that the liquidator call an annual meeting of creditors in a creditors' voluntary winding up. [*Schedule 2, item 2, Part 2, item 148*]

7.179 Section 498 which deals with the power to adjourn a meeting is repealed consequential on the removal of the requirement in section 497 for a liquidator in a creditors' voluntary winding up to convene an initial meeting of creditors. [Schedule 2, item 2, Part 2, item 150]

7.180 Paragraph 506(1)(f) is repealed and replaced by the power given to an external administrator in Division 75 of the Insolvency Practice Schedule (Corporations) to convene meetings of creditors and to convene a general meeting of the company in the case of a members' voluntary winding up. [Schedule 2, item 2, Part 2, item 153]

7.181 Section 506A which deals with declarations by liquidators of relevant relationships is amended consequential on the removal of the requirement for an initial creditors' meeting under section 497 in a creditors' voluntary winding up. [Schedule 2, item 2, Part 2, item 154]

7.182 The amendments to section 509 are consequential on the removal of the obligation imposed on a liquidator in a creditors' voluntary winding up to convene a meeting of creditors when the affairs of a company are fully wound up. [Schedule 2, item 2, Part 2, item 156]

7.183 Section 546 which deals with resolutions passed at adjourned meetings of creditors and contributories is repealed and will be covered by rules in the Insolvency Practice Rules made under the rule-making power in section 75-50 of the Insolvency Practice Schedule (Corporations). [Schedule 2, item 2, Part 2, item 164]

Committees of inspection

7.184 The definition of a *committee of creditors* is repealed because in the context of a voluntary administration these committees are treated as a committee of inspection under Division 80 of the Insolvency Practice Schedule (Corporations). [Schedule 2, item 2, Part 2, item 62]

7.185 Division 5 of Part 5.6 of Chapter 5 is repealed because committees of inspection are dealt with in Division 80 of the Insolvency Practice Schedule (Corporations) and the Insolvency Practice Rules under rule-making powers in Division 80. [Schedule 2, item 2, Part 2, item 165]

Directions to creditors

7.186 Subsections 436F(2) and (3) relating to directions by a committee of creditors to an administrator are repealed. [Schedule 2, item 2, Part 2, item 94]

7.187 Subsection 479(1) which deals with directions given by creditors to a liquidator is repealed and these matters are now dealt with in section 85-5 of the Insolvency Practice Schedule (Corporations). [*Schedule 2, item 2, Part 2, item 140*]

Review of the external administration of a company

7.188 The amendment of paragraph 411(9)(b) is consequential on the Court's powers in relation to the supervision of liquidators being dealt with in Division 90 of the Insolvency Practice Schedule (Corporations). [*Schedule 2, item 2, Part 2, item 86*]

7.189 Section 447D which provides for an administrator to seek directions from the Court is repealed. Section 447E which provides for the supervision of the administrator of a company or a deed of company arrangement is also repealed. The matters in these sections are dealt with in Division 90 of the Insolvency Practice Schedule (Corporations). [*Schedule 2, item 2, Part 2, item 118*]

7.190 Section 449B which gives the Court power to remove an administrator is repealed because this matter is dealt with in Division 90 of the Insolvency Practice Schedule (Corporations). [*Schedule 2, item 2, Part 2, item 118*]

7.191 Section 449D which gives the Court power to appoint a replacement administrator is repealed because the Court is given this power in Division 90 of the Insolvency Practice Schedule (Corporations). [*Schedule 2, item 2, Part 2, item 125*]

7.192 The heading to section 472 is amended by removing the reference to an official liquidator because there is no longer such a category of liquidator. Subsections 472(1) and (2) are also amended consequential on the removal of the category of official liquidator. [*Schedule 2, item 2, Part 2, item 125*]

7.193 Subsection 472(6) relating to the Court's powers in relation to a provisional liquidator is repealed because the Court is given these supervisory powers in Division 90 of the Insolvency Practice Schedule (Corporations). It is noted that the substituted subsection 472(6) covers the matters in repealed subsection 473(8). [*Schedule 2, item 2, Part 2, item 132*]

7.194 Section 473 is repealed and the substituted section 473 only deals with the resignation of a liquidator. The Court's general supervisory powers in relation to an external administrator, including the power to remove an external administrator, are dealt with in Division 90 of the Insolvency Practice Schedule (Corporations) and the Court is also given powers to review a remuneration determination under Division 60 of that Schedule. [*Schedule 2, item 2, Part 2, item 133*]

7.195 Sections 502 to 504 are repealed because the Court's supervisory powers in relation to external administrators are dealt with in Division 90 of the Insolvency Practice Schedule (Corporations). The Court also is given power to review a remuneration determination under that Schedule. *[Schedule 2, item 2, Part 2, item 152]*

7.196 Subsections 511(1) and (2) are repealed and replaced by the Court's powers in relation to external administrators in Division 90 of the Insolvency Practice Schedule (Corporations). *[Schedule 2, item 2, Part 2, item 157]*

7.197 Section 536 is repealed and replaced by the Court's supervisory powers in Division 90 of the Insolvency Practice Schedule (Corporations). *[Schedule 2, item 2, Part 2, item 164]*

7.198 Section 547 is repealed because the Court is given the power to direct that meetings of creditors or contributories be convened in Division 90 of the Insolvency Practice Schedule (Corporations). *[Schedule 2, item 2, Part 2, item 164]*

Application and transitional provisions

Corporations Act 2001

General rules for application of Part 3 of the Insolvency practice Schedule (Corporations)

7.199 Part 3 of the Insolvency Practice Schedule (Corporations) applies in relation to a new external administration of a company.

- A new administration of a company is defined to mean an external administration of a company that starts on or after the commencement day. *[Schedule 2, Part 3, item 303, Division 1, sections 1550 and 1551 and Division 3, section 1580 and subsection 1579(1)]*

7.200 Part 3 of the Insolvency Practice Schedule (Corporations) applies in relation to an ongoing external administration of a company as set out in the transitional and application provisions but generally only in relation to new events that occur after the commencement day. Generally, the old Act continues to apply to old events and processes that are incomplete.

- An ongoing external administration is defined to mean an external administration of a company that started before the commencement day and ends after that day. *[Schedule 2, Part 3,*

item 303, Division 1, sections 1550 and 1551 and Division 3, section 1578 and subsection 1579(2)]

7.201 In most case, the old Act continues to apply to old administrations that have ended but that may have ongoing obligations or processes.

- The old Act is defined to mean the Corporations Act, as in force immediately before the commencement day and includes the old regulations. *[Schedule 2, Part 3, item 303, Division 1, sections 1550 and 1551 and Division 3, section 1578]*

Remuneration and other benefits received by external administrators

7.202 The general rule is that the requirements relating to the remuneration of an external administrator set out in Subdivision B to D of Division 60 of the Insolvency Practice Schedule (Corporations) apply in relation to an external administrator of a company under ongoing administration who is appointed on or after the commencement day. *[Schedule 2, Part 3 item 303, Division 3, section 1580]*

7.203 The old Act continues to apply in relation to the remuneration of an external administrator of a company who is appointed before the commencement day.

- An exception to this rule is that the meeting provisions in Division 75 of the Insolvency Practice Schedule (Corporations) will apply to a meeting that deals with the remuneration of an external administrator who is appointed before the commencement day unless the meeting is either convened or held before the commencement day. *[Schedule 2, Part 3, item 303, Division 3, section 1581]*

7.204 Section 60-20 of the Insolvency Practice Schedule (Corporations) sets out duties of external administrators in relation to deriving profit or advantage from the administration of the company and section 60-25 prohibits an external administrator from giving up remuneration to any other person. These sections will apply to an external administrator of an ongoing external administrator of a company whether or not the administrator was appointed before, on or after the commencement day. However, those sections do not apply in relation to any arrangement made before the commencement day. *[Schedule 2, Part 3, item 303, Division 3, section 1582]*

7.205 Sections 60-30 and 60-35 of the Insolvency Practice Schedule (Corporations) dealing with the remuneration and expenses of former administrators only apply where both the former and new administrator

mentioned in those sections are appointed on or after the commencement day. *[Schedule 2, Part 3, item 303, Division 3, section 1583]*

7.206 Where the remuneration of an external administrator is fixed under section 449E of the old Act, then the old Act continues to apply to any right of indemnity that the external administrator has as if the repeal of section 449E and the amendment of paragraph 443D(b) of the old Act had not happened. This rule applies whether the remuneration of the administrator of a company is fixed under section 449E of the old Act:

- before the commencement day; or
- on or after the commencement day (in accordance with a provision of this Division). In this context note that the general rule is that the old Act continues to apply in relation to the remuneration of an external administrator of a company who is appointed before the commencement day. *[Schedule 2, Part 3, item 303, Division 3, sections 1581 and 1584]*

7.207 Subsection 473(7) of the old Act provides that the Court may fill a vacancy in the office of an official liquidator appointed by the Court. Section 473 is repealed and section 473A now deals with the filling of a vacancy in the office of a liquidator appointed by the Court. Subsection 473A(1) applies whether or not the vacancy in the office of liquidator occurred before, on or after the commencement day. *[Schedule 2, Part 3, item 303, Division 3, section 1585]*

7.208 The new section 198G rationalises the requirements in the old Act dealing with the powers of the officers of a company under external administration and the provision applies in relation to an exercise of power or a performance of a function that occurs on or after the commencement day. Where a committee of inspection or the company's creditors, have given approval under subsection 499(4) of the old Act for a director to continue to perform or exercise the director's powers or functions, then subsections 198G(1) and (2) do not apply in relation to the director. *[Schedule 2, Part 3, item 303, Division 3, section 1586]*

Funds handling

7.209 The general rule is that Division 65 of the Insolvency Practice Schedule (Corporations) applies in relation to an ongoing administration of a company. *[Schedule 2, Part 3, item 303, Division 3, section 1587]*

7.210 If, immediately before the commencement day, a person has a liquidator's general account in relation to the external administration of a company or a company in a pooled group, then the account is taken, on and after the commencement day to be the administration account for the

company for the purposes of section 65-5 of the Insolvency Practice Schedule (Corporations). *[Schedule 2, Part 3, item 303, Division 3, section 1588]*

7.211 Sections 65-10 and 65-15 which deal with the obligations of an external administrator relating to paying money into the administration account do not apply in relation to money received before the commencement day. Paragraph 5.6.06 of the old regulations continues to apply in relation to money received before the commencement day. *[Schedule 2, Part 3, item 303, Division 3, section 1589 and Schedule 2, Part 3, item 303, Division 1, section 1551, definition of old regulations]*

7.212 Section 65-25 of the Insolvency Practice Schedule (Corporations) which sets out an external administrator's obligations in relation to paying money out of an administration account does not apply in relation to money received before the commencement day. *[Schedule 2, Part 3, item 303, Division 3, section 1590]*

7.213 Section 65-35 of the Insolvency Practice Schedule (Corporations) which sets out an external administrator's obligations in relation to receipts for payments into and out of the administration account does not apply in relation to money paid into or out of an administration account before the commencement day. *[Schedule 2, Part 3, item 303, Division 3, section 1591]*

7.214 Section 65-25 of the Insolvency Practice Schedule (Corporations) which sets out an external administrator's obligations in relation to the handling of securities does not apply in relation to negotiable instruments and other securities received before the commencement day. Regulation 5.6.07 of the old regulations continues to apply in relation to negotiable instruments and other securities received before the commencement day. Regulation 5.6.07 of the old regulations continues to apply in relation to bills, notes and other securities received before the commencement day. *[Schedule 2, Part 3, Division 3, item 303, section 1592 and Schedule 2, Part 3, item 303, Division 1, section 1551, definition of old regulations]*

Information

7.215 The general rule is that Division 70 of the Insolvency Practice Schedule (Corporations) applies in relation to an ongoing external administration of a company. *[Schedule 2, Part 3, item 303, Division 3, section 1593]*

7.216 Sections 70-5 (annual administration return) and 70-6 (end of administration return) apply in relation to the financial year starting on 1 July 2016 and later financial years. *[Schedule 2, Part 3, item 303, Division 3, subsection 1594(1)]*

7.217 Sections 438, 445J and 539 which relate to the lodgement of accounts under the old Act are repealed. The following application rules apply to these provisions:

- the repeal of these sections applies to periods starting on or after 1 July 2016;
- the provisions continue to apply to periods starting before 1 July 2016 and ending after that day as if as if the period ends on 30 June 2016; and
- for the avoidance of doubt, despite the repeal of those provisions, an audit of accounts lodged under the provisions may be continued as if the old Act continued to apply.
[Schedule 2, Part 3, item 303, Division 3, section 1594]

7.218 Section 70-10 setting out the requirements in relation to administration books does not apply to events that occur before the commencement day and in respect of which or because of which, entries or minutes are to be made. In respect of such events, section 531 of the old Act continues to apply. *[Schedule 2, Part 3, item 303, Division 3, section 1595]*

7.219 Sections 70-15 to 70-25 of the Insolvency Practice Schedule (Corporations) relating to the audit of administration books apply to books relating to an ongoing external administration whether or not the books are kept under a provision of the old Act or the Insolvency Practice Schedule (Corporations). *[Schedule 2, Part 3, item 303, Division 3, section 1596]*

7.220 Sections 70-30 and 70-31 which set out the requirements relating to the transfer of books imposed on a person who ceases to be the external administrator of a company apply in relation to a person who ceases to be the external administrator of a company on or after the commencement day. *[Schedule 2, Part 3 item 303, Division 3, subsection 1597(1)]*

7.221 Section 1298A deals with the transfer of books relating to the books of an externally administered body corporate when the registration of a liquidator, liquidator of a specified body corporate or an official liquidator is cancelled or suspended. Section 1298A does not apply in relation to a person whose registration as a liquidator is cancelled or suspended on or after the commencement day. *[Schedule 2, Part 3, item 303, Division 3, subsection 1597(2)]*

7.222 Section 70-35 of the Insolvency Practice Schedule (Corporations) which relates to the retention and destruction of books in relation to the external administration of a company applies to an ongoing external administration whether or not the books were kept under a

provision of the old Act or of the Insolvency Practice Schedule (Corporations). *[Schedule 2, Part 3, item 303, Division 3, subsection 1598(1)]*

7.223 If an external administration ends before the commencement day, then section 542 of the old Act continues to apply to the books of the company even if the retention period continues after the commencement day. Any consent that has been given by ASIC before the commencement day under subsections 542(3) and (4) to destroy books, then despite section 70-30 of the Insolvency Practice Schedule (Corporations), those books may be destroyed. *[Schedule 2, Part 3, item 303, Division 3, subsections 1598(2) and (3)]*

7.224 Subdivision D of Division 70 of the Insolvency Practice Schedule (Corporations), which relates to requests by creditors and other persons that an external administrator give information, provide a report or produce a document referred to in subsection 70-40(1), 70-45(1), 70-46(2), 70-47(2) or 70-50(1), applies whether or not the information, report or document, was obtained or generated, was made or prepared or is in respect of actions or events that occurred before, on or after the commencement day. *[Schedule 2, Part 3, item 303, Division 3, section 1599]*

7.225 Section 70-55 of the Insolvency Practice Schedule (Corporations) which relates to requests by the Commonwealth for information from an external administrator applies whether the information, report or document referred to in subsection 70-55(2) was obtained or generated, was made or prepared or is in respect of actions or events that occurred before, on or after the commencement day. *[Schedule 2, Part 3, item 303, Division 3, section 1600]*

7.226 Section 70-60 of the Insolvency Practice Schedule (Corporations) provides rule-making powers for rules to be made in the Insolvency Practice Rules in relation to reporting to ASIC by an external administrator. Section 70-60 applies whether or not the information, report or document was obtained or generated, was made or prepared or is in respect of actions or events that occurred before, on or after the commencement day. *[Schedule 2, Part 3, item 303, Division 3, section 1601]*

7.227 Section 540 of the old Act which gives the Court the power to make an order directing a liquidator to make good a default in lodging or making an application, return, account or other document continues to apply in relation to a notice referred to in subsection 540(1) that is served on a person before the commencement day. *[Schedule 2, Part 3, item 303, Division 3, section 1602]*

Meetings

7.228 The general transitional rule is:

- Division 75 of the Insolvency Practice Schedule (Corporations) applies in relation to an ongoing administration of a company; however,
- Division 75 does not apply in relation to a meeting convened or held before the commencement day. *Schedule 2, Part 3, item 303, Division 3, section 1603]*

7.229 Section 75-15 which sets out the circumstances when an external administrator must convene a meeting of creditors does not apply in relation to:

- requests made before the commencement day; or
- directions given before the commencement day; or
- resolutions passed before the commencement day. *[Schedule 2, Part 3, item 303, Division 3, subsection 1604(1)]*

7.230 Despite their repeal:

- Sections 497 and 498 of the old Act continue to apply on and after the commencement day in relation to a resolution for voluntary winding up that is passed before the commencement day;
- Subsection 477(4) of the old Act continues to apply on and after the commencement day if a meeting of creditors has not been held under section 497 of the old Act in relation to a voluntary winding up a resolution for which is passed before the commencement day. *[Schedule 2, Part 3, item 303, Division 3, subsection 1604(2)]*

7.231 Section 508 of the old Act sets out obligations imposed on a liquidator in a members' voluntary winding up and a creditors' voluntary winding up to convene a general meeting of the members in a members' voluntary winding up and to either convene a creditors' meeting or send out a report to creditors in the case of a creditors' voluntary winding up. The transitional provision in relation to the obligations under section 508 is:

- where a year mentioned in subsection 508(1) of the old Act starts before the commencement day but ends after that day; the,
- section 508 of the old Act continues to apply on and after the commencement day in relation to the company for that year. *[Schedule 2, Part 3, item 303, Division 3, section 1605]*

7.232 Section 509, which imposes obligations on a liquidator of members' voluntary winding up and a creditors' voluntary winding up, continue to apply in relation to companies that are fully wound up before the commencement day. [*Schedule 2, Part 3, item 303, Division 3, section 1606*]

7.233 There are transitional provisions which apply the old Act for certain meetings that are convened before the commencement day:

- where the administrator is required to convene a meeting of the company's creditors under section 439A of the old Act and the convening period ends on or after the commencement day and as at the commencement day, the meeting has not been convened:
 - then the old Act continues to apply on and after the commencement day in relation to the meeting;
- sections 445A and 445F of the old Act, which relate to a meeting of creditors to consider a variation of a deed of company arrangement, continue to apply on and after the commencement day in relation to meetings for which a notice under subsection 445F(2) is given before the commencement day;
- section 479 of the old Act continues to apply on or after the commencement day in relation to meetings which have been convened under subsection 479(2) or for which a direction or request is given under that subsection before the commencement day;
- subsection 496(8) of the old Act continues to apply on or after the commencement day in relation to meetings convened before the commencement day. [*Schedule 2, Part 3, item 303, Division 3, section 1607*]

7.234 Sections 75-41 to 75-45 of the Insolvency Practice Schedule (Corporations) apply whether a proposal has been voted on or a resolution passed before, on or after the commencement day. [*Schedule 2, Part 3, item 303, Division 3, section 1608*]

Committees of inspection

7.235 The general rule is that Division 80 of the Insolvency Practice Schedule (Corporations) applies in relation to a committee of inspection for an ongoing external administration of a company:

- that is appointed under that Division on or after the commencement day; or
- that is appointed under a provision of the old Act but is taken to be a committee of inspection under subsection 1610(2);
- however, Division 80 does not apply in relation to meetings of, or related to, a committee of inspection convened or held before the commencement day. *[Schedule 2, Part 3, item 303, Division 3, section 1609]*

7.236 The transitional rules applying when a committee is taken to be a committee of inspection under subsection 1610(2) are:

- in the case of a committee validly appointed under section 436E or 548 of the old Act on or before the commencement day, the committee of inspection is taken to be established under section 80-10 of the Insolvency Practice Schedule (Corporations) on the commencement day;
- in the case of a committee validly appointed under section 436E or 548 of the old Act but the committee is appointed on a day after the commencement day, the committee of inspection is taken to be appointed on that last day under section 80-10 of the Insolvency Practice Schedule (Corporations). This is to cover the position where before the commencement day the administrator or liquidator is required to convene a meeting of creditors but as at the commencement day the meeting has not been convened.
- the same rules apply in the case of a committee validly appointed under section 548A of the old Act. *[Schedule 2, Part 3, item 303, Division 3, section 1610]*

7.237 If, before the commencement day, the administrator of a company under administration is directed by a committee of creditors under subsection 436F(3) of the old Act to give a report then that section continues to apply on or after the commencement day in relation to the report. *[Schedule 2, Part 3, item 303, Division 3, section 1611]*

7.238 Members of a ‘continued committee’ are the members appointed to the committee under section 436E (in accordance with section 436G), 548, or 548A of the old Act. If a person is a member of a continued committee then sections 436G, 548 or 548A and section 550 continue to apply in relation to the person. A number of specific provisions of Division 80 of the Insolvency Practice Schedule (Corporations) are expressly excluded from applying to a member of a continued committee. *[Schedule 2, Part 3 item 303, Division 3, section 1612]*

7.239 Directions given under the old Act to an external administrator by creditors or a committee of inspection continue to apply and sections 80-35 and 85-5 of the Insolvency Practice Schedule (Corporations) apply to the directions whether or not the directions were given before, on or after the commencement day. [*Schedule 2, Part 3, item 303, Division 3, section 1613*]

7.240 Sections 80-55 and 80-60 of the Insolvency Practice Schedule (Corporations) relating to a member of a committee of inspection deriving a profit or advantage from the external administration of a company apply to arrangements made on or after the commencement day. [*Schedule 2, Part 3, items 303, Division 3, section 1615*]

Review of the external administration of a company

7.241 The general rule is that Division 90 of the Insolvency Practice Schedule (Corporations) applies in relation to an ongoing external administration whether or not the matter to be reviewed occurred before, on or after the commencement day. [*Schedule 2, Part 3, item 303, Division 3, section 1616*]

7.242 There is a general rule that applies if a court makes an order in relation to a person or the external administration of a company under the old Act that is inconsistent with a an Insolvency Practice Schedule (Corporations) provision. The general rule is that:

- the old Act order does not cease to have effect because a provision of the old Act under which it was made has been amended or repealed by Schedule 2 to the *Insolvency Law Reform Act 2014*;
- if the old Act order is inconsistent with a provision of this Act (the Corporations Act) that is amended or inserted by Schedule 2 to the *Insolvency Law Reform Act 2014* then, subject to this Part, the provision does not apply to the extent that it inconsistent with the old Act order. [*Schedule 2, Part 3, item 303, section 1617*]

7.243 The general rule is that if proceedings are brought under the old Act in relation to the external administration of a company, the old Act will continue to apply to those proceedings. [*Schedule 2, Part 3, item 303, section 1617*]

7.244 The following rules apply in relation to the Court's powers to inquire into and give orders:

- sections 90-5 and 90-10 of the Insolvency Practice Schedule (Corporations) apply whether or not the information, report or document was prepared before, on or after the commencement day;
- the Court's power to make an order in relation to the remuneration of an external administrator under paragraph 90-15(3)(f) of the Insolvency Practice Schedule (Corporations) applies whether or not the remuneration is paid or payable before, on or after the commencement day;
- the matters that the Court may take into account under subsection 90-15(4) of the Insolvency Practice Schedule (Corporations) applies whether or not the action or failure to act occurred before, on or after the commencement day;
- section 536 of the old Act continues to apply in relation to inquiries commenced by ASIC before the commencement day;
- new section 599 which relates to appeals from decisions of a receiver applies whether or not the act, omission or decision occurred before, on or after the commencement day. [*Schedule 2, Part 3, item 303, section 1619*]

7.245 Sections 90-24 and 90-26 which relate to the appointment of a reviewing liquidator apply whether or not the remuneration is paid or payable or the cost or expense is incurred or paid, before, on or after the commencement day. [*Schedule 2, Part 3, item 303, subsection 1620(2)*]

7.246 The periods referred to in paragraphs 90-26(4)(d) and (c), may include a period that:

- starts before the commencement day but ends after that day;
or
- starts and ends before the commencement day. [*Schedule 2, Part 3, item 303, subsection 1620(3)*]

7.247 Section 90-28 of the Insolvency Practice Schedule (Corporations) applies whether or not the books or information mentioned in paragraph 90-28(2)(a) were prepared before, on or after the commencement day. [*Schedule 2, Part 3, item 303, subsection 1620(4)*]

7.248 Rules made for the purposes of section 90-29 of the Insolvency Practice Rules (Corporations) may make provision for or in relation to costs and expenses incurred before, on or after the commencement day. [*Schedule 2, Part 3, item 303, subsection 1620(5)*]

7.249 Section 90-35 which related to the removal of an external administrator by creditors applies whether or not the external administrator was appointed before, on or after the commencement day. *[Schedule 2, Part 3, item 303, section 1621]*

7.250 The general rule relating to proceedings already begun in the Administrative Appeals Tribunal before the commencement day or on or after the commence day (in accordance with a provision in Part 3) will continue under the old Act. *[Schedule 2, Part 3, item 303, section 1622]*

7.251 Application provisions for other consequential amendments are provided for in Division 5 of Part 3. *[Schedule 2, Part 3, item 303, sections 1623 to 1635]*

7.252 Regulations may be made to deal with other transitional matters. *[Schedule 2, Part 3, item 303, section 1636]*

Chapter 8

Regulator powers and miscellaneous amendments

Outline of chapter

8.1 The Bill amends the Australian Securities and Investments Commission Act 2001 to provide ASIC with further powers to assist it in its oversight of the regulation of registered liquidators. In particular, the Bill amends the ASIC Act to:

- enable ASIC to require the provision of information and books as part of an ASIC proactive surveillance program;
- enable ASIC to provide administration information to a person with a material interest in the information; and
- improve the transparency of ASIC oversight of the corporate insolvency industry.

8.2 The Bill makes a range of miscellaneous amendments including an amendment of the Corporations Act to enable the assignment of an external administrator's statutory rights of action.

Context of amendments

8.3 The divergent regulatory approaches undertaken by ASIC and ITSA in relation to surveillance also affect the approaches that the respective regulators take to communicating with creditors. As part of ITSA's complaints handling processes, it may perform an examination of the file about which an allegation has been made and report the findings to the person who made the allegation. ASIC is constrained in the extent of any information that it might otherwise similarly provide.

8.4 ASIC currently conducts compliance and transaction reviews of registered liquidators where concerns are raised through complaints or other market intelligence. Significant concerns were raised during the Senate Inquiry regarding the absence of a proactive surveillance program for liquidators. The Senate Committee stated that the current approach to monitoring registered liquidators is inadequate and expressed concern that a complaints system alone cannot deter all misconduct.

8.5 Given the significant information, technical knowledge and technical skill asymmetries present in most insolvencies, creditors may not know when misconduct is occurring within an administration or may think it is occurring when it is not.

8.6 The current wording of some of the statutory powers to conduct investigations and to communicate the outcomes of those investigations under the Australian Securities and Investments Commission Act 2001 is more restrictive than the commensurate powers for ITSA under the Bankruptcy Act.

8.7 Where a stakeholder's attempts to obtain information from a practitioner are improperly obstructed by an insolvency practitioner, there is no power for the regulators to direct insolvency practitioners to provide information or otherwise facilitate access by creditors (or other parties, such as the debtor in personal insolvency) to information and records.

8.8 However, currently there is limited scope for ASIC to communicate information or provide copies of records to relevant stakeholders that have been obtained through their regulatory activities or under their information gathering powers. In personal insolvency the Inspector General can provide copies of reports that result from inquiries and investigations.

8.9 The personal insolvency regulator currently has extensive powers to obtain and disseminate information regarding personal insolvency matters.

8.10 In personal insolvency, the regulator may require a practitioner to answer an inquiry made to him or her in relation to any administration in which the trustee is, or has been, engaged. This power may be exercised whether or not a breach is suspected provided it is for the purpose of discharging ITSA's functions. ASIC does not have an equivalent power.

8.11 The ability to take civil action to recover company property inappropriately dissipated prior to business failure and hold directors liable for insolvent trading are key mechanisms to address phoenix activity. The inability to obtain funding is a major obstacle to the commencement of these actions. The taking of these actions may also delay the finalisation of administrations as a whole, ultimately to the detriment of creditors. The sale of rights of action may enable the value in such rights to be realised in the absence of funding being available and may result in the pursuit of matters which would not otherwise have been able to be pursued. There is some uncertainty as to whether statutory rights of action arising under the Corporations Act may be sold, which is limiting the sale of such rights.

Summary of new law

8.12 The reforms empower ASIC to give a registered liquidator a written notice to give specified information or produce specified books to assist ASIC in the performance of its functions and the exercise of its powers in relation to the requirements imposed on registered liquidators and for other limited purposes.

8.13 ASIC would also be able to obtain information from any person who is believed to have information that is relevant to an inquiry or investigation regarding a liquidator's compliance with their obligations.

8.14 The reforms also empower ASIC to share information obtained or generated by it in the exercise of its powers or performance of its functions in relation to registered liquidators, the external administration of companies and the receivership of the property of a corporation. This information may be shared with a variety of people including the corporation, the external administrator or receiver, related entities of the corporation, creditors and those reviewing an external administration. Alternatively, ASIC would be able to direct registered liquidators to provide such information directly.

8.15 In order to supplement the improved rights for creditors to require the calling of meetings, ASIC would be given a power to direct that a meeting of creditors be called. This new ability replicates a power currently available to the Inspector-General under the Bankruptcy Act.

8.16 The statutory powers of insolvency practitioners would be amended to clarify that a practitioner is empowered to assign statutory rights of action arising out of the Corporations Act that vest with the practitioner (or company) during an administration, to a third party.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
ASIC may, by written notice, require the production of information or books regarding an external administration from a registered liquidator or any other person. The intentional or reckless failure to provide the requested books is an offence punishable by 100 penalty units or 2 year imprisonment.	ASIC may require the production of books regarding an external administration from a registered liquidator. ASIC must not disclose information given to it in connection with the performance of its functions or the exercise of its powers. ASIC may provide information

<i>New law</i>	<i>Current law</i>
<p>ASIC may provide information obtained from a practitioner to a person with an interest in the administration of a company, where: the information requested relates to the person's affairs to a material extent; ASIC has notified the practitioner that it will be providing the information; and ASIC is satisfied that any objections by the practitioner should not preclude the provision of the information to the person.</p> <p>ASIC may place conditions on the use of the information provided to a person. Where a person does not comply with any such condition, the person will be committing an offence punishable by 10 penalty units or three months imprisonment.</p> <p>ASIC may provide information regarding the conduct of an insolvency practitioner to a prescribed body, other than a prescribed professional disciplinary body. ARITA will be listed as a prescribed body for the purposes of this provision.</p> <p>ASIC must report on its regulation of the insolvency industry in its annual report</p>	<p>regarding the conduct of an insolvency practitioner to a prescribed professional disciplinary body.</p> <p>ASIC may provide information regarding a corporate insolvency matter, or the conduct of a liquidator, to another Government department or agency where the information will enable or assist that department or agency to perform its functions.</p>

Detailed explanation of new law

Notice to registered liquidators concerning information and books

8.17 New powers are given to ASIC in relation to a registered liquidator to seek specified information and to produce specified books in order to facilitate ASIC's surveillance activities (see below under consequential amendments). *Schedule 2, Part 2, item 10 section 30B*

8.18 ASIC may give a registered liquidator a written notice requiring the liquidator to give specified information and to produce specified books to a specified member of staff at a specified place and time. ASIC may extend the period within which the registered liquidator must give the information or produce the books to which a notice relates. *[Schedule 2, Part 2, item 10, subsections 30B(1) and(6)]*

8.19 ASIC may only exercise these powers:

- for the purposes of the performance or exercise of any of ASIC's functions and powers in relation to liquidator requirements (see below); or
- for the purposes of ascertaining compliance with the liquidator requirements; or
- in relation to:
 - an alleged or suspected contravention of the liquidator requirements; or
 - an alleged or suspected contravention of a law of the Commonwealth, or of a State or Territory in that jurisdiction, being a contravention that relates to the performance or exercise of a registered liquidator's functions, duties or powers and that either concerns the management of the affairs of a body corporate or involves fraud or dishonesty and relates to a body corporate; or
 - for the purposes of an investigation under Division 1 of the ASIC Act relating to a contravention referred to in the preceding subparagraph. [Schedule 2, Part 2, item 10, subsection 30B(2)]

8.20 **Liquidator requirements** are defined to mean the requirements in relation to registered liquidators, the external administration of companies and the receivership of the property of corporations under:

- Chapter 5 of the Corporations Act;
- Schedule 2 to that Act (the Insolvency Practice Schedule (Corporations)); and
- other provisions of that Act that relate to that Chapter or Schedule. [Schedule 2, Part 2, item 5, subsection 30B(3)]

8.21 A notice given by ASIC to a registered liquidator may specify information or books that relate to any or all of the following:

- the policies relating to the external administration of companies and the receivership of the property of corporations that the registered liquidator has adopted or proposes to adopt;

- the procedures relating to the external administration of companies and the receivership of the property of corporations that the registered liquidator has put in place or proposes to put in place;
- the external administration of a company, that the registered liquidator has conducted, is conducting or is proposing to conduct;
- any other matter relating to the external administration of companies or the receivership of the property of corporations that is prescribed. *[Schedule 2, Part 2, item 10, subsection 30B(4)]*

8.22 A registered liquidator to whom ASIC has given a notice must comply with the request even if giving the information or producing the books would involve a breach of an obligation of confidentiality that the registered liquidator owes to:

- a company that is, has been or is likely to be under external administration; or
- a corporation the property of which is, has been or is likely to be under receivership. *[Schedule 2, Part 2, item 10, subsection 30B(6)]*

8.23 ASIC may give to a person a written notice requiring the production of specified books that:

- are in the person's possession or control; and
- relate to the question whether a registered liquidator has complied with liquidator requirements, within the meaning of subsection 30B(3). *[Schedule 2, Part 2, item 11, subsection 33(3)]*

ASIC may give information and books in relation to Chapter 5 bodies corporate

8.24 ASIC's power to give information applies where ASIC obtains or generates information or books in the exercise of its powers or the performance of its functions in relation to:

- a person in that capacity as a registered liquidator; or
- the external administration of a company; or
- the receivership of property of a corporation. *[Schedule 2, Part 2, item 14, subsection 39C(1)]*

8.25 ASIC may give the information or books (administrative information) to one or more specified persons. ASIC must not give the information to a person unless ASIC is satisfied that:

- the administration information is relevant to the person;
- the administration information is relevant to the exercise of a power or the performance of a function under the Corporations Act by the person in relation to:
 - a registered liquidator;
 - the external administration of a company;
 - the receivership of property of a corporation; or
 - it is otherwise reasonable to give the administration information to the person. *[Schedule 2, Part 2, item 14, subsection 39C(3)]*

8.26 ASIC must comply with a detailed process before it can release the administration information to the person. If ASIC imposes a condition on the use of the information, a person who fails to comply with the condition commits an offence with a penalty of 10 penalty units or imprisonment for 3 months or both. *[Schedule 2, Part 2, item 14, subsections 39C(4), (5), (6), (7), (8),(9) and (10)]*

Miscellaneous amendments

Corporations Act 2001

8.27 An administrator is required to consider whether the company to which they have been appointed would retain any equipment or other property in the company's possession that is owned by a third party. An administrator who decides not to retain such property must notify the owner of that decision within 5 business days after the commencement of the administration. The law is amended to require the administrator to advise the third parties of the location of their property when they are advising those parties that they do not intend to use the property in an administration. *[Schedule 3, Part 1, item 1, subsection 443B(3)]*

8.28 Creditors have the right to resolve to terminate deeds of company arrangement that have been breached or to apply to the Court for remedial action. However, there is no statutory requirement for a deed of company arrangement administrator or for the directors of the company to inform creditors that a breach of the deed of company arrangement has

occurred. The law is amended to require the deed administrator or the directors to notify creditors. *[Schedule 3, Part 2, item 2, section 445HA]*

8.29 A number of incorrect cross-references in section 161A which relates to the use of a company's former name are corrected. *[Schedule 3, Part 2, items 5, 6 and 7, section 161A]*

8.30 Where the Court makes an order terminating a deed of company arrangement and winding up a company, or where a provision in a deed of company arrangement provides for the termination and the winding up of a company is triggered no provision has been made for a liquidator to be appointed to the subsequent liquidation. This error has been rectified. *[Schedule 3, Part 4, items 8 to 16]*

8.31 A number of difficulties with the definition of relation back day are addressed. *[Schedule 3, Part 5, items 17 and 18, section 91]*

8.32 Part 6 of Schedule 3 contains further miscellaneous amendments. Most of these amendments will relate to the lodgement of documents with ASIC which require a notice to be in the prescribed form. *[Schedule 3, Part 6, items 22 to 33]*

8.33 Part 7 of Schedule 3 contains application provisions for the amendments in Schedule 3. *Schedule 3, Part 7 item 34*

Consequential amendments

Australian Securities and Investments Commission Act 2001

8.34 There are a number of amendments consequential on the insertion of new section 30B. *[Schedule 2, Part 2, items 9, 12, 13, 15 and 16]*