

EXPOSURE-DRAFT

2010-2011-2012-2013

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT

Insolvency Law Reform Bill 2013

No. , 2013

(Treasury)

A Bill for an Act to amend the law in relation to the administration of corporations that owe debts, the administration of the estates of individuals who owe debts, and the practitioners involved in those administrations, and for related purposes

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1 **A Bill for an Act to amend the law in relation to the**
2 **administration of corporations that owe debts, the**
3 **administration of the estates of individuals who owe**
4 **debts, and the practitioners involved in those**
5 **administrations, and for related purposes**

6 The Parliament of Australia enacts:

7 **1 Short title**

8 This Act may be cited as the *Insolvency Law Reform Act 2013*.

9 **2 Commencement**

10 (1) Each provision of this Act specified in column 1 of the table
11 commences, or is taken to have commenced, in accordance with

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1 column 2 of the table. Any other statement in column 2 has effect
2 according to its terms.

3

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedules 1 and 2	A day or days to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

4 Note: This table relates only to the provisions of this Act as originally
5 enacted. It will not be amended to deal with any later amendments of
6 this Act.

7 (2) Any information in column 3 of the table is not part of this Act.
8 Information may be inserted in this column, or information in it
9 may be edited, in any published version of this Act.

10 3 Schedule(s)

11 Each Act that is specified in a Schedule to this Act is amended or
12 repealed as set out in the applicable items in the Schedule
13 concerned, and any other item in a Schedule to this Act has effect
14 according to its terms.
15

1 **Schedule 1—Uniform insolvency practice**
2 **rules**
3

4 *Bankruptcy Act 1966*

5 **1 At the end of the Act**

6 Add:

7 **Schedule 2—Insolvency Practice Rules**

8 Note: See section 4A.

9 **Part 1—Definitions**

10 **Division 1—Introduction**

11 **1-5 Guide to this Part**

12 *[To be drafted after consultation]*

13 **Division 2—The Dictionary**

14 **2-5 The Dictionary**

15 In this Schedule:

16 *adequate and appropriate fidelity insurance* has a meaning
17 affected by subsection 10-5(2).

18 *adequate and appropriate professional indemnity insurance* has a
19 meaning affected by subsection 10-5(2).

20 *administration account* has the meaning given by section 24-10.

21 *annual administration return* means the return required to be
22 lodged under subsection 26-10(2).

23 *annual trustee return* means the return required to be lodged under
24 subsection 12-5(1).

25 *creditor*, when used in relation to a debtor's estate, means a
26 creditor of the estate.

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Schedule 1 Uniform insolvency practice rules

- 1 *current conditions* has the meaning given by section 3-5.
- 2 *default remuneration amount*, for a trustee of a regulated debtor's
3 estate, has the meaning given by section 22-30.
- 4 *notified estate charge* has the meaning given by subsection
5 8-80(7).
- 6 *registered trustee* means a person who is registered as a trustee
7 under Part 2 of this Schedule, but does not include a person whose
8 registration is suspended.
- 9 *Register of Trustees* means the register established and maintained
10 by the Inspector-General under section 6-5.
- 11 *regulated debtor* has the meaning given by section 3-10.
- 12 *regulated debtor's estate* has the meaning given by section 3-12.
- 13 *remuneration determination*, for a trustee of a regulated debtor's
14 estate, means a determination made in accordance with
15 section 22-15 in relation to the trustee.
- 16 *trustee of a regulated debtor's estate* has the meaning given by
17 section 3-15.

18 **Division 3—Other definitions**

19 **3-5 Meaning of *current conditions***

- 20 (1) Each of the following is a *current condition* imposed on a
21 registered trustee:
- 22 (a) a condition that a committee decides that the registered
23 trustee is to be subject to under subsection 8-25(5) or (6),
24 subject to any variation that a committee has decided should
25 be made to the condition under section 8-60;
- 26 (b) a condition that a committee decides that the registered
27 trustee is to be subject to under paragraph 16-70(1)(f) or (g),
28 subject to any variation that a committee has decided should
29 be made to the condition under section 8-60;
- 30 (c) a condition imposed under subsection 16-20(2), subject to
31 any variation that the Court orders under section 17-5;

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- 1 (d) a condition imposed on all registered trustees, or on
2 registered trustees of the trustee's class, under section 8-40;
3 (e) a condition imposed on the registered trustee by the Court
4 under section 17-5.

5 (2) However, the *current conditions* imposed on a registered trustee
6 do not include:

- 7 (a) a condition that a committee has decided to remove under
8 section 8-60; or
9 (b) a condition that the Court has ordered be removed under
10 section 17-5.

11 **3-10 Meaning of *regulated debtor***

12 A person is a *regulated debtor* if the person is:

- 13 (a) a bankrupt who is not covered by paragraph (d); or
14 (b) a person whose property is subject to control under
15 Division 2 of Part X; or
16 (c) a debtor under a personal insolvency agreement; or
17 (d) a deceased bankrupt whose estate is being administered
18 under Part XI.

19 **3-12 Meaning of *regulated debtor's estate***

20 An estate is a *regulated debtor's estate* if it is:

- 21 (a) in relation to a bankrupt—the estate of the bankrupt; and
22 (b) in relation to a person whose property is subject to control
23 under Division 2 of Part X—the estate of the person; and
24 (c) in relation to a debtor under a personal insolvency
25 agreement—the estate of the debtor; and
26 (d) in relation to a deceased debtor—the estate of the debtor.

27 **3-15 Meaning of *trustee of a regulated debtor's estate***

28 A person is the *trustee of a regulated debtor's estate* if the person
29 is:

- 30 (a) in relation to a bankrupt who is not covered by
31 paragraph (d)—the trustee of the bankrupt's estate; and
32 (b) in relation to a person whose property is subject to control
33 under Division 2 of Part X—the controlling trustee; and

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Schedule 1 Uniform insolvency practice rules

- 1 (c) in relation to a debtor under a personal insolvency
2 agreement—the trustee of the agreement; and
3 (d) in relation to a deceased bankrupt whose estate is being
4 administered under Part XI—the trustee administering the
5 estate under that Part.

6 **3-20 References to the trustee of a regulated debtor's estate**

7 A reference in this Schedule to the trustee of a regulated debtor's
8 estate is to be read:

- 9 (a) in relation to a regulated debtor's estate in respect of which
10 there are 2 or more joint trustees—as a reference to all of the
11 trustees; and
12 (b) in relation to a regulated debtor's estate in respect of which
13 there are 2 or more joint and several trustees—as a reference
14 to all of the trustees or any one or more of the trustees.

15 **Part 2—Registering and disciplining practitioners**

16 **Division 4—Introduction**

17 **4-5 Guide to this Part**

18 *[To be drafted after consultation]*

19 **4-10 Object**

- 20 (1) The object of this Part is to set appropriate standards to be met by
21 practitioners working in insolvency.
22 (2) This object is achieved by:
23 (a) providing for the registration of practitioners; and
24 (b) providing for procedures by which disciplinary action may be
25 taken if appropriate standards are not met.

26 **4-15 Working cooperatively with ASIC**

27 In performing his or her functions and exercising his or her powers
28 under this Act in relation to persons who are, have been or may
29 become both registered trustees under this Act and registered

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Uniform insolvency practice rules **Schedule 1**

1 liquidators under the *Corporations Act 2001*, the Inspector-General
2 must work cooperatively with ASIC.

3 **Division 6—Register of trustees**

4 **6-5 Register of Trustees**

- 5 (1) The Inspector-General must establish and maintain a Register of
6 Trustees.
- 7 (2) The Register of Trustees may be kept in any form that the
8 Inspector-General considers appropriate.
- 9 (3) The regulations may make provision for and in relation to the
10 Register of Trustees.
- 11 (4) Without limiting subsection (3), regulations made for the purposes
12 of that subsection may deal with:
13 (a) the details to be entered on the Register of Trustees; and
14 (b) the parts of the Register that are to be made available to the
15 public.
- 16 (5) Without limiting paragraph (4)(a), those details may include:
17 (a) details of any disciplinary action decided by a committee
18 under section 16-70; and
19 (b) details of persons who have had their registration as a trustee
20 under this Act suspended or cancelled.

21 **Division 8—Registering trustees**

22 **Subdivision A—Introduction**

23 **8-5 Guide to this Division**

24 **Subdivision B—Registration**

25 **8-10 Application for registration**

- 26 (1) An individual may apply to the Inspector-General to be registered
27 as a trustee.

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Schedule 1 Uniform insolvency practice rules

- 1 (2) The application must be lodged with the Inspector-General in the
2 approved form.
- 3 (3) The application must be accompanied by an application fee
4 determined by the Minister by legislative instrument.
- 5 (4) The application is properly made if subsections (2) and (3) are
6 complied with.

8-15 Inspector-General may convene a committee to consider

- 8 (1) The Inspector-General may convene a committee for the purposes
9 of considering an application, or applications, for registration as a
10 trustee.
- 11 (2) The committee must consist of:
12 (a) the Inspector-General; and
13 (b) a registered trustee chosen by the Insolvency Practitioners
14 Association of Australia (ACN 002 472 362); and
15 (c) a person appointed by the Minister.

16 Note: Section 18-10 sets out the matters of which the Minister must be
17 satisfied before making an appointment under paragraph (c).

8-20 Inspector-General must refer applications to a committee

- 18 (1) The Inspector-General must refer an application that is properly
19 made to a committee for consideration.
- 20 (2) The Inspector-General must do so within 6 months after receiving
21 the application.
22

8-25 Committee to consider applications

- 23 (1) If an application is referred to a committee, the committee must
24 consider the application.
25
- 26 (2) For the purposes of considering the application, the committee:
27 (a) must interview the applicant; and
28 (b) may require the applicant to sit for an exam.
- 29 (3) Within 45 business days after interviewing the applicant, the
30 committee must decide whether the applicant should be registered
31 as a trustee or not.

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Uniform insolvency practice rules **Schedule 1**

- 1 (4) The committee must decide that the applicant should be registered
2 if it is satisfied that the applicant:
- 3 (a) has the qualifications, experience, knowledge and abilities
4 prescribed by regulation; and
 - 5 (b) will take out adequate and appropriate professional indemnity
6 and fidelity insurance against the liabilities that the applicant
7 may incur working as a registered trustee; and
 - 8 (c) has not been convicted, within 10 years before making the
9 application, of an offence involving fraud or dishonesty; and
 - 10 (d) is not, and has not been within 10 years before making the
11 application:
 - 12 (i) an insolvent under administration; or
 - 13 (ii) a person who is a party as debtor under a debt
14 agreement under Part IX of the *Bankruptcy Act 1966*, or
15 the corresponding provisions of a law of an external
16 Territory or a law of a foreign country; and
 - 17 (e) has not had his or her registration as a trustee under this Act
18 cancelled within 10 years before making the application,
19 other than in response to a written request by the applicant to
20 have the registration cancelled; and
 - 21 (f) has not had his or her registration as a liquidator under the
22 *Corporations Act 2001* cancelled within 10 years before
23 making the application, other than in response to a written
24 request by the applicant to have the registration cancelled;
25 and
 - 26 (g) is not disqualified from managing corporations under
27 Part 2D.6 of the *Corporations Act 2001*, or under a law of an
28 external Territory or a law of a foreign country; and
 - 29 (h) is otherwise a fit and proper person; and
 - 30 (i) is resident in Australia.
- 31 (5) The committee may decide that the applicant should be registered
32 even if the committee is not satisfied of a matter mentioned in
33 paragraph (4)(a) or (i), provided the committee is satisfied that the
34 applicant would be suitable to be registered as a trustee if the
35 applicant complied with conditions specified by the committee.
- 36 (6) The committee may decide that the applicant's registration is to be
37 subject to any other condition specified by the committee.
-

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Schedule 1 Uniform insolvency practice rules

- 1 (7) Nothing in this section affects the operation of Part VIIC of the
2 *Crimes Act 1914* (which includes provisions that, in certain
3 circumstances, relieve persons from the requirement to disclose
4 spent convictions and require persons aware of such convictions to
5 disregard them).

6 **8-30 Committee to report**

7 The committee must give the applicant and the Inspector-General a
8 report setting out:

- 9 (a) the committee's decision on the application; and
10 (b) the committee's reasons for that decision; and
11 (c) if the committee decides under subsection 8-25(5) or (6) that
12 the applicant should be registered subject to a condition:
13 (i) the condition; and
14 (ii) the committee's reasons for imposing the condition.

15 **8-35 Registration**

- 16 (1) The Inspector-General must register the applicant as a trustee if:
17 (a) the committee has decided that the applicant should be
18 registered; and
19 (b) the applicant has paid the registration fee determined by the
20 Minister by legislative instrument; and
21 (c) the applicant has produced evidence in writing to the
22 Inspector-General that the applicant has taken out adequate
23 and appropriate professional indemnity and fidelity insurance
24 against the liabilities that the applicant may incur working as
25 a registered trustee.
- 26 (2) The Inspector-General registers an applicant by entering on the
27 Register of Trustees the details relating to the applicant prescribed
28 for the purposes of subsection 6-5(3).
- 29 (3) The registration is subject to the current conditions imposed on the
30 registered trustee.
- 31 (4) After registering a person as a trustee, the Inspector-General must
32 give the person a certificate of registration.
- 33 (5) The certificate may be given electronically.

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Uniform insolvency practice rules **Schedule 1**

1 (6) The registration has effect for 3 years.

2 **8-40 Conditions imposed on all registered trustees or a class of**
3 **registered trustees**

4 (1) The regulations may impose conditions on all registered trustees,
5 or registered trustees of a specified class.

6 (2) Without limiting subsection (1), a condition may be imposed
7 limiting the kinds of activity in which the trustee may engage,
8 either for the duration of the registration or for a shorter period.

9 **Subdivision C—Varying conditions of registration**

10 **8-45 Application to vary conditions of registration**

11 (1) If a committee has decided under this Schedule that a person's
12 registration as a trustee is to be subject to a condition, the person
13 may apply to the Inspector-General for the condition to be varied
14 or removed.

15 (2) The application must be lodged with the Inspector-General in the
16 approved form.

17 (3) The application is properly made if subsection (2) is complied
18 with.

19 (4) A single application by a registered trustee may deal with more
20 than one condition.

21 **8-50 Inspector-General may convene a committee to consider**
22 **applications**

23 (1) The Inspector-General may convene a committee for the purposes
24 of considering an application, or applications, made under
25 section 8-45 (application to vary conditions of registration).

26 (2) The committee must consist of:
27 (a) the Inspector-General; and
28 (b) a registered trustee chosen by the Insolvency Practitioners
29 Association of Australia (ACN 002 472 362); and
30 (c) a person appointed by the Minister.

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Schedule 1 Uniform insolvency practice rules

1 Note: Section 18-10 sets out the matters of which the Minister must be
2 satisfied before making an appointment under paragraph (c).

3 **8-55 Inspector-General must refer applications to a committee**

- 4 (1) The Inspector-General must refer an application that is properly
5 made under section 8-45 to a committee convened under
6 section 8-50 for consideration.
- 7 (2) The Inspector-General must do so within 6 months after receiving
8 the application.

9 **8-60 Committee to consider applications**

- 10 (1) If an application is referred to a committee, the committee must
11 consider the application.
- 12 (2) For the purposes of considering the application, the committee
13 must interview the applicant.
- 14 (3) Within 10 business days after interviewing the applicant, the
15 committee must:
- 16 (a) decide whether the condition or conditions to which the
17 application relates should be varied or removed; and
18 (b) if a condition is to be varied, specify the way in which it is to
19 be varied.

20 **8-65 Committee to report**

- 21 The committee must give the applicant and the Inspector-General a
22 report setting out:
- 23 (a) the committee's decision on the application; and
24 (b) the committee's reasons for that decision; and
25 (c) if the committee decides that a condition should be varied—
26 the variation that is to be made.

27 **8-70 Inspector-General must give effect to the committee's decision**

28 If the committee decides that a condition imposed on a registered
29 trustee is to be varied or removed, the Inspector-General must alter
30 the Register of Trustees to reflect the decision.

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1 **Subdivision D—Renewal**

2 **8-75 Application for renewal**

- 3 (1) An individual may apply to the Inspector-General to have the
4 individual's registration as a trustee renewed.
- 5 (2) The application must be lodged with the Inspector-General in the
6 approved form.
- 7 (3) If an individual applies to have his or her registration as a trustee
8 renewed, the individual must, at least 1 month before the expiry of
9 the registration, pay the renewal fee determined by the Minister by
10 legislative instrument. If the renewal fee is not paid before that
11 time, an additional amount equal to 20% of the renewal fee is
12 payable by the applicant by way of penalty.
- 13 (4) The application is properly made if subsection (2) is complied
14 with.

15 **8-80 Renewal**

- 16 (1) On application under section 8-75, the Inspector-General must
17 renew the registration of the applicant as a trustee if:
18 (a) the application is properly made; and
19 (b) the applicant has paid the renewal fee determined by the
20 Minister under subsection 8-75(3), and any late payment
21 penalty under that subsection; and
22 (c) the applicant has produced evidence in writing to the
23 Inspector-General that the applicant has taken out adequate
24 and appropriate professional indemnity and fidelity insurance
25 against the liabilities that the applicant may incur working as
26 a registered trustee; and
27 (d) the applicant does not owe more than the prescribed amount
28 of notified estate charges; and
29 (e) the applicant has complied with any condition dealing with
30 continuing professional education to which the applicant is
31 subject during the applicant's current registration.
- 32 (2) The Inspector-General renews the registration of the applicant by
33 entering, or maintaining, on the Register of Trustees the details

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- 1 relating to the applicant prescribed for the purposes of subsection
2 6-5(3).
- 3 (3) The renewed registration is subject to the current conditions
4 imposed on the registered trustee.
- 5 (4) After renewing the registration of a person as a trustee, ASIC must
6 give the person a certificate of registration.
- 7 (5) The certificate may be given electronically.
- 8 (6) The renewed registration has effect for 3 years.
- 9 (7) A person owes a *notified estate charge* if:
10 (a) the person owes either of the following:
11 (i) a charge under the *Bankruptcy (Estate Charges) Act*
12 *1997* (the *estate charge*);
13 (ii) a penalty under section 281 (late payment penalty) of
14 this Act in respect of that charge; and
15 (b) the Inspector-General notified the person of the unpaid estate
16 charge at least one month and 10 business days before the
17 person's registration as a trustee ceases to have effect.

18 **Subdivision E—Offences relating to registration**

19 **8-85 False representation that person is a registered trustee**

20 A person commits an offence if:

- 21 (a) the person makes a representation; and
22 (b) the representation is that the person is a registered trustee;
23 and
24 (c) the representation is false.

25 Penalty: 30 penalty units.

26 **Division 10—Insurance**

27 **10-5 Registered trustees to maintain insurance**

- 28 (1) A registered trustee must maintain:
29 (a) adequate and appropriate professional indemnity insurance;
30 and

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- 1 (b) adequate and appropriate fidelity insurance;
2 against the liabilities that the trustee may incur working as a
3 registered trustee.
- 4 (2) The Inspector-General may, by legislative instrument, determine
5 what constitutes adequate and appropriate professional indemnity
6 insurance, and adequate and appropriate fidelity insurance, in
7 relation to either or both of the following:
8 (a) specified circumstances;
9 (b) specified registered trustees.
- 10 (3) A person commits an offence if:
11 (a) the person is subject to a requirement under subsection (1);
12 and
13 (b) the person intentionally or recklessly fails to comply with the
14 requirement.
- 15 Penalty: 1,000 penalty units.
- 16 (4) A person commits an offence of strict liability if:
17 (a) the person is subject to a requirement under subsection (1);
18 and
19 (b) the person fails to comply with the requirement.
- 20 Penalty: 60 penalty units.
- 21 Note: For offences of strict liability, see subsection 6.1(1) of the *Criminal*
22 *Code*.

23 **Division 12—Annual trustee returns**

24 **12-5 Annual trustee returns**

- 25 (1) A person who is a registered trustee during all or part of a return
26 year for the person must, within 1 month after the end of that year,
27 lodge with the Inspector-General a return that conforms with
28 subsection (3).
- 29 (2) A *return year* for a person who is, or has at any time been, a
30 registered trustee is:
31 (a) the period of 12 months beginning on the day the person first
32 began to be registered as a trustee; and
33 (b) each subsequent period of 12 months.

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- 1 (3) A return under subsection (1) must:
2 (a) be in the approved form; and
3 (b) include evidence that the person has maintained adequate and
4 appropriate professional indemnity and fidelity insurance
5 against the liabilities that the person may incur working as a
6 registered trustee during the whole of any period of the year
7 during which the person was registered as a trustee.
- 8 (4) The Inspector-General may, on the application of a registered
9 trustee made before the end of the period for lodging a return under
10 subsection (1), extend, or further extend, that period.
- 11 (5) A person commits an offence of strict liability if:
12 (a) the person is subject to a requirement under subsection (1);
13 and
14 (b) the person fails to comply with the requirement.
- 15 Penalty: 5 penalty units.
- 16 Note: For offences of strict liability, see subsection 6.1(1) of the *Criminal*
17 *Code*.

18 Division 14—Notice requirements

19 14-5 Notice of significant events

- 20 (1) A registered trustee must lodge with the Inspector-General a
21 notice, in the approved form, if any of the following occur:
22 (a) the trustee becomes an insolvent under administration;
23 (b) the trustee becomes a party as debtor under a debt agreement
24 under Part IX of this Act, or the corresponding provisions of
25 a law of an external Territory or a law of a foreign country;
26 (c) a bankruptcy notice is issued under this Act in relation to the
27 trustee as debtor, or a corresponding notice is issued in
28 relation to the trustee as debtor under a law of an external
29 Territory or a law of a foreign country;
30 (d) the trustee is convicted of an offence involving fraud or
31 dishonesty;
32 (e) the trustee is disqualified from managing corporations under
33 Part 2D.6 of the *Corporations Act 2001*, or under a law of an
34 external Territory or a law of a foreign country;
35 (f) the trustee ceases to have:
-

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- 1 (i) adequate and appropriate professional indemnity
2 insurance; or
3 (ii) adequate and appropriate fidelity insurance;
4 against the liabilities that the trustee may incur working as a
5 registered trustee;
6 (g) the trustee is issued with a notice under section 16-50 of the
7 *Corporations Act 2001* in relation to the trustee's registration
8 as a liquidator under that Act;
9 (h) the trustee's registration as a liquidator under the
10 *Corporations Act 2001* is suspended or cancelled;
11 (i) information included in an annual trustee return, or in an
12 annual administration return, prepared by or on behalf of the
13 trustee is or becomes inaccurate;
14 (j) any other event prescribed by regulation.
15 The notice must be lodged within 5 business days after the
16 registered trustee could reasonably be expected to be aware that the
17 event has occurred.

- 18 (2) A person commits an offence if:
19 (a) the person is subject to a requirement under subsection (1);
20 and
21 (b) the person intentionally or recklessly fails to comply with the
22 requirement.

23 Penalty: 100 penalty units.

24 **Division 16—Disciplinary and other action**

25 **Subdivision A—Introduction**

26 **16-5 Guide to this Division**

27 *[To be drafted after consultation]*

28 **Subdivision B—Direction to comply**

29 **16-10 Trustee to remedy failure to lodge etc. documents**

- 30 (1) This section applies if a registered trustee fails to comply with a
31 requirement to lodge, make or give any document that the trustee is
32 required under this Schedule to lodge, make or give.

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- 1 (2) The Inspector-General may, in writing, direct the trustee to comply
2 with the requirement within 10 business days after the notice is
3 given.
- 4 (3) The Inspector-General may withdraw a direction given under
5 subsection (2).
- 6 (4) If the trustee does not comply within that period, the
7 Inspector-General may do either or both of the following:
8 (a) give a direction under subsection 16-20(1) (direction not to
9 accept further appointments);
10 (b) apply to the Court for an order under section 30 or 17-5
11 directing the trustee to comply with the requirement within
12 such time as is specified in the order.
- 13 (5) A direction under subsection (2) is not a legislative instrument.
- 14 (6) Nothing in this section prejudices the operation of any law
15 imposing penalties on a trustee in relation to such a failure to
16 comply.

17 **16-15 Trustee to correct inaccuracies**

- 18 (1) This section applies if the Inspector-General reasonably suspects
19 that information in any document that a registered trustee is
20 required under this Schedule to lodge, make or give is incomplete
21 or incorrect in any particular.
- 22 (2) The Inspector-General may, in writing, direct the trustee to do any
23 or all of the following within a period of 10 business days after the
24 direction is given:
25 (a) confirm to the Inspector-General that the information in the
26 document is complete and correct;
27 (b) complete or correct the information (as the case requires);
28 (c) notify any persons specified by the Inspector-General in the
29 direction of the addition or correction.
- 30 (3) If the trustee does not comply within that period, the
31 Inspector-General may do either or both of the following:
32 (a) give a direction under subsection 16-20(1) (direction not to
33 accept further appointments);

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1 (b) apply to the Court for an order under section 30 or 17-5
2 directing the trustee to do a thing specified in the direction
3 within such time as is specified in the order.

4 (4) A direction under subsection (2) is not a legislative instrument.

5 (5) Nothing in this section prejudices the operation of any law
6 imposing penalties on the trustee in relation to giving incomplete
7 or incorrect information.

8 **16-20 Direction not to accept further appointments**

9 (1) The Inspector-General may direct a registered trustee not to accept
10 any further appointments as a trustee, or not to accept any further
11 appointments as a trustee during a period specified in the direction,
12 if the trustee has failed to comply with a direction given to the
13 trustee under section 16-10 (direction to remedy failure to lodge
14 etc. documents) or 16-15 (direction to correct inaccuracies).

15 (2) If the Inspector-General gives a direction to a registered trustee
16 under subsection (1), it is a condition of the trustee's registration
17 that the trustee must comply with the direction.

18 (3) The Inspector-General may withdraw a direction given under
19 subsection (1).

20 (4) The condition is removed from the trustee's registration if the
21 Inspector-General withdraws the direction.

22 (5) The registered trustee may apply to the Court for an order under
23 section 17-5 to vary or remove the condition from the trustee's
24 registration.

25 (6) A direction under subsection (1) is not a legislative instrument.

26 (7) Nothing in this section prejudices the operation of any law
27 imposing penalties on the trustee in relation to:

28 (a) a failure to comply with a requirement of the kind mentioned
29 in subsection 16-10(1); or

30 (b) giving incomplete or incorrect information.

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1 **Subdivision C—Automatic cancellation**

2 **16-30 Automatic cancellation**

- 3 (1) The registration of a person as a trustee is cancelled if:
- 4 (a) the person becomes an insolvent under administration; or
- 5 (b) the person becomes a party as debtor under a debt agreement
- 6 under Part IX of this Act, or the corresponding provisions of
- 7 a law of an external Territory or a law of a foreign country;
- 8 or
- 9 (c) the person dies.
- 10 (2) The cancellation takes effect on the day the event mentioned in
- 11 subsection (1) happens.

12 **Subdivision D—Inspector-General may suspend or cancel**

13 **registration**

14 **16-35 Inspector-General may suspend registration**

- 15 (1) The Inspector-General may suspend the registration of a person as
- 16 a trustee if:
- 17 (a) the person is disqualified from managing corporations under
- 18 Part 2D.6 of the *Corporations Act 2001*, or under a law of an
- 19 external Territory or a law of a foreign country; or
- 20 (b) the person ceases to have adequate and appropriate
- 21 professional indemnity or fidelity insurance against the
- 22 liabilities that he or she may incur working as a registered
- 23 trustee; or
- 24 (c) the person's registration as a liquidator under the
- 25 *Corporations Act 2001* has been cancelled or suspended,
- 26 other than in compliance with a written request by the person
- 27 to cancel or suspend the registration; or
- 28 (d) the person owes more than the prescribed amount of notified
- 29 estate charges under this Act; or
- 30 (e) the person has failed to repay remuneration in accordance
- 31 with regulations made for the purposes of subsection
- 32 22-20(7); or
- 33 (f) the person has been convicted of an offence involving fraud
- 34 or dishonesty; or

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1 (g) the person lodges a request with the Inspector-General in the
2 approved form to have the registration suspended.

3 (2) Nothing in this section affects the operation of Part VIIC of the
4 *Crimes Act 1914* (which includes provisions that, in certain
5 circumstances, relieve persons from the requirement to disclose
6 spent convictions and require persons aware of such convictions to
7 disregard them).

8 **16-40 Inspector-General may cancel registration**

9 (1) The Inspector-General may cancel the registration of a person as a
10 trustee if:

11 (a) the person is disqualified from managing corporations under
12 Part 2D.6 of the *Corporations Act 2001*, or under a law of an
13 external Territory or a law of a foreign country; or

14 (b) the person ceases to have adequate and appropriate
15 professional indemnity or fidelity insurance against the
16 liabilities that he or she may incur working as a registered
17 trustee; or

18 (c) the person's registration as a liquidator under the
19 *Corporations Act 2001* has been cancelled or suspended,
20 other than in compliance with a written request by the person
21 to cancel or suspend the registration; or

22 (d) the person owes more than the prescribed amount of notified
23 estate charges under this Act; or

24 (e) the person has failed to repay remuneration in accordance
25 with regulations made for the purposes of subsection
26 22-20(7); or

27 (f) the person has been convicted of an offence involving fraud
28 or dishonesty; or

29 (g) the person lodges a request with the Inspector-General in the
30 approved form to have the registration cancelled.

31 (2) Nothing in this section affects the operation of Part VIIC of the
32 *Crimes Act 1914* (which includes provisions that, in certain
33 circumstances, relieve persons from the requirement to disclose
34 spent convictions and require persons aware of such convictions to
35 disregard them).

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16-45 Notice of suspension or cancellation

- (1) This section applies if the Inspector-General decides under section 16-35 or 16-40 to suspend or cancel the registration of a person as a trustee.
- (2) The Inspector-General must, not later than 10 business days after the decision, give the person a written notice setting out the decision, and the reasons for the decision.
- (3) The decision comes into effect at the end of the day the notice is given to the person.
- (4) A failure by the Inspector-General to give the notice under subsection (2) within 10 business days does not affect the validity of the decision.

Subdivision E—Disciplinary action by committee

16-50 Inspector-General may give show-cause notice

- (1) The Inspector-General may give a registered trustee notice in writing asking the trustee to give the Inspector-General a written explanation why the trustee should continue to be registered, if the Inspector-General believes that:
 - (a) the trustee no longer has the qualifications, experience, knowledge and abilities prescribed by regulation under paragraph 8-25(4)(a); or
 - (b) the trustee has committed an act of bankruptcy within the meaning of this Act or a corresponding law of an external Territory or a foreign country; or
 - (c) the trustee is 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; or
 - (d) the trustee has ceased to have adequate and appropriate professional indemnity or fidelity insurance against the liabilities that he or she may incur working as a registered trustee; or
 - (e) the trustee has breached a condition of the trustee's registration; or
 - (f) the trustee's registration as a liquidator under the *Corporations Act 2001* has been cancelled or suspended,

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- 1 other than in compliance with a written request by the trustee
2 to cancel or suspend the registration; or
3 (g) the trustee owes more than the prescribed amount of notified
4 estate charges under this Act; or
5 (h) the trustee has failed to repay remuneration in accordance
6 with regulations made for the purposes of subsection
7 22-20(7); or
8 (i) the trustee has been convicted of an offence involving fraud
9 or dishonesty; or
10 (j) the trustee is permanently or temporarily unable to perform
11 the functions and duties of a trustee because of physical or
12 mental incapacity; or
13 (k) the trustee has failed to carry out adequately and properly
14 (whether in Australia or in an external Territory or in a
15 foreign country):
16 (i) the duties of a trustee; or
17 (ii) any other duties or functions that under a law of the
18 Commonwealth or of a State or Territory, or under the
19 general law, a registered trustee is required to carry out;
20 or
21 (l) the trustee is not a fit and proper person; or
22 (m) the trustee is not resident in Australia; or
23 (n) the trustee has failed to comply with a standard prescribed for
24 the purposes of subsection (4).
- 25 (2) A notice under subsection (1) is not a legislative instrument.
- 26 (3) Nothing in this section affects the operation of Part VIIC of the
27 *Crimes Act 1914* (which includes provisions that, in certain
28 circumstances, relieve persons from the requirement to disclose
29 spent convictions and require persons aware of such convictions to
30 disregard them).
- 31 (4) The regulations may prescribe standards applicable to the exercise
32 of powers, or the carrying out of duties, of registered trustees.

33 **16-55 Inspector-General may convene a committee**

- 34 (1) The Inspector-General may convene a committee to consider
35 whether a decision should be made to take action of the kind

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1 mentioned in section 16-70 in relation to a registered trustee, or
2 registered trustees.

- 3 (2) The committee must consist of:
4 (a) the Inspector-General; and
5 (b) a registered trustee chosen by the Insolvency Practitioners
6 Association of Australia (ACN 002 472 362); and
7 (c) a person appointed by the Minister.

8 Note: Section 18-10 sets out the matters of which the Minister must be
9 satisfied before making an appointment under paragraph (c).

10 **16-60 Inspector-General may refer matters to the committee**

11 The Inspector-General may refer a registered trustee to a
12 committee convened under section 16-55, if the Inspector-General
13 gives the trustee a notice under section 16-50 and does not receive
14 an explanation within a reasonable time, or is not satisfied by the
15 explanation.

16 **16-65 Committee to consider**

- 17 (1) The committee may make a decision that action of a kind
18 mentioned in section 16-70 should be taken if the committee is
19 satisfied that any of paragraphs (a) to (n) of subsection 16-50(1) is
20 satisfied in relation to the registered trustee.
- 21 (2) In deciding whether any of those paragraphs is satisfied, the
22 committee must accord the registered trustee procedural fairness.
- 23 (3) In deciding whether any of those paragraphs is satisfied, the
24 committee may have regard to:
25 (a) any information provided to the committee by the
26 Inspector-General; and
27 (b) any explanation given by the trustee why the trustee's
28 registration should not be cancelled or suspended; and
29 (c) any other information given by the trustee to the committee;
30 and
31 (d) if the trustee is or was also a registered liquidator under the
32 *Corporations Act 2001*—any information in relation to the
33 trustee given to the committee by ASIC or a committee
34 convened under Schedule 2 to that Act; and
35 (e) any other matter that the committee considers relevant.

1 **16-70 Decision of the committee**

2 (1) The committee may, having considered the matters mentioned in
3 section 16-65 in relation to a registered trustee, decide one or more
4 of the following:

- 5 (a) that the trustee should continue to be registered;
6 (b) that the trustee's registration should be cancelled;
7 (c) that the trustee's registration should be suspended for a
8 period, or until the occurrence of an event, specified in the
9 decision;
10 (d) that the Inspector-General should direct the trustee not to
11 accept any further appointments as trustee, or not to accept
12 any further appointments as trustee during the period
13 specified in the decision;
14 (e) that the trustee should be publicly admonished or
15 reprimanded;
16 (f) that a condition specified in the decision should be imposed
17 on the trustee;
18 (g) that a condition should be imposed on all other registered
19 trustees that they must not allow the trustee to carry out any
20 of the functions or duties, or exercise any of the powers, of a
21 trustee on their behalf (whether as employee, agent,
22 consultant or otherwise) for a period specified in the decision
23 of no more than 10 years;
24 (h) that the Inspector-General should publish specified
25 information in relation to the committee's decision and the
26 reasons for that decision.

27 (2) Without limiting paragraph (1)(f), conditions imposed under that
28 paragraph may include one of more of the following:

- 29 (a) a condition that the trustee engage in, or refrain from
30 engaging in, specified conduct;
31 (b) a condition that the trustee engage in, or refrain from
32 engaging in, specified conduct except in specified
33 circumstances;
34 (c) a condition that the trustee publish specified information;
35 (d) a condition that the trustee notify a specified person or class
36 of persons of specified information;
37 (e) a condition that the trustee publish a specified statement;

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- 1 (f) a condition that the trustee make a specified statement to a
2 specified person or class of persons.

3 **16-75 Committee to report**

- 4 The committee must give the registered trustee and the
5 Inspector-General a report setting out:
6 (a) the committee's decision in relation to the trustee; and
7 (b) the committee's reasons for that decision; and
8 (c) if the committee decides under paragraph 16-70(1)(f) that the
9 trustee should be registered subject to a condition:
10 (i) the condition; and
11 (ii) the committee's reasons for imposing the condition; and
12 (d) if the committee decides under paragraph 16-70(1)(g) that all
13 other registered trustees should be subject to a condition:
14 (i) the condition; and
15 (ii) the committee's reasons for imposing the condition.

16 **16-80 Inspector-General must give effect to the committee's decision**

- 17 The Inspector-General must give effect to the committee's
18 decision.

19 **Subdivision F—Action initiated by industry body**

20 **16-85 Notice by industry bodies of possible grounds for disciplinary 21 action**

- 22 (1) An industry body may lodge with the Inspector-General a notice in
23 the approved form:
24 (a) stating that the body reasonably suspects that there are
25 grounds for the Inspector-General:
26 (i) to suspend the registration of a registered trustee under
27 section 16-35; or
28 (ii) to cancel the registration of a registered trustee under
29 section 16-40; or
30 (iii) to give a registered trustee a notice under section 16-50;
31 and
32 (b) identifying the registered trustee; and

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- 1 (c) including the information and copies of any documents upon
2 which the suspicion is founded.
- 3 (2) If the Inspector-General receives a notice under subsection (1), the
4 Inspector-General must consider the information and copies of
5 documents (if any) included with the notice and decide whether to:
6 (a) suspend the registration of the registered trustee under
7 section 16-35; or
8 (b) cancel the registration of the registered trustee under
9 section 16-40; or
10 (c) give the registered trustee a notice under section 16-50; or
11 (d) take other action, including conducting an inquiry or
12 gathering information in relation to the registered trustee; or
13 (e) take no further action in relation to the matters raised by the
14 notice.
- 15 (3) If the Inspector-General decides to take no further action in relation
16 to the matters raised by the notice, the Inspector-General must give
17 the industry body notice in writing of that fact, together with the
18 reasons for his or her decision.
- 19 (4) An industry body is not liable civilly, criminally or under any
20 administrative process for giving a notice under subsection (1) if:
21 (a) the body acted in good faith in giving the notice; and
22 (b) the suspicion that is the subject of the notice is a reasonable
23 suspicion.
- 24 (5) A person who, in good faith, makes a decision as a result of which
25 the industry body gives a notice under subsection (1) is not liable
26 civilly, criminally or under any administrative process for making
27 the decision.
- 28 (6) A person who, in good faith, gives information or a document to an
29 industry body that is included, or a copy of which is included, in a
30 notice under subsection (1) is not liable civilly, criminally or under
31 any administrative process for giving the information or document.
- 32 (7) The regulations may prescribe bodies as *industry bodies* for the
33 purposes of this section.

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1 **Subdivision G—Consequences of certain disciplinary and other**
2 **action**

3 **16-90 Inspector-General must update the Register of Trustees**

4 If a person's registration as a trustee is suspended or cancelled, the
5 Inspector-General must update the Register of Trustees to reflect
6 the fact as soon as is reasonably practicable after becoming aware
7 of the fact.

8 **16-95 Inspector-General must include details of conditions in**
9 **Register of Trustees**

10 If:

- 11 (a) a committee decides under subsection 8-25(5) or (6) or
12 paragraph 16-70(1)(f) or (g) that a registered trustee should
13 be registered subject to a condition; or
14 (b) a condition is imposed on a registered trustee under
15 subsection 16-20(2); or
16 (c) a condition is imposed on a registered trustee by the Court
17 under section 17-5;

18 the Inspector-General must include details of that condition in the
19 entry in relation to the registered trustee on the Register of
20 Trustees.

21 **Division 17—Court oversight of registered trustees**

22 **17-5 Court may make orders in relation to registered trustee**

- 23 (1) The Court may make such orders as it thinks fit in relation to a
24 registered trustee.
- 25 (2) The Court may exercise the power under subsection (1):
26 (a) on its own initiative; or
27 (b) on application under subsection (3).
- 28 (3) Each of the following persons may apply for an order under
29 subsection (1):
30 (a) the registered trustee;
31 (b) the Inspector-General.

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- 1 (4) Without limiting the matters which the Court may take into
2 account when making orders, the Court may take into account:
3 (a) whether an action or failure to act by the registered trustee
4 may affect public confidence in registered trustees as a
5 whole; and
6 (b) whether an order that the Court proposes to make would
7 promote public confidence in registered trustees as a whole.
- 8 (5) Any order made under this section may provide that all costs of
9 and incidental to the application must be borne by the trustee in his
10 or her personal capacity.

11 **Division 18—Committees under this Part**

12 **18-5 Guide to this Division**

13 *[To be drafted after consultation]*

14 **18-10 Minister appointing a person to a committee**

- 15 (1) This section applies if the Minister is to appoint a person to a
16 committee under this Part.
- 17 (2) The Minister is to appoint a person as a member of the committee
18 only if the Minister is satisfied that the person is qualified for
19 appointment by virtue of his or her knowledge of, or experience in,
20 one or more of the following fields:
21 (a) business;
22 (b) law, including the law relating to bankruptcy;
23 (c) economics;
24 (d) accounting;
25 (e) public policy relating to bankruptcy.

26 **18-15 Single committee may consider more than one matter**

- 27 A single committee may be convened under this Part to consider
28 one or more of the following:
29 (a) a matter or matters relating to one applicant for registration
30 as a trustee;
31 (b) a matter or matters relating to more than one applicant for
32 registration as a trustee;
-

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- 1 (c) a matter or matters relating to one registered trustee;
2 (d) a matter or matters relating to more than one registered
3 trustee.

4 **18-20 Ongoing consideration of matters by committee**

5 If a committee is convened under this Schedule to consider a
6 matter:

- 7 (a) the committee's powers, functions and duties in relation to
8 the matter are not affected by a change in the membership of
9 the committee; and
10 (b) the committee may adjourn its consideration of the matter,
11 and may do so more than once; and
12 (c) the matter may be transferred to another committee with
13 powers, functions and duties under this Schedule in relation
14 to matters of that kind.

15 **18-25 Procedure and other rules relating to committees**

16 The regulations may provide for:

- 17 (a) the manner in which the committees convened under this Part
18 are to perform their functions, including:
19 (i) meetings of committees; and
20 (ii) the number of committee members required to
21 constitute a quorum; and
22 (iii) disclosure of interests in a matter before a committee;
23 and
24 (iv) the manner in which questions are to be decided by the
25 committee; and
26 (b) the reconstitution of a committee; and
27 (c) the termination of the consideration of a matter by a
28 committee, and the transfer of matters to another committee.

29 **18-30 Committee must only use information etc. for purposes for 30 which disclosed**

- 31 (1) A person commits an offence if:
32 (a) the person is a member of a committee; and

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- 1 (b) information or a document is disclosed to the person for the
2 purposes of exercising powers or performing functions as a
3 member of the committee; and
4 (c) the person uses or discloses the information or document for
5 any other purpose.

6 Penalty: 50 penalty units.

7 *Exception—information or document disclosed to ASIC or another*
8 *committee etc.*

- 9 (2) Subsection (1) does not apply if the information is disclosed:
10 (a) to ASIC to assist ASIC to exercise its powers or perform its
11 functions under Chapter 5 of, or Schedule 2 to, the
12 *Corporations Act 2001*; or
13 (b) to a committee convened under Part 2 of Schedule 2 to the
14 *Corporations Act 2001* to assist the committee to exercise its
15 powers or perform its functions under that Part; or
16 (c) to another committee convened under this Part to assist the
17 committee to exercise its powers or perform its functions
18 under this Part; or
19 (d) to enable or assist a body prescribed for the purposes of this
20 paragraph to perform its disciplinary function in relation to
21 its members; or
22 (e) in order to enable or assist an authority or person in:
23 (i) a State or Territory; or
24 (ii) a country outside Australia and the external Territories;
25 to perform or exercise a function or power that corresponds,
26 or is analogous, to any of the committee's functions and
27 powers; or
28 (f) to a court or tribunal in relation to proceedings before the
29 court or tribunal.

30 Note: A defendant bears an evidential burden in relation to the matter in
31 subsection (2): see subsection 13.3(3) of the *Criminal Code*.

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1 **Part 3—General rules relating to estate**
2 **administrations**

3 **Division 20—Introduction**

4 **20-5 Guide to this Part**

5 *[To be drafted after consultation]*

6 **Division 22—Remuneration and other benefits received by**
7 **the trustee etc.**

8 **Subdivision A—Introduction**

9 **22-5 Guide to this Division**

10 *[To be drafted after consultation]*

11 **Subdivision B—Remuneration of trustees**

12 **22-10 Trustee's remuneration**

13 *Each trustee of a regulated debtor's estate*

- 14 (1) The trustee of a regulated debtor's estate is entitled to accrue, in
15 relation to the administration of the regulated debtor's estate, the
16 remuneration specified in any remuneration determinations for the
17 trustee (see section 22-15).

18 *First trustee of a regulated debtor's estate*

- 19 (2) The person first appointed as the trustee of a regulated debtor's
20 estate is entitled to accrue, in relation to the administration of the
21 regulated debtor's estate, the default remuneration amount for the
22 trustee (see section 22-30).
- 23 (3) If, immediately before the trustee referred to in subsection (2)
24 ceases to be the trustee of the regulated debtor's estate, the total
25 amount of remuneration accrued by the trustee in relation to the
26 administration of the regulated debtor's estate is less than the
27 default remuneration amount for the trustee, the trustee is entitled

1 to additional remuneration equal to the difference between the
2 amount accrued and the default remuneration amount for the
3 trustee.

4 **22-15 Remuneration determinations**

5 *Remuneration determinations*

- 6 (1) A determination, specifying the remuneration to which a trustee of
7 a regulated debtor's estate is entitled in relation to the
8 administration of the estate, may be made:
9 (a) by resolution of the creditors; or
10 (b) if the creditors so resolve—by the committee of inspection;
11 or
12 (c) if no determination is made under paragraph (a) or (b)—by
13 the Inspector-General.
- 14 (2) The determination may specify the remuneration to which the
15 trustee is entitled in either or both of the following ways:
16 (a) by specifying an amount of remuneration to which the trustee
17 is entitled;
18 (b) by specifying a method for working out the amount of
19 remuneration to which the trustee is entitled.

20 *Remuneration on a time-cost basis*

- 21 (3) If the determination specifies that the trustee is entitled to
22 remuneration worked out wholly or partly on a time-cost basis, the
23 determination must include a cap on the amount of remuneration
24 worked out on a time-cost basis to which the trustee is entitled.

25 *Remuneration on a percentage basis*

- 26 (4) If the determination specifies that the trustee is entitled to
27 remuneration worked out wholly or partly on the basis of a
28 specified percentage of money received by the trustee in respect of
29 the estate:
30 (a) the determination must specify the money to which the
31 specified percentage applies; and
32 (b) the specified percentage must not be greater than the
33 percentage prescribed by regulation for the purposes of this
34 paragraph.

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1 *More than one remuneration determination may be made*

- 2 (5) To avoid doubt, more than one determination under this section
3 may be made in relation to a particular trustee and a particular
4 regulated debtor's estate.

5 **22-20 Review of remuneration determinations**

6 *Review by Inspector-General on request*

- 7 (1) Either of the following persons may request the Inspector-General
8 to review a remuneration determination for the trustee of a
9 regulated debtor's estate:
10 (a) the regulated debtor;
11 (b) a person with a financial interest in the administration of the
12 estate.
- 13 (2) On request under subsection (1), the Inspector-General may, if the
14 Inspector-General considers it appropriate to do so, review, in
15 accordance with the regulations, the remuneration determination.

16 *Review on Inspector-General's own initiative*

- 17 (3) The Inspector-General may, on the Inspector-General's own
18 initiative, review, in accordance with the regulations, a
19 remuneration determination for the trustee of a regulated debtor's
20 estate.

21 *Inspector-General must affirm, vary or set aside remuneration
22 determination*

- 23 (4) After reviewing a remuneration determination under subsection (2)
24 or (3), the Inspector-General must:
25 (a) affirm the remuneration determination; or
26 (b) vary the remuneration determination; or
27 (c) set aside the remuneration determination and substitute
28 another remuneration determination.
- 29 (5) This Subdivision applies to a determination affirmed, varied or
30 substituted by the Inspector-General as if the determination was
31 made by the Inspector-General under subsection 22-15(1).

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Exception

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- (6) Subsections (1) and (3) do not apply to a remuneration determination made by the Inspector-General.

3

4

Regulations

5

- (7) Without limiting subsection (2) or (3), regulations made for the purposes of this section may provide for and in relation to either or both of the following matters:

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7

8

- (a) the powers available to the Inspector-General in relation to a review under this section;

9

10

- (b) the repayment of remuneration by a trustee of a regulated debtor's estate as a consequence of a review under this section.

11

12

13

Application to the Court for review of Inspector-General's decision

14

- (8) The Court may make such orders as it thinks fit in relation to a remuneration determination that is affirmed, varied or substituted under subsection (4).

15

16

17

Note: See also section 22-25 (matters to which the Court must have regard).

18

- (9) An order under subsection (8) may be made on application by the trustee, the regulated debtor or a person with a financial interest in the administration of the estate.

19

20

21

22-25 Matters to which the Court must have regard

22

In making an order under subsection 22-20(8) in relation to a remuneration determination, the Court must have regard to whether the remuneration is reasonable, taking into account any or all of the following matters:

23

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25

26

- (a) the extent to which the work performed by the trustee was reasonably necessary;

27

28

- (b) the extent to which the work likely to be performed by the trustee is likely to be reasonably necessary;

29

30

- (c) the period during which the work was, or is likely to be, performed by the trustee;

31

32

- (d) the quality of the work performed, or likely to be performed, by the trustee;

33

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- 1 (e) the complexity (or otherwise) of the work performed, or
2 likely to be performed, by the trustee;
- 3 (f) the extent (if any) to which the trustee was, or is likely to be,
4 required to deal with extraordinary issues;
- 5 (g) the extent (if any) to which the trustee was, or is likely to be,
6 required to accept a higher level of risk or responsibility than
7 is usually the case;
- 8 (h) the value and nature of any property dealt with, or likely to
9 be dealt with, by the trustee;
- 10 (i) the number, attributes and behaviour, or the likely number,
11 attributes and behaviour, of the creditors;
- 12 (j) if the remuneration is worked out wholly or partly on a
13 time-cost basis—the time properly taken, or likely to be
14 properly taken, by the trustee in performing the work;
- 15 (k) any other relevant matters.

16 **22-30 Default remuneration amount**

17 *Default remuneration amount*

- 18 (1) The **default remuneration amount** for a trustee is:
- 19 (a) if the trustee is appointed as the trustee of the regulated
20 debtor's estate during the financial year beginning on 1 July
21 2013—\$5,500; or
- 22 (b) if the trustee is appointed as the trustee of the regulated
23 debtor's estate during a financial year beginning on or after
24 1 July 2014—the greater of:
- 25 (i) the amount worked out by multiplying the indexation
26 factor for the financial year, worked out under
27 subsections (3) and (4), by the default remuneration
28 amount for a trustee appointed as the trustee of a
29 regulated debtor's estate during the previous financial
30 year; and
- 31 (ii) the amount (if any) specified in a regulation for the
32 purposes of this subparagraph.

33 *Rounding*

- 34 (2) Amounts worked out under subsection (1) must be rounded to the
35 nearest whole dollar (rounding 50 cents upwards).

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1 *Indexation factor*

2 (3) Subject to subsection (4), the *indexation factor* for a financial year
3 is the number worked out by dividing the index number for the
4 March quarter immediately preceding that financial year by the
5 index number for the March quarter immediately preceding that
6 first-mentioned March quarter.

7 (4) If an indexation factor worked out under subsection (3) would be
8 less than 1, the indexation factor is to be increased to 1.

9 *Changes to CPI reference base and publication of substituted*
10 *index numbers*

11 (5) In working out the indexation factor:

12 (a) use only the index numbers published in terms of the most
13 recently published reference base for the Consumer Price
14 Index; and

15 (b) disregard index numbers published in substitution for
16 previously published index numbers (except where the
17 substituted numbers are published to take account of changes
18 in the reference base).

19 *Index number*

20 (6) In this section:

21 *index number*, in relation to a quarter, means the All Groups
22 Consumer Price Index number, being the weighted average of the 8
23 capital cities, published by the Australian Statistician in respect of
24 that quarter.

25 **Subdivision E—Duties of trustees relating to remuneration and** 26 **benefits etc.**

27 **22-35 Trustee must disclose employment etc. of related entities**

28 (1) Before a related entity of a trustee of a regulated debtor's estate is
29 employed or engaged to provide services in connection with the
30 administration of the estate, the trustee must disclose the proposed
31 employment or engagement to the creditors.

32 (2) A person commits an offence of strict liability if:

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Schedule 1 Uniform insolvency practice rules

- 1 (a) the person is subject to a requirement under subsection (1);
2 and
3 (b) the person fails to comply with the requirement.

4 Penalty: 50 penalty units.

5 Note: For offences of strict liability, see subsection 6.1(1) of the *Criminal*
6 *Code*.

7 **22-40 Trustee must not derive or confer profits etc.**

8 *Deriving profit etc. from the estate*

- 9 (1) A trustee of a regulated debtor's estate must not directly or
10 indirectly derive any profit or advantage from a transaction, sale or
11 purchase for or on account of the estate.

12 *Deriving gifts etc. from creditors*

- 13 (2) A trustee of a regulated debtor's estate must not directly or
14 indirectly derive any gift, profit or advantage from a creditor.

15 *Conferring profit etc. from the estate*

- 16 (3) A trustee of a regulated debtor's estate must not directly or
17 indirectly confer on a related entity of the trustee any profit or
18 advantage from a transaction, sale or purchase for or on account of
19 the estate.

20 *Exception*

- 21 (4) Subsection (1), (2) or (3) does not apply to the extent that the
22 trustee's actions are required or permitted by this Act.

23 *Offence*

- 24 (5) A person commits an offence of strict liability if:
25 (a) the person is subject to a requirement under subsection (1),
26 (2) or (3); and
27 (b) the person fails to comply with the requirement.

28 Penalty: 50 penalty units.

29 Note 1: For offences of strict liability, see subsection 6.1(1) of the *Criminal*
30 *Code*.

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1 Note 2: A defendant bears an evidential burden in relation to the matter in
2 subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

3 **22-45 Trustee must not accept extra benefits etc.**

- 4 (1) A trustee of a regulated debtor's estate must not make an
5 arrangement for receiving, or accept, from any person any:
6 (a) gift; or
7 (b) remuneration; or
8 (c) consideration; or
9 (d) benefit;
10 in connection with the administration of the estate.
- 11 (2) To avoid doubt, subsection (1) applies to consideration or a benefit
12 whether pecuniary or otherwise.
- 13 (3) Subsection (1) does not apply to a payment that is:
14 (a) made to the trustee by or on behalf of the Commonwealth or
15 an agency or authority of the Commonwealth; and
16 (b) of a kind prescribed by regulation.
- 17 (4) Subsection (1) does not apply to the extent that the trustee's actions
18 are required or permitted by this Act.
- 19 (5) A person commits an offence of strict liability if:
20 (a) the person is subject to a requirement under subsection (1);
21 and
22 (b) the person fails to comply with the requirement.

23 Penalty: 50 penalty units.

24 Note 1: For offences of strict liability, see subsection 6.1(1) of the *Criminal*
25 *Code*.

26 Note 2: A defendant bears an evidential burden in relation to the matters in
27 subsections (3) and (4) (see subsection 13.3(3) of the *Criminal Code*).

28 **22-50 Trustee must not give up remuneration**

- 29 (1) The trustee of a regulated debtor's estate must not:
30 (a) make an arrangement for giving up; or
31 (b) give up;

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1 to any other person, any or all of the remuneration to which the
2 trustee is entitled under this Act in relation to the administration of
3 the estate.

- 4 (2) A person commits an offence of strict liability if:
5 (a) the person is subject to a requirement under subsection (1);
6 and
7 (b) the person fails to comply with the requirement.

8 Penalty: 50 penalty units.

9 Note: For offences of strict liability, see subsection 6.1(1) of the *Criminal*
10 *Code*.

11 **22-55 Trustee must not purchase any part of the regulated debtor's** 12 **estate**

13 (1) Except with the leave of the Court, the trustee of a regulated
14 debtor's estate must not, directly or indirectly, become the
15 purchaser of any part of the estate.

- 16 (2) A person commits an offence of strict liability if:
17 (a) the person is subject to a requirement under subsection (1);
18 and
19 (b) the person fails to comply with the requirement.

20 Penalty: 50 penalty units.

21 Note: For offences of strict liability, see subsection 6.1(1) of the *Criminal*
22 *Code*.

23 **22-60 Payments in respect of performance by third parties**

24 (1) If a trustee of a regulated debtor's estate receives remuneration for
25 his or her services, a payment in respect of the performance by
26 another person of the ordinary duties that are required by this Act
27 to be performed by the trustee is not allowed in the trustee's
28 accounts.

29 (2) Subsection (1) does not apply to a payment if the payment was
30 authorised by resolution of:

- 31 (a) the creditors; or
32 (b) the committee of inspection.

33 (3) A person commits an offence of strict liability if:

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- 1 (a) the person is subject to a requirement under subsection (1);
2 and
3 (b) the person fails to comply with the requirement.

4 Penalty: 50 penalty units.

5 Note 1: For offences of strict liability, see subsection 6.1(1) of the *Criminal*
6 *Code*.

7 Note 2: A defendant bears an evidential burden in relation to the matter in
8 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- 9 (4) This section does not apply to the Official Trustee.

10 **Subdivision F—Other matters**

11 **22-65 Division of remuneration and expenses**

- 12 (1) If one person acts as a trustee of a regulated debtor's estate after
13 another person has acted as the trustee, their remuneration and
14 expenses are to be divided between them, if necessary, on a basis:
15 (a) that they agree on; and
16 (b) that is endorsed by a resolution of the creditors.
- 17 (2) Subdivision B of this Division applies to a resolution referred to in
18 paragraph (1)(b) as if it were a determination made by the creditors
19 under subsection 22-15(1).

20 **22-70 Account of receipts and payments**

- 21 (1) If a person (the *former trustee*) ceases to be the trustee of a
22 regulated debtor's estate because another person (the *new trustee*)
23 has become trustee, the former trustee must:
24 (a) prepare an account of his or her receipts and payments
25 (including remuneration and expenses) for the period that he
26 or she was trustee; and
27 (b) keep a copy of the account; and
28 (c) give each creditor a copy of the account; and
29 (d) give the new trustee a copy of the account and any other
30 accounts the former trustee has received from a person who
31 was the trustee before the former trustee.
- 32 (2) The new trustee must allow an authorised employee to inspect at
33 any reasonable time an account received from the former trustee.

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22-75 Review of payments to third parties

- (1) The regulations may make provision for and in relation to:
 - (a) the Inspector-General reviewing a bill of costs for services provided by a person (the *third party*) in relation to the administration of a regulated debtor's estate; and
 - (b) the trustee of the estate applying for the review.
- (2) The regulations may provide for:
 - (a) the powers available to the Inspector-General in relation to the review; and
 - (b) the trustee or the third party to provide information or documents to the Inspector-General; and
 - (c) the decisions that may be made by the Inspector-General in relation to the review; and
 - (d) the notification of decisions made by the Inspector-General.
- (3) Subsection (2) does not limit subsection (1).
- (4) The third party, the trustee, the regulated debtor or a creditor of the regulated debtor may appeal to the Court from a decision of the Inspector-General in relation to the review.

Division 24—Funds handling

24-5 Guide to this Division

[To be drafted after consultation]

24-10 Paying money into administration account

Paying money into administration account

- (1) The trustee of a regulated debtor's estate must:
 - (a) pay all money received by the trustee on behalf of, or in relation to, the estate into a single bank account (the *administration account*); and
 - (b) do so within 5 business days of its receipt.

Exception—direction by the Court

- (2) Subsection (1) does not apply if the Court directs otherwise.

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1

Administration accounts

2

(3) The administration account:

3

(a) may contain money received by the trustee on behalf of, or in relation to, one or more estates; and

4

5

(b) must comply with the requirements (if any) prescribed by regulation.

6

7

Offence

8

(4) A person commits an offence of strict liability if:

9

(a) the person is subject to a requirement under subsection (1); and

10

11

(b) the person fails to comply with the requirement.

12

Penalty: 50 penalty units.

13

Note 1: For offences of strict liability, see subsection 6.1(1) of the *Criminal Code*.

14

15

Note 2: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

16

17

24-15 Consequences for failure to pay money into administration account

18

19

(1) This section applies if:

20

(a) the trustee of a regulated debtor's estate:

21

(i) is subject to a requirement under subsection 24-10(1) (paying money into administration account); and

22

23

(ii) fails to comply with the requirement in relation to an amount of money; and

24

25

(b) the amount exceeds:

26

(i) \$50; or

27

(ii) if another amount is prescribed by regulation—that other amount; and

28

29

(c) 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.

30

31

32

(2) The trustee must, as a penalty, pay interest to the Commonwealth on the excess:

33

34

(a) at the rate of 20% per year; or

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- 1 (b) if another rate is prescribed by regulation—at that other rate.
- 2 (3) The trustee is personally liable for, and is not entitled to be
- 3 reimbursed by the estate in relation to, the payment of that interest.

4 **24-20 Paying money out of administration account**

- 5 (1) The trustee must not pay any money out of the administration
- 6 account otherwise than:
- 7 (a) for purposes related to the administration of the estate; or
- 8 (b) in accordance with this Act; or
- 9 (c) in accordance with a direction of the Court.
- 10 (2) A payment out of the administration account may be made by
- 11 cheque or by electronic funds transfer.
- 12 (3) A cheque referred to in subsection (2) must:
- 13 (a) have the name of the regulated debtor written on it; and
- 14 (b) be signed by the trustee.
- 15 (4) A person commits an offence of strict liability if:
- 16 (a) the person is subject to a requirement under subsection (1);
- 17 and
- 18 (b) the person fails to comply with the requirement.

19 Penalty: 50 penalty units.

20 Note: For offences of strict liability, see subsection 6.1(1) of the *Criminal*

21 *Code*.

22 **24-25 Interest on administration account**

- 23 (1) The trustee is entitled, in his or her personal capacity, to each
- 24 payment of interest on the administration account, less an amount
- 25 equal to the bank fees or charges (if any) paid or payable on the
- 26 account during the period to which the interest relates.
- 27 (2) If, under subsection (1), the trustee is only entitled to part of a
- 28 payment of interest, the rest of that payment:
- 29 (a) if the administration account contains money from only one
- 30 estate—forms part of that estate; or
- 31 (b) if the administration account contains money from more than
- 32 one estate—forms part of those estates in proportion to the

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1 respective amounts of money held in the administration
2 account on account of each of those estates.

3 (3) Interest on money in the administration account is not subject to
4 taxation under a law of the Commonwealth, a State or a Territory
5 except as provided in Part 2 of the *Bankruptcy (Estate Charges)*
6 *Act 1997*.

7 **24-30 Reconciliation of administration account**

8 (1) This section applies if an administration account contains money
9 received on account of more than one estate.

10 (2) The trustee must:

11 (a) maintain a separate record for each of those estates of:

12 (i) money received by the trustee from the regulated
13 debtors in relation to the estate; and

14 (ii) payments made by the trustee in relation to the estate;
15 and

16 (iii) the balance of money held by the trustee in relation to
17 the estate; and

18 (b) at least once every 25 business days, reconcile the balance
19 relating to each estate held in the account with the
20 corresponding record maintained under paragraph (a).

21 **24-35 Receipts for payments into and out of the estate**

22 (1) The trustee of a regulated debtor's estate must issue a receipt for a
23 payment into the estate if asked to do so by the person making the
24 payment.

25 (2) The trustee must, wherever practicable, obtain a receipt for a
26 payment made out of the estate.

27 **24-40 Handling of securities**

28 *Securities must be deposited with administration account bank*

29 (1) The trustee of a regulated debtor's estate must deposit in the bank
30 with which the administration account for the estate is held:

31 (a) the bills of exchange; and

32 (b) the promissory notes; and

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1 (c) any other negotiable instrument or security;
2 payable to the regulated debtor or the trustee within 5 business
3 days after they are received by the trustee.

4 (2) Subsection (1) does not apply if the Court directs otherwise.

5 *Offence*

6 (3) A person commits an offence of strict liability if:

7 (a) the person is subject to a requirement under subsection (1);
8 and

9 (b) the person fails to comply with the requirement.

10 Penalty: 50 penalty units.

11 Note 1: For offences of strict liability, see subsection 6.1(1) of the *Criminal*
12 *Code*.

13 Note 2: A defendant bears an evidential burden in relation to the matter in
14 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

15 *Delivery of securities*

16 (4) The bills, notes or other instrument or security must be delivered
17 out on the signed request of the trustee.

18 **24-45 Handling of money and securities—Court directions**

19 (1) The Court may, on application, give directions regarding the
20 payment, deposit or custody of:

21 (a) money; and

22 (b) bills of exchange, promissory notes and other negotiable
23 instruments and securities;

24 that are payable to, or held by, the trustee of a regulated debtor's
25 estate.

26 (2) The Court may, on application, give directions authorising the
27 trustee of a regulated debtor's estate to make payments into and out
28 of a special bank account.

29 (3) Without limiting subsection (2), the Court may:

30 (a) authorise the payments for the time and on the terms it thinks
31 fit; and

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- 1 (b) if the Court thinks the account is no longer required—at any
2 time order it to be closed.
- 3 (4) A copy of an order under paragraph (3)(b) must be served by the
4 trustee on the bank with which the special bank account was
5 opened.
- 6 (5) An application under this section may be made by:
7 (a) a creditor; or
8 (b) the regulated debtor; or
9 (c) the trustee; or
10 (d) any other person with a financial interest in the estate.

11 **24-50 Regulations in relation to consequences for failure to comply** 12 **with this Division**

13 The regulations may make provision in relation to:

- 14 (a) the payment by the trustee of a regulated debtor's estate of
15 interest at such rate, on such amount and in respect of such
16 period as is prescribed; and
17 (b) disallowance of all or of such part as is prescribed of the
18 remuneration of the trustee of a regulated debtor's estate; and
19 (c) the removal from office of the trustee of a regulated debtor's
20 estate by the Court; and
21 (d) the payment by the trustee of a regulated debtor's estate of
22 any expenses occasioned by reason of his or her default;
23 in cases where the trustee of a regulated debtor's estate contravenes
24 or fails to comply with this Division (including regulations made
25 under this Division).

26 **Division 26—Information**

27 **Subdivision A—Introduction**

28 **26-5 Guide to this Division**

29 *[To be drafted after consultation]*

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1 **Subdivision B—Annual administration return**

2 **26-10 Annual administration return**

- 3 (1) This section applies if a person is the trustee of a regulated debtor's
4 estate during all or part of a financial year.
- 5 (2) The person must lodge a return in relation to the person's
6 administration of that estate during that year.
- 7 (3) The return must:
8 (a) be in the approved form; and
9 (b) be lodged with the Inspector-General within 25 business days
10 after the end of the financial year.
- 11 (4) If the person does not lodge the return within the period mentioned
12 in paragraph (3)(b), the person must pay a late lodgement fee,
13 determined by the Minister by legislative instrument, by way of
14 penalty.

15 **Subdivision C—Record-keeping**

16 **26-15 Administration books**

- 17 (1) The trustee of a regulated debtor's estate must keep proper books
18 in which the trustee must cause to be made:
19 (a) entries or minutes of proceedings at meetings relating to the
20 administration of the estate; and
21 (b) such other entries as are necessary to give a complete and
22 correct record of the trustee's administration of the estate.
- 23 (2) The trustee:
24 (a) must ensure that the books are kept at the trustee's office; and
25 (b) must permit a creditor, or another person acting on the
26 creditor's behalf, to inspect the books at all reasonable times.
- 27 (3) Subsections (1) and (2) do not apply if the trustee has a reasonable
28 excuse.
- 29 (4) A person commits an offence of strict liability if:
30 (a) the person is subject to a requirement under subsection (1) or
31 (2); and

1 (b) the person fails to comply with the requirement.

2 Penalty: 5 penalty units.

3 Note 1: For offences of strict liability, see subsection 6.1(1) of the *Criminal*
4 *Code*.

5 Note 2: A defendant bears an evidential burden in relation to the matter in
6 subsection (3); see subsection 13.3(3) of the *Criminal Code*.

7 **26-20 Trustee's books when trading**

8 (1) If the trustee of a regulated debtor's estate carries on a business
9 previously carried on by the regulated debtor, the trustee must:

- 10 (a) keep such books as are usually kept in relation to the carrying
11 on of a business of that kind; and
12 (b) permit a creditor, or another person acting on the creditor's
13 behalf, to inspect, at all reasonable times, the books.

14 (2) A person commits an offence of strict liability if:

- 15 (a) the person is subject to a requirement under subsection (1);
16 and
17 (b) the person fails to comply with the requirement.

18 Penalty: 5 penalty units.

19 Note: For offences of strict liability, see subsection 6.1(1) of the *Criminal*
20 *Code*.

21 **26-25 Audit of administration books—Inspector-General**

22 (1) The Inspector-General may audit, or cause to be audited, the books
23 referred to in section 26-15 (administration books) or 26-20 (books
24 when trading).

25 (2) The audit may be conducted:

- 26 (a) on the Inspector-General's own initiative; or
27 (b) at the request of the regulated debtor; or
28 (c) at the request of a creditor.

29 (3) The person carrying out the audit must prepare a report on the
30 audit.

31 (4) The Inspector-General must give a copy of the report to:

- 32 (a) the trustee of the estate; and
-

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1 (b) the person who requested the report (if any).

2 (5) The cost of an audit under this section must be determined by the
3 Inspector-General and is to be borne by the estate.

4 **26-30 Audit of administration books—on order of the Court**

5 (1) The Court may order that the Inspector-General audit, or cause to
6 be audited, the books referred to in section 26-15 (administration
7 books) or 26-20 (books when trading).

8 (2) The order may be made on application of any person with a
9 financial interest in the administration of the regulated debtor's
10 estate.

11 (3) The Court may make such orders in relation to the audit as it thinks
12 fit, including:

- 13 (a) the preparation and provision of a report on the audit; and
14 (b) orders as to the costs of the audit.

15 **26-35 Trustee to comply with auditor requirements**

16 (1) This section applies if books are audited under section 26-25 or
17 26-30.

18 (2) The trustee of the estate must give to the person carrying out the
19 audit such books, information and assistance as the person
20 reasonably requires.

21 (3) Subsection (2) does not apply if the trustee has a reasonable
22 excuse.

23 (4) A person commits an offence of strict liability if:

- 24 (a) the person is subject to a requirement under subsection (2);
25 and
26 (b) the person fails to comply with the requirement.

27 Penalty: 5 penalty units.

28 Note 1: For offences of strict liability, see subsection 6.1(1) of the *Criminal*
29 *Code*.

30 Note 2: A defendant bears an evidential burden in relation to the matter in
31 subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

1 **26-40 Transfer of books to new trustee**

2 *Application*

- 3 (1) This section applies if:
- 4 (a) a person ceases to be the trustee of a regulated debtor's estate
- 5 (the **former trustee**); and
- 6 (b) the Inspector-General has not issued a notice to the former
- 7 trustee under section 26-42; and
- 8 (c) a registered trustee (the **new trustee**) is appointed as trustee
- 9 of the estate instead.

10 *Transfer of books to new trustee*

- 11 (2) The former trustee must transfer to the new trustee:
- 12 (a) any books that the regulated debtor or a previous trustee has
- 13 given to the former trustee (subject to section 26-47); and
- 14 (b) any other books relating to the administration of the estate
- 15 that are in the former trustee's possession or control;
- 16 within 5 business days after the new trustee is appointed.
- 17 (3) The former trustee may take a copy of any part of the books before
- 18 transferring them to the new trustee.
- 19 (4) After the books are transferred, the new trustee must allow the
- 20 former trustee to inspect them at any reasonable time and take a
- 21 copy of any part of the books.

22 *Offence*

- 23 (5) A person commits an offence if:
- 24 (a) the person is subject to a requirement under subsection (2) or
- 25 (4); and
- 26 (b) the person intentionally or recklessly fails to comply with the
- 27 requirement.

28 Penalty: 50 penalty units.

- 29 (6) No lien against the books is prejudiced by the requirement under
- 30 this section.

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1 **26-42 Transfer of books to Inspector-General**

2 *Transfer of books to Inspector-General*

- 3 (1) If a person ceases to be the trustee of a regulated debtor's estate,
4 the Inspector-General may, by written notice given to the person,
5 require the person to:
- 6 (a) if the person has books relating to the administration of the
7 estate in his or her possession—transfer those books to the
8 Inspector-General within the period specified in the notice; or
9 (b) otherwise—notify the Inspector-General, within the period
10 and in the manner specified in the notice, that the person does
11 not have books relating to the administration in his or her
12 possession.
- 13 (2) A person commits an offence if:
- 14 (a) the person is subject to a requirement under subsection (1);
15 and
16 (b) the person intentionally or recklessly fails to comply with the
17 requirement.

18 Penalty: 50 penalty units.

19 *Transfer of books to new trustee*

- 20 (3) If:
- 21 (a) books relating to an administration of a regulated debtor's
22 estate are transferred to the Inspector-General under this
23 section; and
24 (b) the books are in the Inspector-General's possession; and
25 (c) a person is or becomes the trustee of the regulated debtor's
26 estate;
- 27 the Inspector-General must, as soon as practicable, transfer those
28 books to the person.

29 *Transfer of books to regulated debtor*

- 30 (4) If:
- 31 (a) books relating to a regulated debtor's estate are transferred to
32 the Inspector-General under this section; and
33 (b) the books are in the Inspector-General's possession; and

- 1 (c) the person to whom the books relate ceases to be a regulated
2 debtor;
3 the Inspector-General must, as soon as practicable, transfer those
4 books to the person.

5 **26-45 Retention and return or destruction of books**

6 *Retention period for books*

- 7 (1) The last trustee to administer a regulated debtor's estate must
8 retain:
9 (a) any books that the regulated debtor has given to any trustee
10 of the estate (subject to section 26-47); and
11 (b) any other books relating to the administration of the estate
12 that are in the trustee's possession or control on the day the
13 administration is finalised;
14 for a period (the *retention period*) of 7 years from that day.

15 *Exception—reasonable excuse*

- 16 (2) Subsection (1) does not apply if the trustee has a reasonable
17 excuse.

18 *Exception—consent of Inspector-General etc.*

- 19 (3) Despite subsection (1), the books may be returned to the regulated
20 debtor within the retention period:
21 (a) if there is a committee of inspection—as the committee
22 directs;
23 (b) if there is no committee of inspection—as the creditors by
24 resolution direct;
25 if the Inspector-General consents to the return.

26 *Return or destruction of books at end of retention period*

- 27 (4) Subject to section 262A (keeping of records) of the *Income Tax*
28 *Assessment Act 1936*, the trustee may return the books to the
29 regulated debtor, or destroy the books, at the end of the retention
30 period.

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1

Offence

2

(5) A person commits an offence if:

3

(a) the person is subject to a requirement under subsection (1);
and

4

5

(b) the person intentionally or recklessly fails to comply with the
requirement.

6

7

Penalty: 50 penalty units.

8

Note: A defendant bears an evidential burden in relation to the matters in
subsections (2) and (3) (see subsection 13.3(3) of the *Criminal Code*).

9

10

26-47 Return or destruction of irrelevant books

11

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:

12

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14

(a) the regulated debtor has given to any trustee of the estate; and

15

(b) the trustee considers will not help the administration of the
estate.

16

17

Subdivision D—Giving information etc. to creditors

18

26-50 Right of creditors to request information etc. from trustee

19

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

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21

(a) give information; or

22

(b) provide a report; or

23

(c) produce a document;

24

to the creditors.

25

(2) The trustee must comply with the request unless:

26

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

27

28

(b) 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

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(c) it is otherwise not reasonable for the trustee to comply with
the request.

32

- 1 (3) The regulations may prescribe circumstances in which a request is,
2 or is not, reasonable.

3 **26-55 Right of individual creditor to request information etc. from**
4 **trustee**

- 5 (1) A creditor may request a trustee of a regulated debtor's estate to:
6 (a) give information; or
7 (b) provide a report; or
8 (c) produce a document;
9 to the creditor.
- 10 (2) The trustee must comply with the request unless:
11 (a) the information, report or document is not relevant to the
12 administration of the regulated debtor's estate; or
13 (b) the trustee would breach his or her duties in relation to the
14 administration of the regulated debtor's estate if the trustee
15 complied with the request; or
16 (c) it is otherwise not reasonable for the trustee to comply with
17 the request.
- 18 (3) The regulations may prescribe circumstances in which a request is,
19 or is not, reasonable.

20 **26-60 Reporting to creditors**

- 21 (1) The regulations may make provision for or in relation to the
22 obligations of trustees of regulated debtors' estates:
23 (a) to give information; and
24 (b) to provide reports; and
25 (c) to produce documents;
26 to the creditors.
- 27 (2) Without limiting subsection (1), the regulations may provide for:
28 (a) circumstances in which the trustee must give information,
29 provide a report or produce a document to a creditor; and
30 (b) the manner and form in which information is to be given, a
31 report provided or a document produced; and
32 (c) the timeframes in which information is to be given, a report
33 provided or a document produced; and

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- 1 (d) who is to bear the cost of giving information, providing a
2 report or producing a document.
- 3 (3) The regulations may:
- 4 (a) make different provision in relation to different kinds of
5 estate administration; and
- 6 (b) provide that specified requirements imposed under the
7 regulations may be replaced or modified, by resolution, by:
- 8 (i) the creditors; or
9 (ii) if there is a committee of inspection—the committee.

10 **Subdivision E—Other requests for information**

11 **26-65 Commonwealth may request information**

- 12 (1) This section applies if:
- 13 (a) a regulated debtor's estate is being administered by a trustee;
14 and
- 15 (b) either:
- 16 (i) a former employee of the regulated debtor has made a
17 claim for financial assistance from the Commonwealth
18 in relation to unpaid employment entitlements; or
- 19 (ii) the Commonwealth considers that such a claim is likely
20 to be made.
- 21 (2) The Commonwealth may request the trustee to provide specified
22 information in relation to the administration of the regulated
23 debtor's estate.

24 **26-67 Right of regulated debtor to request information etc. from** 25 **trustee**

- 26 (1) A regulated debtor may request a trustee of the regulated debtor's
27 estate to:
- 28 (a) give information; or
29 (b) provide a report; or
30 (c) produce a document;
31 to the regulated debtor.
- 32 (2) The trustee must comply with the request unless:

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- 1 (a) the information, report or document is not relevant to the
2 administration of the regulated debtor's estate; or
3 (b) the trustee would breach his or her duties in relation to the
4 administration of the regulated debtor's estate if the trustee
5 complied with the request; or
6 (c) it is otherwise not reasonable for the trustee to comply with
7 the request.
- 8 (3) The regulations may prescribe circumstances in which a request is,
9 or is not, reasonable.

10 **26-68 Right of Inspector-General to request information etc. from** 11 **trustee**

- 12 (1) The Inspector-General may request a trustee of a regulated debtor's
13 estate to:
14 (a) give information; or
15 (b) provide a report; or
16 (c) produce a document;
17 to the Inspector-General.
- 18 (2) The trustee must comply with the request unless it is not
19 reasonable for the trustee to comply with the request.
- 20 (3) The regulations may prescribe circumstances in which a request is,
21 or is not, reasonable.

22 **Subdivision F—Trustee may be compelled to comply with** 23 **requests for information**

24 **26-70 Application of this Subdivision**

25 This Subdivision applies if the trustee of a regulated debtor's estate
26 refuses a request made by a person under this Act to give
27 information, provide a report or produce a document (*to give*
28 *relevant material*).

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1 **26-75 Inspector-General may direct trustee to comply with request**
2 **for information, report or document**

3 *Inspector-General may direct trustee to comply with request*

- 4 (1) The Inspector-General may, in writing, direct the trustee to give all
5 or part of the relevant material to the person or persons who made
6 the request within 5 business days after the direction is given.
- 7 (2) The Inspector-General must not give a direction under this section
8 in relation to the relevant material, or part of the relevant material,
9 if the Inspector-General is satisfied that the trustee was entitled not
10 to comply with the request to give the relevant material, or that part
11 of the relevant material, to the person under a provision of this Act,
12 or under any other law.

13 *Procedure before giving a direction*

- 14 (3) Before giving the trustee a direction under this section, the
15 Inspector-General must give the trustee notice in writing:
16 (a) stating that the Inspector-General proposes to give the trustee
17 a direction under this section; and
18 (b) identifying:
19 (i) the relevant material, or the part of the relevant material,
20 that the Inspector-General proposes to direct be given;
21 and
22 (ii) the person or persons to whom the Inspector-General
23 proposes to direct that the relevant material, or that part
24 of the relevant material, be given; and
25 (c) inviting the trustee to make a written submission to the
26 Inspector-General within 10 business days after the notice is
27 given, stating:
28 (i) whether the trustee has any objection to giving the
29 relevant material, or that part of the relevant material, to
30 a person or persons as proposed; and
31 (ii) if the trustee has such an objection—the reasons for that
32 objection.
- 33 (4) If the trustee of a regulated debtor's estate objects to giving the
34 relevant material, or part of the relevant material, to a person, the
35 Inspector-General must take into account the reasons for that
36 objection when deciding whether to direct that the relevant

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1 material, or that part of the relevant material, be given to the
2 person.

3 *Conditions*

4 (5) The Inspector-General may, by notice in writing to the person or
5 persons to whom the relevant material is to be given, impose
6 conditions on the use and disclosure of the relevant material, or
7 part of the relevant material, by the person or persons.

8 *Offence*

- 9 (6) A person commits an offence if:
- 10 (a) the Inspector-General directs that the relevant material, or
 - 11 part of the relevant material, be disclosed to the person
 - 12 subject to a condition in relation to the use or disclosure of
 - 13 that information by the person; and
 - 14 (b) the Inspector-General has given the person notice of the
 - 15 condition under subsection (5); and
 - 16 (c) the person does not comply with the condition.

17 Penalty: 10 penalty units or imprisonment for 3 months, or both.

18 *Directions and notices are not legislative instruments*

- 19 (7) A direction under subsection (1) is not a legislative instrument.
- 20 (8) Notices under subsections (3) and (5) are not legislative
21 instruments.

22 **26-80 Court may order information etc. to be given**

- 23 (1) The person who made the request may apply to the Court for an
24 order that the trustee give the person all or part of the relevant
25 material.
- 26 (2) If the Inspector-General gives the trustee a direction under
27 section 26-75 in relation to all or part of the relevant material, and
28 the trustee does not comply with the direction, the
29 Inspector-General may apply to the Court for an order that the
30 trustee give the person who made the request that part of the
31 relevant material.
- 32 (3) On application under subsection (1) or (2), the Court may:

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- 1 (a) order the trustee to give the person who made the request all
2 or part of the relevant material; and
3 (b) make such other orders, including orders as to costs, as it
4 thinks fit.

5 **Division 28—Meetings of creditors**

6 **28-5 Guide to this Division**

7 *[To be drafted after consultation]*

8 **28-10 Trustee may convene meetings**

9 The trustee of a regulated debtor's estate may convene a meeting
10 of the creditors at any time.

11 **28-15 Trustee must convene meeting if required by creditors**

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

- 14 (a) where there is a committee of inspection—the committee of
15 inspection requests the trustee to do so; or
16 (b) the creditors direct the trustee to do so by resolution; or
17 (c) at least 25% in value of the creditors direct the trustee to do
18 so in writing; or
19 (d) both of the following are satisfied:
20 (i) less than 25%, but more than 10%, in value of the
21 creditors direct the trustee to do so in writing;
22 (ii) security for the cost of holding the meeting is given to
23 the trustee before the meeting is convened.

24 **28-20 Trustee must convene meeting if required by the** 25 **Inspector-General**

- 26 (1) The Inspector-General may, in writing, direct the trustee of a
27 regulated debtor's estate to convene a meeting of the creditors.
28 (2) The Inspector-General may include in the direction requirements to
29 be complied with by the trustee in notifying the creditors of the
30 meeting and conducting the meeting.

1 (3) The trustee must comply with a direction given under
2 subsection (1), and any requirements included in the direction
3 under subsection (2).

4 (4) A direction given under subsection (1) is not a legislative
5 instrument.

6 **28-25 Trustee's representative at meetings**

7 (1) The trustee of a regulated debtor's estate may, by signed writing,
8 appoint a person to represent the trustee at a meeting.

9 (2) If the trustee is not personally present at a meeting, then a
10 reference in a provision of this Act to a trustee, in respect of
11 matters occurring at or in connection with the meeting, is a
12 reference to a person so appointed to represent the trustee at the
13 meeting.

14 **28-30 The Inspector-General may attend meetings**

15 (1) The Inspector-General is entitled to attend any meeting of creditors
16 held under this Act.

17 (2) Subject to any provision of this Act (including any provision in
18 relation to voting), the Inspector-General is entitled to participate
19 in any meeting of creditors held under this Act.

20 **28-35 Commonwealth may attend certain meetings etc.**

21 If:

22 (a) a former employee of a regulated debtor has made a claim for
23 financial assistance from the Commonwealth in relation to
24 unpaid employment entitlements; or

25 (b) the Commonwealth considers that such a claim is likely to be
26 made;

27 the Commonwealth is entitled to nominate a representative to
28 attend any meeting of creditors held in relation to the
29 administration of the regulated debtor's estate.

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28-40 Creditors' resolution without meeting

- 1
- 2 (1) The trustee of a regulated debtor's estate may at any time put a
- 3 proposal to the creditors by giving notice, in writing, under this
- 4 section.
- 5 (2) The notice must:
- 6 (a) contain a single proposal; and
- 7 (b) include a statement of the reasons for the proposal and the
- 8 likely impact it will have on creditors (if it is passed); and
- 9 (c) be given to each creditor who would be entitled to receive
- 10 notice of a meeting of creditors; and
- 11 (d) invite the creditor to either:
- 12 (i) vote Yes or No on the proposal; or
- 13 (ii) object to the proposal being resolved without a meeting
- 14 of creditors; and
- 15 (e) specify a reasonable time by which replies must be received
- 16 by the trustee (in order to be taken into account).
- 17 (3) If, within the time specified in the notice:
- 18 (a) at least 1 creditor votes in writing; and
- 19 (b) no other creditor objects in writing to the proposal being
- 20 resolved without a meeting of creditors;
- 21 then the following provisions have effect:
- 22 (c) if the proposal requires a special resolution and there is a Yes
- 23 vote by a majority in number, and at least 75% in value, of
- 24 those who voted within the required time—the proposal is
- 25 taken to have been passed by a special resolution of creditors
- 26 at a meeting;
- 27 (d) if the proposal does not require a special resolution and there
- 28 is a Yes vote by a majority worked out in accordance with
- 29 the regulations—the proposal is taken to have been passed by
- 30 a resolution of creditors at a meeting;
- 31 (e) in any other case—the proposal is taken not to have been
- 32 passed.
- 33 (4) A certificate signed by the trustee of the regulated debtor's estate
- 34 stating any matter relating to a proposal under this section is prima
- 35 facie evidence of the matter.

1 **28-50 Regulations relating to meetings and resolutions**

- 2 (1) The regulations may make provision for and in relation to meetings
3 and resolutions of creditors.
- 4 (2) Without limiting subsection (1), the regulations may make
5 provision in relation to:
6 (a) notice for convening meetings; and
7 (b) agenda; and
8 (c) information to be given to creditors; and
9 (d) who is to preside at meetings; and
10 (e) the number of creditors required to constitute a quorum; and
11 (f) proxies and attorneys; and
12 (g) motions; and
13 (h) voting (including casting votes); and
14 (i) when a resolution or special resolution is taken to be passed;
15 and
16 (j) facilities, including electronic communication facilities, to be
17 available at meetings; and
18 (k) minutes.
- 19 (3) Without limiting subsection (1), the regulations may make
20 provision in relation to:
21 (a) costs in relation to meetings of creditors and resolutions
22 without meeting under section 28-40 and security for those
23 costs; and
24 (b) the circumstances in which resolutions must or may be put to
25 creditors, either in a creditors' meeting or without meeting
26 under section 28-40.

27 **Division 30—Committees of inspection**

28 **30-5 Guide to this Division**

29 *[To be drafted after consultation]*

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Schedule 1 Uniform insolvency practice rules

1 **30-10 Committee of inspection**

2 *Appointment*

3 (1) The creditors of a regulated debtor's estate who are entitled to vote
4 may, by resolution, appoint a committee of inspection in relation to
5 the administration of the estate.

6 *Membership and procedure*

7 (2) The creditors may, by resolution, determine:

8 (a) the number of members; and

9 (b) the membership; and

10 (c) the procedures;
11 of the committee.

12 (3) Subsection (2) is subject to subsection (7).

13 (4) A creditor representing at least 10% in value of the creditors, or a
14 group of creditors who together represent at least 10% in value of
15 the creditors, may appoint a person as a member of the committee.

16 (5) The employees of the regulated debtor representing at least 50% in
17 value of amounts due to or in respect of any employee of the
18 regulated debtor (whether remunerated by salary, wages,
19 commission or otherwise) in respect of services rendered to or for
20 the regulated debtor may appoint a person as a member of the
21 committee.

22 (6) A creditor:

23 (a) cannot exercise the power of appointment under both
24 subsections (4) and (5); and

25 (b) can only exercise the power of appointment under either
26 subsection (4) or (5) once in relation to the external
27 administration.

28 (7) If a creditor appoints a person under subsection (4) or (5):

29 (a) the appointment is in addition to the number of members
30 determined by resolution under paragraph (2)(a); and

31 (b) the creditor is not eligible to vote in relation to the remaining
32 membership of the committee other than:

33 (i) to remove that person as a member of the committee; or

1 (ii) to fill a vacancy of the office of that member.

2 *Regulations about committees of inspection*

3 (8) The regulations may make provision for or in relation to
4 committees of inspection.

5 (9) Without limiting subsection (8), the regulations may make
6 provision for or in relation to:

7 (a) eligibility to be appointed as a member of a committee of
8 inspection; and

9 (b) the convening of, conduct of, and procedure and voting at,
10 meetings; and

11 (c) resignation and removal of members; and

12 (d) vacancies in membership.

13 **30-15 Functions of committee of inspection**

14 (1) A committee of inspection has the following functions:

15 (a) to advise and assist the trustee;

16 (b) to give directions to the trustee;

17 (c) to monitor the conduct of the administration of the estate;

18 (d) such other functions as are conferred on the committee by
19 this Act;

20 (e) to do anything incidental or conducive to the performance of
21 any of the above functions.

22 (2) A trustee must have regard to any directions given to the trustee by
23 the committee of inspection, but the trustee is not required to
24 comply with such directions.

25 **30-20 Committee of inspection may request information etc.**

26 (1) A committee of inspection may request the trustee to:

27 (a) give information; or

28 (b) provide a report; or

29 (c) produce a document;

30 to the committee.

31 (2) The trustee need not comply with the request if:

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Schedule 1 Uniform insolvency practice rules

- 1 (a) the information, report or document is not relevant to the
2 administration of the regulated debtor's estate; or
3 (b) the trustee would breach his or her duties in relation to the
4 administration of the regulated debtor's estate if the trustee
5 complied with the request; or
6 (c) it is otherwise not reasonable for the trustee to comply with
7 the request.
- 8 (3) The regulations may prescribe circumstances in which a request is,
9 or is not, reasonable.

10 **30-25 Reporting to committee of inspection**

- 11 (1) The regulations may make provision for or in relation to the
12 obligations of trustees of regulated debtors' estates:
13 (a) to give information; and
14 (b) to provide reports; and
15 (c) to produce documents;
16 to committees of inspection.
- 17 (2) Without limiting subsection (1), the regulations may provide for:
18 (a) circumstances in which the trustee must give information,
19 provide a report or produce a document to a committee of
20 inspection; and
21 (b) the manner and form in which information is to be given, a
22 report provided or a document produced; and
23 (c) the timeframes in which information is to be given, a report
24 provided or a document produced; and
25 (d) who is to bear the cost of giving information, providing a
26 report or producing a document.
- 27 (3) The regulations may:
28 (a) make different provision in relation to different kinds of
29 estate administration; and
30 (b) provide that specified requirements imposed under the
31 regulations may be replaced or modified, by resolution, by:
32 (i) the creditors; or
33 (ii) the committee of inspection.

1 **30-30 Committee of inspection may obtain specialist advice or**
2 **assistance**

3 (1) A committee of inspection may resolve that a member of the
4 committee obtain, on behalf of the committee, such advice or
5 assistance as the committee considers desirable in relation to the
6 conduct of the administration of the estate.

7 (2) To avoid doubt, an expense incurred under subsection (1) is to be
8 taken to be an expense of the administration of the estate.

9 **30-35 Obligations of members of committee of inspection**

10 *Accepting extra benefits etc.*

11 (1) Except as provided by this Act or with the leave of the Court, a
12 member of a committee of inspection must not, while acting as a
13 member, make an arrangement for receiving, or accept, from any
14 person, any:

- 15 (a) gift; or
- 16 (b) remuneration; or
- 17 (c) consideration; or
- 18 (d) benefit;

19 in connection with the administration of the estate.

20 (2) To avoid doubt, subsection (1) applies to consideration or a benefit
21 whether pecuniary or otherwise.

22 *Deriving profit etc. from the estate*

23 (3) Except as provided by this Act or with the leave of the Court, a
24 member of a committee of inspection must not, while acting as a
25 member, directly or indirectly derive any profit or advantage from
26 a transaction, sale or purchase for or on account of the estate.

27 *Deriving gifts etc. from creditors*

28 (4) Except as provided by this Act or with the leave of the Court, a
29 member of a committee of inspection must not, while acting as a
30 member, directly or indirectly derive any gift, profit or advantage
31 from a creditor.

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Schedule 1 Uniform insolvency practice rules

1

Purchasing property

2

(5) Except as provided by this Act or with the leave of the Court, a member of a committee of inspection must not, while acting as a member, directly or indirectly become the purchaser of any part of the estate.

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(6) Subsection (5) does not apply if the creditors resolve otherwise.

7

8

(7) The member of the committee is not entitled to vote on the resolution referred to in subsection (6).

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14

(8) Except as provided by this Act or with the leave of the Court, if a member of a committee of inspection is a person authorised by a creditor to act for the creditor in relation to the administration of the estate, the creditor must not, while that person is performing functions as a member of the committee, either directly or indirectly become the purchaser of any part of the estate.

15

Effect of contravention of this section

16

17

(9) A transaction entered into in contravention of this section may be set aside by the Court on the application of a creditor.

18

30-40 Oversight by the Inspector-General

19

20

The Inspector-General is entitled to attend any meeting of a committee of inspection.

21

30-45 Oversight by the Court

22

23

24

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.

25

Division 32—Review of the administration of a regulated debtor's estate

26

27

Subdivision A—Introduction

28

32-5 Guide to this Division

29

[To be drafted after consultation]

1 **Subdivision B—Court powers to inquire and make orders**

2 **32-10 Court may inquire on own initiative**

- 3 (1) The Court may, on its own initiative, inquire into the
4 administration of a regulated debtor's estate.
- 5 (2) The Court may, for the purposes of such an inquiry, require the
6 trustee of the regulated debtor's estate to:
- 7 (a) give information; or
8 (b) provide a report; or
9 (c) produce a document;
10 to the Court in relation to the administration of the estate.

11 **32-15 Court may inquire on application of creditors etc.**

- 12 (1) The Court may, on the application of a person mentioned in
13 subsection (2), inquire into the administration of a regulated
14 debtor's estate.
- 15 (2) Each of the following persons may make an application for an
16 inquiry:
- 17 (a) a creditor, on his or her own behalf;
18 (b) if the committee of inspection (if any) so resolves—a
19 creditor, on behalf of the committee;
20 (c) the regulated debtor;
21 (d) the trustee of the regulated debtor's estate;
22 (e) any other person with a financial interest in the
23 administration of the regulated debtor's estate;
24 (f) the Inspector-General.
- 25 (3) The Court may, for the purposes of such an inquiry, require the
26 trustee of the regulated debtor's estate to:
- 27 (a) give information; or
28 (b) provide a report; or
29 (c) produce a document;
30 to the Court.
- 31 (4) If an application is made by a person referred to in
32 paragraph (2)(b), expenses associated with the application are to be
33 taken to be expenses of the administration of the estate.

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Schedule 1 Uniform insolvency practice rules

1 **32-20 Court may make orders in relation to estate administration**

- 2 (1) The Court may make such orders as it thinks fit in relation to the
3 administration of a regulated debtor's estate.
- 4 (2) The Court may exercise the power under subsection (1):
5 (a) on its own initiative; or
6 (b) on application under subsection (3).
- 7 (3) Each of the following persons may apply for an order under
8 subsection (1):
9 (a) a creditor, on his or her own behalf;
10 (b) if the committee of inspection (if any) so resolves—a
11 creditor, on behalf of the committee;
12 (c) the regulated debtor;
13 (d) the trustee of the regulated debtor's estate;
14 (e) any other person with a financial interest in the
15 administration of the regulated debtor's estate;
16 (f) the Inspector-General.
- 17 (4) Without limiting subsection (1), those orders may include:
18 (a) an order that a person cease to be the trustee of the estate; and
19 (b) an order that another person be appointed as the trustee of the
20 estate; and
21 (c) an order in relation to the costs of an action (including court
22 action) taken by the trustee of the regulated debtor's estate or
23 another person in relation to the administration of the
24 debtor's estate; and
25 (d) an order directing the trustee to make good any loss that the
26 estate has sustained because of a breach of duty by the
27 trustee; and
28 (e) any other order that the Court is permitted to make under this
29 Act.
- 30 (5) Without limiting the matters which the Court may take into
31 account when making orders, the Court may take into account:
32 (a) whether an action or failure to act by the registered trustee
33 may affect public confidence in registered trustees as a
34 whole; and
35 (b) whether an order that the Court proposes to make would
36 promote public confidence in registered trustees as a whole.
-

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Uniform insolvency practice rules **Schedule 1**

- 1 (6) If an application is made by a person referred to in
2 paragraph (3)(b), expenses associated with the application are to be
3 taken to be expenses of the administration of the estate.
- 4 (7) If:
- 5 (a) the Court orders that a person cease to be the trustee of the
6 estate and that another person be appointed as the trustee of
7 the estate; and
- 8 (b) the orders are made on application by a creditor;
9 the creditor must give the Official Receiver written notice of the
10 cessation and the appointment as soon as practicable.
- 11 (8) If the Court appoints a person as the trustee of an estate, the
12 Official Receiver must issue to the person a certificate of
13 appointment.

14 **Subdivision C—Review by Inspector-General**

15 **32-21 Application of this Subdivision**

16 This Subdivision applies in relation to the administration of a
17 regulated debtor's estate.

18 **32-24 Review**

- 19 (1) The Inspector-General may carry out a review of decisions of the
20 trustee of the regulated debtor's estate to withdraw, or to propose
21 to withdraw, funds from the estate for payment for the trustee's
22 remuneration.
- 23 (2) The Inspector-General may carry out a review under this
24 Subdivision:
- 25 (a) on his or her own initiative; or
26 (b) on application by the regulated debtor or a creditor.
- 27 (3) The trustee, the regulated debtor or a creditor of the regulated
28 debtor may appeal to the Court from a decision of the
29 Inspector-General in relation to the review.

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Schedule 1 Uniform insolvency practice rules

32-27 Regulations about reviews

- 1
- 2 (1) The regulations may make provision for and in relation to reviews
3 under this Subdivision.
- 4 (2) Regulations made for the purposes of subsection (1) may make
5 provision for or in relation to any or all of the following matters:
6 (a) the giving of notice to the trustee before beginning a review,
7 or making an application for a review, under this
8 Subdivision;
9 (b) the powers and duties of the Inspector-General in carrying
10 out a review;
11 (c) the decisions that may be made by the Inspector-General in
12 relation to the review;
13 (d) the repayment of remuneration by the trustee as a
14 consequence of a review under this section.
- 15 (3) Subsection (2) does not limit subsection (1).

Subdivision D—Removal by creditors

32-30 Application of this Subdivision

16

17

18 This Subdivision applies in relation to the administration of a
19 regulated debtor's estate.

32-35 Removal by creditors

- 20
- 21 (1) The creditors may:
22 (a) by resolution at a meeting, remove the trustee of the
23 regulated debtor's estate; and
24 (b) by resolution at the same or a subsequent meeting, appoint
25 another person as trustee of the regulated debtor's estate.
- 26 (2) However, the creditors may not do so unless:
27 (a) at least 5 business days' notice of the meeting is given to all
28 persons who would be entitled to receive notice of creditors'
29 meetings; and
30 (b) the notice of the meeting includes a statement:
31 (i) where it is proposed that the trustee of the regulated
32 debtor's estate be removed at the meeting—that a

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- 1 motion will be put at the meeting to remove the trustee;
2 and
3 (ii) where it is proposed that another person will be
4 appointed as trustee of the regulated debtor's estate at
5 the meeting—that a motion will be put at the meeting to
6 appoint as the trustee a person specified in the notice.
- 7 (3) A person who has been removed as trustee of the regulated
8 debtor's estate (the *former trustee*) by resolution of the creditors
9 may apply to the Court to be reappointed as trustee of the regulated
10 debtor's estate.
- 11 (4) However, if the former trustee makes such an application, the
12 former trustee must separately record all costs incurred by the
13 former trustee and the debtor's estate in relation to the application.
- 14 (5) The Court may order that the former trustee be reappointed as
15 trustee of the debtor's estate if the Court is satisfied that the
16 removal of the former trustee was an improper use of the powers of
17 one or more creditors.
- 18 (6) The Court may make such other orders in relation to the
19 application as it thinks fit.
- 20 (7) If a person is appointed as trustee under paragraph (1)(b) or
21 subsection (5), the Official Receiver must issue to the person a
22 certificate of appointment.

23 **Part 4—Other matters**

24 **Division 40—Introduction**

25 **40-5 Guide to this Part**

26 *[To be drafted after consultation]*

27 **Division 42—Other matters**

28 **42-3 Review by the Administrative Appeals Tribunal**

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

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- 1 (a) a decision of a committee under section 8-25 in relation to an
2 application for registration as a trustee;
- 3 (b) a decision of a committee under section 8-60 in relation to an
4 application for the variation or removal of a condition of
5 registration;
- 6 (c) a decision of the Inspector-General to suspend the
7 registration of a person as a trustee under section 16-35;
- 8 (d) a decision of the Inspector-General to cancel the registration
9 of a person as a trustee under section 16-40;
- 10 (e) a decision of a committee under section 16-70 (disciplinary
11 action by committee).

12 **42-4 Trustee to have regard to directions given by creditors**

- 13 (1) The creditors may, by resolution, give directions to the trustee of a
14 regulated debtor's estate in relation to the administration of the
15 estate.
- 16 (2) The trustee must have regard to any directions so given, but the
17 trustee is not required to comply with such directions.
- 18 (3) If there is a conflict between directions given by the creditors
19 under subsection (1) and by the committee of inspection under
20 section 30-15, directions given by the creditors override any
21 directions given by the committee.

22 **42-10 Trustee may assign right to sue under this Act**

- 23 (1) A trustee may assign any right to sue that is conferred on the
24 trustee by this Act.
- 25 (2) Subsection (1) has effect subject to subsection (3).
- 26 (3) If the trustee's action has already begun, the trustee cannot assign
27 the right to sue unless the trustee has the approval of the Court.
- 28 (4) If a right is assigned under this section, a reference in this Act to
29 the trustee in relation to the action is taken to be a reference to the
30 person to whom the right has been assigned.

31 *Corporations Act 2001*

32 **2 Before Schedule 3**

1 Insert:

2 **Schedule 2—Insolvency Practice Rules**

3 Note: See section 600K.

4 **Part 1—Definitions**

5 **Division 1—Introduction**

6 **1-5 Guide to this Part**

7 *[To be drafted after consultation]*

8 **Division 2—The Dictionary**

9 **2-5 The Dictionary**

10 In this Schedule:

11 *adequate and appropriate fidelity insurance* has a meaning
12 affected by subsection 10-5(2).

13 *adequate and appropriate professional indemnity insurance* has a
14 meaning affected by subsection 10-5(2).

15 *annual administration return* means the return required to be
16 lodged under subsection 26-10(2).

17 *annual liquidator return* means the return required to be lodged
18 under subsection 12-5(1).

19 *approved form*: a document is lodged in the *approved form* if it is
20 lodged in accordance with section 3-30.

21 *creditor*, when used in relation to a company under external
22 administration, means a creditor of the company.

23 *current conditions* has the meaning given by section 3-5.

24 *default remuneration amount*, for an external administrator, has
25 the meaning given by section 22-30.

26 *end of an external administration* means:

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- 1 (a) in relation to a company under administration—the day
2 worked out in accordance with paragraph 435C(1)(b); and
3 (b) in relation to a company subject to a deed of company
4 arrangement—the day the deed is terminated; and
5 (c) in the case of a winding up of a company—the day the
6 company is deregistered.

7 **external administration** of a company has the meaning given by
8 section 3-10.

9 **external administrator** of a company has the meaning given by
10 section 3-15.

11 **property** has a meaning affected by section 3-25.

12 **registered liquidator** means a person who is registered as a
13 liquidator under Part 2 of this Schedule, but does not include a
14 person whose registration is suspended.

15 **Register of Liquidators** means the register established and
16 maintained by ASIC under section 6-5.

17 **related entity**, in relation to an individual, has the same meaning as
18 in the *Bankruptcy Act 1966*.

19 **remuneration determination**, for an external administrator, means
20 a determination made in accordance with section 22-15 in relation
21 to the external administrator.

22 **reviewing liquidator** means a registered liquidator appointed under
23 section 32-22 or 32-23 to conduct a review.

24 **start of an external administration** means:

- 25 (a) in relation to a company under administration—the day an
26 administrator of the company is appointed under
27 section 436A, 436B or 436C; and
28 (b) in relation to a company that is subject to a deed of company
29 arrangement—the day the deed is executed; and
30 (c) in the case of a winding up of a company—the day the
31 winding up of the company is taken to have begun under
32 section 513A or 513B; and
33 (d) in relation to a company for which a provisional liquidator
34 has been appointed—the day the provisional liquidator was
35 appointed.
-

1 **Division 3—Other definitions**

2 **3-5 Meaning of *current conditions***

- 3 (1) Each of the following is a ***current condition*** imposed on a
4 registered liquidator:
- 5 (a) a condition that a committee decides that the registered
6 liquidator is to be subject to under subsection 8-25(5) or (6),
7 subject to any variation that a committee has decided should
8 be made to the condition under section 8-60;
 - 9 (b) a condition that a committee decides that the registered
10 liquidator is to be subject to under paragraph 16-70(1)(f) or
11 (g), subject to any variation that a committee has decided
12 should be made to the condition under section 8-60;
 - 13 (c) a condition imposed under subsection 16-20(2), subject to
14 any variation that the Court orders under section 17-5;
 - 15 (d) a condition imposed on all registered liquidators, or on
16 registered liquidators of the liquidator's class, under
17 section 8-40;
 - 18 (e) a condition imposed on the registered liquidator by the Court
19 under section 17-5.
- 20 (2) However, the ***current conditions*** imposed on a registered
21 liquidator do not include:
- 22 (a) a condition that a committee has decided to remove under
23 section 8-60; or
 - 24 (b) a condition that the Court has ordered be removed under
25 section 17-5.

26 **3-10 Meaning of *external administration* of a company**

- 27 A company is taken to be under ***external administration*** if:
- 28 (a) the company is under administration; or
 - 29 (b) a deed of company arrangement has been entered into in
30 relation to the company; or
 - 31 (c) a liquidator has been appointed in relation to the company; or
 - 32 (d) a provisional liquidator has been appointed in relation to the
33 company.

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1 **3-15 Meaning of *external administrator* of a company**

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

- 4 (a) the administrator of the company; or
- 5 (b) the administrator under a deed of company arrangement that
6 has been entered into in relation to the company; or
- 7 (c) the liquidator of the company; or
- 8 (d) the provisional liquidator of the company.

9 **3-20 References to the external administrator of a company**

10 If 2 or more persons have been appointed as external
11 administrators of a company, a reference in this Schedule to the
12 external administrator of the company is to be read as a reference
13 to whichever one or more of those external administrators as the
14 case requires.

15 **3-25 Property of a company**

16 The *property* of a company includes any PPSA retention of title
17 property of the company.

18 Note: See sections 9 (definition of *property*) and 51F (PPSA retention of
19 title property).

20 **3-30 Approved forms**

- 21 (1) A document that this Schedule requires to be lodged with ASIC in
22 an approved form must:
 - 23 (a) be in the form approved by ASIC for the document; and
 - 24 (b) include the information, statements, explanations or other
25 matters required by the form; and
 - 26 (c) be accompanied by any other material required by the form.
 - 27 (2) A reference in this Schedule to a document that has been lodged
28 (being a document to which subsection (1) applies), includes a
29 reference to any other material lodged with the document as
30 required by the relevant form.
 - 31 (3) If:
 - 32 (a) this Schedule requires a document to be lodged with ASIC in
33 an approved form; and
-

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- 1 (b) a provision of this Schedule specifies, or provides for
2 regulations to specify, information, statements, explanations
3 or other matters that must be included in the document, or
4 other material that must accompany the document;
5 that other provision is not taken to exclude or limit the operation of
6 subsection (1) in relation to the approved form (and so the
7 approved form may also require information etc. to be included in
8 the form or material to accompany the form).
- 9 (4) The regulations may make provision in relation to:
10 (a) methods of verifying any information required by or in
11 approved forms; and
12 (b) the manner in which, the persons by whom, and the
13 directions or requirements in accordance with which,
14 approved forms are required or permitted to be signed,
15 prepared, or completed.

16 **Part 2—Registering and disciplining practitioners**

17 **Division 4—Introduction**

18 **4-5 Guide to this Part**

19 *[To be drafted after consultation]*

20 **4-10 Object**

- 21 (1) The object of this Part is to set appropriate standards to be met by
22 practitioners working in insolvency.
- 23 (2) This object is achieved by:
24 (a) providing for the registration of practitioners; and
25 (b) providing for procedures by which disciplinary action may be
26 taken if appropriate standards are not met.

27 **4-15 Working cooperatively with the Inspector-General in** 28 **Bankruptcy**

29 In performing its functions and exercising its powers under this Act
30 in relation to persons who are, have been or may become both
31 registered liquidators under this Act and registered trustees under

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1 the *Bankruptcy Act 1966*, ASIC must work cooperatively with the
2 Inspector-General in Bankruptcy.

3 **Division 6—Register of liquidators**

4 **6-5 Register of Liquidators**

- 5 (1) ASIC must establish and maintain a Register of Liquidators.
- 6 (2) The Register of Liquidators may be kept in any form that ASIC
7 considers appropriate.
- 8 (3) The regulations may make provision for and in relation to the
9 Register of Liquidators.
- 10 (4) Without limiting subsection (3), regulations made for the purposes
11 of that subsection may deal with:
- 12 (a) the details to be entered on the Register of Liquidators; and
13 (b) the parts of the Register that are to be made available to the
14 public.
- 15 (5) Without limiting paragraph (4)(a), those details may include:
- 16 (a) details of any disciplinary action recommended by a
17 committee under section 16-70; and
18 (b) details of persons who have had their registration as a
19 liquidator under this Act suspended or cancelled.

20 **Division 8—Registering liquidators**

21 **Subdivision A—Introduction**

22 **8-5 Guide to this Division**

23 *[To be drafted after consultation]*

24 **Subdivision B—Registration**

25 **8-10 Application for registration**

- 26 (1) An individual may apply to ASIC to be registered as a liquidator.
- 27 (2) The application must be lodged with ASIC in the approved form.

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1 Note: Fees for lodging documents may be imposed under the *Corporations*
2 *(Fees) Act 2001*.

3 (3) The application is properly made if subsection (2) is complied
4 with.

5 **8-15 ASIC may convene a committee to consider**

6 (1) ASIC may convene a committee for the purposes of considering an
7 application, or applications, for registration as a liquidator.

8 (2) The committee must consist of:

9 (a) ASIC; and

10 (b) a registered liquidator chosen by the Insolvency Practitioners
11 Association of Australia (ACN 002 472 362); and

12 (c) a person appointed by the Minister.

13 Note: Section 18-10 sets out the matters of which the Minister must be
14 satisfied before making an appointment under paragraph (c).

15 **8-20 ASIC must refer applications to a committee**

16 (1) ASIC must refer an application that is properly made to a
17 committee convened under section 8-15 for consideration.

18 (2) ASIC must do so within 6 months after receiving the application.

19 **8-25 Committee to consider applications**

20 (1) If an application is referred to a committee, the committee must
21 consider the application.

22 (2) For the purposes of considering the application, the committee:

23 (a) must interview the applicant; and

24 (b) may require the applicant to sit for an exam.

25 (3) Within 45 business days after interviewing the applicant, the
26 committee must decide whether the applicant should be registered
27 as a liquidator or not.

28 (4) The committee must decide that the applicant should be registered
29 if it is satisfied that the applicant:

30 (a) has the qualifications, experience, knowledge and abilities
31 prescribed by regulation; and

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- 1 (b) will take out adequate and appropriate professional indemnity
2 and fidelity insurance against the liabilities that the applicant
3 may incur working as a registered liquidator; and
- 4 (c) has not been convicted, within 10 years before making the
5 application, of an offence involving fraud or dishonesty; and
- 6 (d) is not, and has not been within 10 years before making the
7 application:
- 8 (i) an insolvent under administration; or
- 9 (ii) a person who is a party as debtor under a debt
10 agreement under Part IX of the *Bankruptcy Act 1966*, or
11 the corresponding provisions of a law of an external
12 Territory or a law of a foreign country; and
- 13 (e) has not had his or her registration as a liquidator under this
14 Act cancelled within 10 years before making the application,
15 other than in response to a written request by the applicant to
16 have the registration cancelled; and
- 17 (f) has not had his or her registration as a trustee under the
18 *Bankruptcy Act 1966* cancelled within 10 years before
19 making the application, other than in response to a written
20 request by the applicant to have the registration cancelled;
21 and
- 22 (g) is not disqualified from managing corporations under
23 Part 2D.6 of this Act, or under a law of an external Territory
24 or a law of a foreign country; and
- 25 (h) is otherwise a fit and proper person; and
- 26 (i) is resident in Australia.
- 27 (5) The committee may decide that the applicant should be registered
28 even if the committee is not satisfied of a matter mentioned in
29 paragraph (4)(a) or (i), provided the committee is satisfied that the
30 applicant would be suitable to be registered as a liquidator if the
31 applicant complied with conditions specified by the committee.
- 32 (6) The committee may decide that the applicant's registration is to be
33 subject to any other condition specified by the committee.
- 34 (7) Nothing in this section affects the operation of Part VIIC of the
35 *Crimes Act 1914* (which includes provisions that, in certain
36 circumstances, relieve persons from the requirement to disclose
37 spent convictions and require persons aware of such convictions to
38 disregard them).
-

1 **8-30 Committee to report**

2 The committee must give the applicant and ASIC a report setting
3 out:

- 4 (a) the committee's decision on the application; and
5 (b) the committee's reasons for that decision; and
6 (c) if the committee decides under subsection 8-25(5) or (6) that
7 the applicant should be registered subject to a condition:
8 (i) the condition; and
9 (ii) the committee's reasons for imposing the condition.

10 **8-35 Registration**

11 (1) ASIC must register the applicant as a liquidator if:

- 12 (a) the committee has decided that the applicant should be
13 registered; and
14 (b) the applicant has produced evidence in writing to ASIC that
15 the applicant has taken out adequate and appropriate
16 professional indemnity and fidelity insurance against the
17 liabilities that the applicant may incur working as a registered
18 liquidator.

19 Note: Fees may be imposed under the *Corporations (Fees) Act 2001* for the
20 doing of an act by ASIC.

21 (2) ASIC registers an applicant by entering on the Register of
22 Liquidators the details relating to the applicant prescribed for the
23 purposes of subsection 6-5(3).

24 (3) The registration is subject to the current conditions imposed on the
25 registered liquidator.

26 (4) After registering a person as a liquidator, ASIC must give the
27 person a certificate of registration.

28 (5) The certificate may be given electronically.

29 (6) The registration has effect for 3 years.

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1 **8-40 Conditions imposed on all registered liquidators or a class of**
2 **registered liquidators**

- 3 (1) The regulations may impose conditions on all registered
4 liquidators, or registered liquidators of a specified class.
- 5 (2) Without limiting subsection (1), a condition may be imposed
6 limiting the kinds of activity in which the liquidator may engage,
7 either for the duration of the registration or for a shorter period.

8 **Subdivision C—Varying conditions of registration**

9 **8-45 Application to vary conditions of registration**

- 10 (1) If a committee has decided under this Schedule that a person's
11 registration as a liquidator is to be subject to a condition, the
12 person may apply to ASIC for the condition to be varied or
13 removed.
- 14 (2) The application must be lodged with ASIC in the approved form.
- 15 (3) The application is properly made if subsection (2) is complied
16 with.
- 17 (4) A single application by a registered liquidator may deal with more
18 than one condition.

19 **8-50 ASIC may convene a committee to consider applications**

- 20 (1) ASIC may convene a committee for the purposes of considering an
21 application, or applications, made under section 8-45 (application
22 to vary conditions of registration).
- 23 (2) The committee must consist of:
- 24 (a) ASIC; and
- 25 (b) a registered liquidator chosen by the Insolvency Practitioners
26 Association of Australia (ACN 002 472 362); and
- 27 (c) a person appointed by the Minister.

28 Note: Section 18-10 sets out the matters of which the Minister must be
29 satisfied before making an appointment under paragraph (c).

1 **8-55 ASIC must refer applications to a committee**

2 (1) ASIC must refer an application that is properly made under
3 section 8-45 to a committee convened under section 8-50 for
4 consideration.

5 (2) ASIC must do so within 6 months after receiving the application.

6 **8-60 Committee to consider applications**

7 (1) If an application is referred to a committee, the committee must
8 consider the application.

9 (2) For the purposes of considering the application, the committee
10 must interview the applicant.

11 (3) Within 10 business days after interviewing the applicant, the
12 committee must:

13 (a) decide whether the condition or conditions to which the
14 application relates should be varied or removed; and

15 (b) if a condition is to be varied—specify the way in which it is
16 to be varied.

17 **8-65 Committee to report**

18 The committee must give the applicant and ASIC a report setting
19 out:

20 (a) the committee's decision on the application; and

21 (b) the committee's reasons for that decision; and

22 (c) if the committee decides that a condition should be varied—
23 the variation that is to be made.

24 **8-70 ASIC must give effect to the committee's decision**

25 If the committee decides that a condition imposed on a registered
26 liquidator is to be varied or removed, ASIC must alter the Register
27 of Liquidators to reflect the decision.

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1 Subdivision D—Renewal

2 8-75 Application for renewal

- 3 (1) An individual may apply to ASIC to have the individual's
4 registration as a liquidator renewed.
- 5 (2) The application must be lodged with ASIC, in the approved form,
6 before the applicant's registration as a liquidator ceases to have
7 effect.
- 8 Note: Fees for lodging documents and late lodgement fees may be imposed
9 under the *Corporations (Fees) Act 2001*.
- 10 (3) The application is properly made if subsection (2) is complied
11 with.

12 8-80 Renewal

- 13 (1) On application under section 8-75, ASIC must renew the
14 registration of the applicant as a liquidator if:
15 (a) the application is properly made; and
16 (b) the applicant has produced evidence in writing to ASIC that
17 the applicant has taken out adequate and appropriate
18 professional indemnity and fidelity insurance against the
19 liabilities that the applicant may incur working as a registered
20 liquidator; and
21 (c) the applicant has complied with any condition dealing with
22 continuing professional education to which the applicant is
23 subject during the applicant's current registration.
- 24 (2) ASIC renews the registration of the applicant by entering, or
25 maintaining, on the Register of Liquidators the details relating to
26 the applicant prescribed for the purposes of subsection 6-5(3).
- 27 (3) The renewed registration is subject to the current conditions
28 imposed on the registered liquidator.
- 29 (4) After renewing the registration of a person as a liquidator, ASIC
30 must give the person a certificate of registration.
- 31 (5) The certificate may be given electronically.
- 32 (6) The renewed registration has effect for 3 years.

1 **Subdivision E—Offences relating to registration**

2 **8-85 False representation that person is a registered liquidator**

3 A person commits an offence if:

- 4 (a) the person makes a representation; and
5 (b) the representation is that the person is a registered liquidator;
6 and
7 (c) the representation is false.

8 Penalty: 30 penalty units.

9 **Division 10—Insurance**

10 **10-5 Registered liquidators to maintain insurance**

11 (1) A registered liquidator must maintain:

12 (a) adequate and appropriate professional indemnity insurance;
13 and

14 (b) adequate and appropriate fidelity insurance;

15 against the liabilities that the liquidator may incur working as a
16 registered liquidator.

17 (2) ASIC may, by legislative instrument, determine what constitutes
18 adequate and appropriate professional indemnity insurance, and
19 adequate and appropriate fidelity insurance, in relation to either or
20 both of the following:

- 21 (a) specified circumstances;
22 (b) specified registered liquidators.

23 (3) A person commits an offence if:

24 (a) the person is subject to a requirement under subsection (1);
25 and

26 (b) the person intentionally or recklessly fails to comply with the
27 requirement.

28 Penalty: 1,000 penalty units.

29 (4) A person commits an offence of strict liability if:

- 30 (a) the person is subject to a requirement under subsection (1);
31 and

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1 (b) the person fails to comply with the requirement.

2 Penalty: 60 penalty units.

3 Note: For offences of strict liability, see subsection 6.1(1) of the *Criminal*
4 *Code*.

5 **Division 12—Annual liquidator returns**

6 **12-5 Annual liquidator returns**

7 (1) A person who is a registered liquidator during all or part of a return
8 year for the person must, within 1 month after the end of that year,
9 lodge with ASIC a return that conforms with subsection (3).

10 (2) A *return year* for a person who is, or has at any time been, a
11 registered liquidator is:

12 (a) the period of 12 months beginning on the day the person first
13 began to be registered as a liquidator; and

14 (b) each subsequent period of 12 months.

15 (3) A return under subsection (1) must:

16 (a) be in the approved form; and

17 (b) include evidence that the person has maintained adequate and
18 appropriate professional indemnity and fidelity insurance
19 against the liabilities that the person may incur working as a
20 registered liquidator during the whole of any period of the
21 year during which the person was registered as a liquidator.

22 (4) ASIC may, on the application of the registered liquidator made
23 before the end of the period for lodging a return under
24 subsection (1), extend that period.

25 (5) A person commits an offence of strict liability if:

26 (a) the person is subject to a requirement under subsection (1);
27 and

28 (b) the person fails to comply with the requirement.

29 Penalty: 5 penalty units.

30 Note: For offences of strict liability, see subsection 6.1(1) of the *Criminal*
31 *Code*.

1 **Division 14—Notice requirements**

2 **14-5 Notice of significant events**

- 3 (1) A registered liquidator must lodge with ASIC a notice, in the
4 approved form, if any of the following occur:
- 5 (a) the liquidator becomes an insolvent under administration;
 - 6 (b) the liquidator becomes a party as debtor under a debt
7 agreement under Part IX of the *Bankruptcy Act 1966*, or the
8 corresponding provisions of a law of an external Territory or
9 a law of a foreign country;
 - 10 (c) a bankruptcy notice is issued under the *Bankruptcy Act 1966*
11 in relation to the liquidator as debtor, or a corresponding
12 notice is issued in relation to the liquidator as debtor under a
13 law of an external Territory or a law of a foreign country;
 - 14 (d) the liquidator is convicted of an offence involving fraud or
15 dishonesty;
 - 16 (e) the liquidator is disqualified from managing corporations
17 under Part 2D.6 of this Act, or under a law of an external
18 Territory or a law of a foreign country;
 - 19 (f) the liquidator ceases to have:
 - 20 (i) adequate and appropriate professional indemnity
21 insurance; or
 - 22 (ii) adequate and appropriate fidelity insurance;
23 against the liabilities that the liquidator may incur working as
24 a registered liquidator;
 - 25 (g) the liquidator is issued with a notice under section 16-50 of
26 the *Bankruptcy Act 1966* in relation to the liquidator's
27 registration as trustee under that Act;
 - 28 (h) the liquidator's registration as a trustee under the *Bankruptcy*
29 *Act 1966* is suspended or cancelled;
 - 30 (i) information included in an annual liquidator return, or in an
31 annual administration return, prepared by or on behalf of the
32 liquidator is or becomes inaccurate;
 - 33 (j) any other event prescribed by regulation.

34 The notice must be lodged within 5 business days after the
35 registered liquidator could reasonably be expected to be aware that
36 the event has occurred.

- 37 (2) A person commits an offence if:
-

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- 1 (a) the person is subject to a requirement under subsection (1);
2 and
3 (b) the person intentionally or recklessly fails to comply with the
4 requirement.

5 Penalty: 100 penalty units.

6 **Division 16—Disciplinary and other action**

7 **Subdivision A—Introduction**

8 **16-5 Guide to this Division**

9 *[To be drafted after consultation]*

10 **Subdivision B—Direction to comply**

11 **16-10 Registered liquidator to remedy failure to lodge etc.** 12 **documents**

- 13 (1) This section applies if a registered liquidator fails to comply with a
14 requirement to lodge, make or give any document that the
15 liquidator is required under this Schedule to lodge, make or give.
- 16 (2) ASIC may, in writing, direct the registered liquidator to comply
17 with the requirement within 10 business days after the direction is
18 given.
- 19 (3) ASIC may withdraw a direction given under subsection (2).
- 20 (4) If the registered liquidator does not comply within that period,
21 ASIC may do either or both of the following:
22 (a) give a direction under subsection 16-20(1) (direction not to
23 accept further appointments);
24 (b) apply to the Court for an order under subsection 1274(11) or
25 section 17-5 directing the liquidator to comply with the
26 requirement within such time as is specified in the order.
- 27 (5) A direction under subsection (2) is not a legislative instrument.
- 28 (6) Nothing in this section prejudices the operation of any law
29 imposing penalties on a registered liquidator in relation to such a
30 failure to comply.

1 (7) This section does not limit section 1274 (registers).

2 **16-15 Registered liquidator to correct inaccuracies**

3 (1) This section applies if ASIC reasonably suspects that information
4 in any document that a registered liquidator is required under this
5 Schedule to lodge, make or give is incomplete or incorrect in any
6 particular.

7 (2) ASIC may, in writing, direct the registered liquidator to do any or
8 all of the following within a period of 10 business days after the
9 direction is given:

- 10 (a) confirm to ASIC that the information in the document is
11 complete and correct;
- 12 (b) complete or correct the information (as the case requires);
- 13 (c) notify any persons specified by ASIC in the direction of the
14 addition or correction.

15 (3) If the registered liquidator does not comply within that period,
16 ASIC may do either or both of the following:

- 17 (a) give a direction under subsection 16-20(1) (direction not to
18 accept further appointments);
- 19 (b) apply to the Court for an order under subsection 1274(11) or
20 section 17-5 directing the liquidator to do a thing specified in
21 the direction within such time as is specified in the order.

22 (4) A direction under subsection (2) is not a legislative instrument.

23 (5) Nothing in this section prejudices the operation of any law
24 imposing penalties on the registered liquidator in relation to giving
25 incomplete or incorrect information.

26 (6) This section does not limit section 1274 (registers).

27 **16-20 Direction not to accept further appointments**

28 (1) ASIC may direct a registered liquidator not to accept any further
29 appointments under Chapter 5 of this Act, or not to accept any
30 further appointments under Chapter 5 of this Act during a period
31 specified in the direction, if the liquidator has failed to comply with
32 a notice given to the liquidator under section 16-10 (direction to
33 remedy failure to lodge etc. documents) or 16-15 (direction to
34 correct inaccuracies).

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- 1 (2) If ASIC gives a direction to a registered liquidator under
2 subsection (1), it is a condition of the liquidator's registration that
3 the liquidator must comply with the direction.
- 4 (3) ASIC may withdraw a direction given under subsection (1).
- 5 (4) The condition is removed from the liquidator's registration if ASIC
6 withdraws the direction.
- 7 (5) The registered liquidator may apply to the Court for an order under
8 section 17-5 to vary or remove the condition from the liquidator's
9 registration.
- 10 (6) A direction under subsection (1) is not a legislative instrument.
- 11 (7) Nothing in this section prejudices the operation of any law
12 imposing penalties on the registered liquidator in relation to:
13 (a) a failure to comply with a requirement of the kind mentioned
14 in subsection 16-10(1); or
15 (b) giving incomplete or incorrect information.

16 **Subdivision C—Automatic cancellation**

17 **16-30 Automatic cancellation**

- 18 (1) The registration of a person as a liquidator is cancelled if:
19 (a) the person becomes an insolvent under administration; or
20 (b) the person becomes a party as debtor under a debt agreement
21 under Part IX of the *Bankruptcy Act 1966*, or the
22 corresponding provisions of a law of an external Territory or
23 a law of a foreign country; or
24 (c) the person dies.
- 25 (2) The cancellation takes effect on the day the event mentioned in
26 subsection (1) happens.

27 **Subdivision D—ASIC may suspend or cancel registration**

28 **16-35 ASIC may suspend registration**

- 29 (1) ASIC may suspend the registration of a person as a liquidator if:
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- 1 (a) the person is disqualified from managing corporations under
2 Part 2D.6 of this Act, or under a law of an external Territory
3 or a law of a foreign country; or
4 (b) the person ceases to have adequate and appropriate
5 professional indemnity or fidelity insurance against the
6 liabilities that the person may incur working as a registered
7 liquidator; or
8 (c) the person's registration as a trustee under the *Bankruptcy*
9 *Act 1966* has been cancelled or suspended, other than in
10 compliance with a written request by the person to cancel or
11 suspend the registration; or
12 (d) if the Court has, after reviewing a remuneration
13 determination for the person under section 22-20, made an
14 order under section 32-20 that the person repay
15 remuneration—the person has failed to repay the
16 remuneration; or
17 (e) the person has been convicted of an offence involving fraud
18 or dishonesty; or
19 (f) the person lodges a request with ASIC in the approved form
20 to have the registration suspended.
- 21 (2) Nothing in this section affects the operation of Part VIIC of the
22 *Crimes Act 1914* (which includes provisions that, in certain
23 circumstances, relieve persons from the requirement to disclose
24 spent convictions and require persons aware of such convictions to
25 disregard them).

26 **16-40 ASIC may cancel registration**

- 27 (1) ASIC may cancel the registration of a person as a liquidator if:
28 (a) the person is disqualified from managing corporations under
29 Part 2D.6 of this Act, or under a law of an external Territory
30 or a law of a foreign country; or
31 (b) the person ceases to have adequate and appropriate
32 professional indemnity or fidelity insurance against the
33 liabilities that the person may incur working as a registered
34 liquidator; or
35 (c) the person's registration as a trustee under the *Bankruptcy*
36 *Act 1966* has been cancelled, other than in compliance with a
37 written request by the person to cancel the registration; or

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- 1 (d) if the Court has, after reviewing a remuneration
2 determination for the person under section 22-20, made an
3 order under section 32-20 that the person repay
4 remuneration—the person has failed to repay the
5 remuneration; or
6 (e) the person has been convicted of an offence involving fraud
7 or dishonesty; or
8 (f) the person lodges a request with ASIC in the approved form
9 to have the registration cancelled.
- 10 (2) Nothing in this section affects the operation of Part VIIC of the
11 *Crimes Act 1914* (which includes provisions that, in certain
12 circumstances, relieve persons from the requirement to disclose
13 spent convictions and require persons aware of such convictions to
14 disregard them).

15 **16-45 Notice of suspension or cancellation**

- 16 (1) This section applies if ASIC decides under section 16-35 or 16-40
17 to cancel or suspend the registration of a person as a liquidator.
- 18 (2) ASIC must, not later than 10 business days after the decision, give
19 the person a written notice setting out the decision, and the reasons
20 for the decision.
- 21 (3) The decision comes into effect at the end of the day the notice is
22 given to the person.
- 23 (4) A failure by ASIC to give the notice under subsection (2) within 10
24 business days does not affect the validity of the decision.

25 **Subdivision E—Disciplinary action by committee**

26 **16-50 ASIC may give show-cause notice**

- 27 (1) ASIC may give a registered liquidator notice in writing asking the
28 liquidator to give ASIC a written explanation why the liquidator
29 should continue to be registered, if ASIC believes that:
30 (a) the liquidator no longer has the qualifications, experience,
31 knowledge and abilities prescribed by regulation under
32 paragraph 8-25(4)(a); or

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- 1 (b) the liquidator has committed an act of bankruptcy, within the
2 meaning of the *Bankruptcy Act 1966* or a corresponding law
3 of an external Territory or a foreign country; or
4 (c) the liquidator is disqualified from managing corporations
5 under Part 2D.6 of this Act, or under a law of an external
6 Territory or a law of a foreign country; or
7 (d) the liquidator has ceased to have adequate and appropriate
8 professional indemnity or fidelity insurance against the
9 liabilities that the person may incur working as a registered
10 liquidator; or
11 (e) the liquidator has breached a condition of the liquidator's
12 registration; or
13 (f) the liquidator has been appointed to act as a reviewing
14 liquidator under Subdivision C of Division 32 of this
15 Schedule, and has failed to properly exercise the powers or
16 perform the duties of a reviewing liquidator; or
17 (g) the liquidator's registration as a trustee under the *Bankruptcy*
18 *Act 1966* has been cancelled or suspended, other than in
19 compliance with a written request by the liquidator to cancel
20 or suspend the registration; or
21 (h) if the Court has, after reviewing a remuneration
22 determination for the liquidator under section 22-20, made an
23 order under section 32-20 that the liquidator repay
24 remuneration—the liquidator has failed to repay the
25 remuneration; or
26 (i) the liquidator has been convicted of an offence involving
27 fraud or dishonesty; or
28 (j) the liquidator is permanently or temporarily unable to
29 perform the functions and duties of a liquidator because of
30 physical or mental incapacity; or
31 (k) the liquidator has failed to carry out adequately and properly
32 (whether in Australia or in an external Territory or in a
33 foreign country):
34 (i) the duties of a liquidator; or
35 (ii) any other duties or functions that under a law of the
36 Commonwealth or of a State or Territory, or the general
37 law, a registered liquidator is required to carry out; or
38 (l) the liquidator is not a fit and proper person; or
39 (m) the liquidator is not resident in Australia.
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- 1 (2) A notice under subsection (1) is not a legislative instrument.
- 2 (3) Nothing in this section affects the operation of Part VIIC of the
3 *Crimes Act 1914* (which includes provisions that, in certain
4 circumstances, relieve persons from the requirement to disclose
5 spent convictions and require persons aware of such convictions to
6 disregard them).

7 **16-55 ASIC may convene a committee**

- 8 (1) ASIC may convene a committee to consider whether a decision
9 should be made to take action of the kind mentioned in
10 section 16-70 in relation to a registered liquidator, or registered
11 liquidators.
- 12 (2) The committee must consist of:
- 13 (a) ASIC; and
- 14 (b) a registered liquidator chosen by the Insolvency Practitioners
15 Association of Australia (ACN 002 472 362); and
- 16 (c) a person appointed by the Minister.

17 Note: Section 18-10 sets out the matters of which the Minister must be
18 satisfied before making an appointment under paragraph (c).

19 **16-60 ASIC may refer matters to the committee**

20 ASIC may refer a registered liquidator to a committee convened
21 under section 16-55, if ASIC gives the liquidator a notice under
22 section 16-50 and does not receive an explanation within a
23 reasonable time, or is not satisfied by the explanation.

24 **16-65 Committee to consider**

- 25 (1) The committee may make a decision that action of the kind
26 mentioned in section 16-70 should be taken if the committee is
27 satisfied that any of paragraphs (a) to (m) of subsection 16-50(1) is
28 satisfied in relation to the registered liquidator.
- 29 (2) In deciding whether any of those paragraphs is satisfied, the
30 committee must accord the registered liquidator procedural
31 fairness.
- 32 (3) In deciding whether any of those paragraphs is satisfied, the
33 committee may have regard to:

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- 1 (a) any information provided to the committee by ASIC; and
2 (b) any explanation given by the liquidator why the liquidator's
3 registration should not be cancelled or suspended; and
4 (c) any other information given by the liquidator to the
5 committee; and
6 (d) if the registered liquidator is or was also a registered trustee
7 under the *Bankruptcy Act 1966*—any information in relation
8 to the liquidator given to the committee by the
9 Inspector-General or a committee convened under Schedule 2
10 to that Act; and
11 (e) any other matter that the committee considers relevant.

12 **16-70 Decision of the committee**

- 13 (1) The committee may, having considered the matters mentioned in
14 section 16-65 in relation to a registered liquidator, decide one or
15 more of the following:
16 (a) that the liquidator should continue to be registered;
17 (b) that the liquidator's registration should be cancelled;
18 (c) that the liquidator's registration should be suspended for a
19 period, or until the occurrence of an event, specified in the
20 decision;
21 (d) that ASIC should direct the liquidator not to accept any
22 further appointments as liquidator, or not to accept any
23 further appointments as liquidator during the period specified
24 in the decision;
25 (e) that the liquidator should be publicly or privately admonished
26 or reprimanded;
27 (f) that a condition specified in the decision should be imposed
28 on the liquidator;
29 (g) that a condition should be imposed on all other registered
30 liquidators that they must not allow the liquidator to carry out
31 any of the functions or duties, or exercise any of the powers,
32 of a registered liquidator on their behalf (whether as
33 employee, agent, consultant or otherwise) for a period
34 specified in the decision of no more than 10 years;
35 (h) that ASIC should publish specified information in relation to
36 the committee's decision and the reasons for that decision.

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- 1 (2) Without limiting paragraph (1)(f), the conditions imposed under
2 that paragraph may include one or more of the following:
3 (a) a condition that the liquidator engage in, or refrain from
4 engaging in, specified conduct;
5 (b) a condition that the liquidator engage in, or refrain from
6 engaging in, specified conduct except in specified
7 circumstances;
8 (c) a condition that the liquidator publish specified information;
9 (d) a condition that the liquidator notify a specified person or
10 class of persons of specified information;
11 (e) a condition that the liquidator publish a specified statement;
12 (f) a condition that the liquidator make a specified statement to a
13 specified person or class of persons.

14 **16-75 Committee to report**

- 15 The committee must give the registered liquidator and ASIC a
16 report setting out:
17 (a) the committee's decision in relation to the liquidator; and
18 (b) the committee's reasons for that decision; and
19 (c) if the committee decides under paragraph 16-70(1)(f) that the
20 liquidator should be registered subject to a condition:
21 (i) the condition; and
22 (ii) the committee's reasons for imposing the condition; and
23 (d) if the committee decides under paragraph 16-70(1)(g) that a
24 condition should be imposed on all other registered
25 liquidators in relation to the liquidator:
26 (i) the condition; and
27 (ii) the committee's reasons for imposing the condition.

28 **16-80 ASIC must give effect to the committee's decision**

29 ASIC must give effect to the committee's decision.

1 **Subdivision F—Action initiated by industry body**

2 **16-85 Notice by industry bodies of possible grounds for disciplinary**
3 **action**

- 4 (1) An industry body may lodge with ASIC a notice in the approved
5 form:
- 6 (a) stating that the body reasonably suspects that there are
7 grounds for ASIC:
 - 8 (i) to suspend the registration of a registered liquidator
9 under section 16-35; or
 - 10 (ii) to cancel the registration of a registered liquidator under
11 section 16-40; or
 - 12 (iii) to give a registered liquidator a notice under
13 section 16-50; and
 - 14 (b) identifying the registered liquidator; and
 - 15 (c) including the information and copies of any documents upon
16 which the suspicion is founded.
- 17 (2) If ASIC receives a notice under subsection (1), ASIC must
18 consider the information and copies of documents (if any) included
19 with the notice and decide whether to:
- 20 (a) suspend the registration of the registered liquidator under
21 section 16-35; or
 - 22 (b) cancel the registration of the registered liquidator under
23 section 16-40; or
 - 24 (c) give the registered liquidator a notice under section 16-50; or
 - 25 (d) take other action, including conducting an inquiry or
26 gathering information in relation to the registered liquidator;
27 or
 - 28 (e) take no further action in relation to the matters raised by the
29 notice.
- 30 (3) If ASIC decides to take no further action in relation to the matters
31 raised by the notice, ASIC must give the industry body notice in
32 writing of that fact, together with the reasons for its decision.
- 33 (4) An industry body is not liable civilly, criminally or under any
34 administrative process for giving a notice under subsection (1) if:
35 (a) the body acted in good faith in giving the notice; and

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- 1 (b) the suspicion that is the subject of the notice is a reasonable
2 suspicion.
- 3 (5) A person who, in good faith, makes a decision as a result of which
4 the industry body gives a notice under subsection (1) is not liable
5 civilly, criminally or under any administrative process for making
6 the decision.
- 7 (6) A person who, in good faith, gives information or a document to an
8 industry body that is included, or a copy of which is included, in a
9 notice under subsection (1) is not liable civilly, criminally or under
10 any administrative process for giving the information or document.
- 11 (7) The regulations may prescribe bodies as *industries bodies* for the
12 purposes of this section.

13 **Subdivision G—Consequences of certain disciplinary and other** 14 **action**

15 **16-90 ASIC must update the Register of Liquidators**

16 If a person's registration as a liquidator is suspended or cancelled,
17 ASIC must update the Register of Liquidators to reflect the fact as
18 soon as is reasonably practicable after becoming aware of the fact.

19 **16-95 ASIC must include details of conditions in Register of** 20 **Liquidators**

21 If:

- 22 (a) a committee decides under subsection 8-25(5) or (6) or
23 paragraph 16-70(1)(f) or (g) that a registered liquidator
24 should be subject to a condition; or
- 25 (b) a condition is imposed on a registered liquidator under
26 subsection 16-20(2); or
- 27 (c) a condition is imposed on a registered liquidator by the Court
28 under section 17-5;

29 ASIC must include details of that condition in the entry on the
30 Register of Liquidators in relation to the registered liquidator.

1 **16-100 Appointment of another liquidator if liquidator's**
2 **registration is suspended or cancelled**

3 (1) If:

- 4 (a) the registration of a liquidator is suspended or cancelled
5 under this Division; and
6 (b) the liquidator is conducting an external administration of a
7 company at the time the registration is suspended or
8 cancelled;

9 ASIC must, in writing, appoint another registered liquidator to
10 conduct the external administration of the company.

11 (2) Subsection (1) does not apply to:

- 12 (a) a liquidator appointed by the Court; or
13 (b) a winding up ordered by ASIC under section 489EA; or
14 (c) a members' voluntary winding up.

15 Note: For court-appointed liquidators, see section 473A. For a winding up
16 ordered by ASIC, see section 489EC. For a members' voluntary
17 winding up, see section 495.

18 **Division 17—Court oversight of registered liquidators**

19 **17-5 Court may make orders in relation to registered liquidators**

20 (1) The Court may make such orders as it thinks fit in relation to a
21 registered liquidator.

22 (2) The Court may exercise the power under subsection (1):

- 23 (a) on its own initiative; or
24 (b) on application under subsection (3).

25 (3) Each of the following persons may apply for an order under
26 subsection (1):

- 27 (a) the registered liquidator;
28 (b) ASIC.

29 (4) Without limiting the matters which the Court may take into
30 account when making orders, the Court may take into account:

- 31 (a) whether an action or failure to act by the registered liquidator
32 may affect public confidence in registered liquidators as a
33 whole; and

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1 (b) whether an order that the Court proposes to make would
2 promote public confidence in registered liquidators as a
3 whole.

4 (5) Any order made under this section may provide that all costs of
5 and incidental to the application must be borne by the liquidator in
6 his or her personal capacity.

7 **Division 18—Committees under this Part**

8 **18-5 Guide to this Division**

9 *[To be drafted after consultation]*

10 **18-10 Minister appointing a person to a committee**

11 (1) This section applies if the Minister is to appoint a person to a
12 committee under this Part.

13 (2) The Minister is to appoint a person as a member of the committee
14 only if the Minister is satisfied that the person is qualified for
15 appointment by virtue of his or her knowledge of, or experience in,
16 one or more of the following fields:

- 17 (a) business;
- 18 (b) administration of companies, including insolvent companies;
- 19 (c) law, including the law relating to insolvency;
- 20 (d) economics;
- 21 (e) accounting;
- 22 (f) public policy relating to insolvency.

23 (3) The Minister may, in writing, delegate the Minister's powers to
24 appoint a person to a committee under this Part to:

- 25 (a) ASIC; or
 - 26 (b) a member of ASIC (within the meaning of section 9 of the
27 *Australian Securities and Investments Commission Act*
28 *2001*); or
 - 29 (c) a staff member of ASIC who:
 - 30 (i) is an SES employee or acting SES employee; or
 - 31 (ii) is an APS employee who holds, or is acting in, an
32 Executive Level 2 position; or
-

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1 (iii) holds, or is acting in, an office or position that is
2 equivalent to an SES employee, or an Executive Level
3 2.

4 (4) In exercising powers under a delegation, the delegate must comply
5 with any directions of the Minister.

6 **18-15 Single committee may consider more than one matter**

7 A single committee may be convened under this Part to consider
8 one or more of the following:

- 9 (a) a matter or matters relating to one applicant for registration
10 as a liquidator;
11 (b) a matter or matters relating to more than one applicant for
12 registration as a liquidator;
13 (c) a matter or matters relating to one registered liquidator;
14 (d) a matter or matters relating to more than one registered
15 liquidator.

16 **18-20 Ongoing consideration of matters by committee**

17 If a committee is convened under this Schedule to consider a
18 matter:

- 19 (a) the committee's powers, functions and duties in relation to
20 the matter are not affected by a change in the membership of
21 the committee; and
22 (b) the committee may adjourn its consideration of the matter,
23 and may do so more than once; and
24 (c) the matter may be transferred to another committee with
25 powers, functions and duties under this Schedule in relation
26 to matters of that kind.

27 **18-25 Procedure and other rules relating to committees**

28 The regulations may provide for:

- 29 (a) the manner in which the committees convened under this Part
30 are to perform their functions, including:
31 (i) meetings of committees; and
32 (ii) the number of committee members required to
33 constitute a quorum; and

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- 1 (iii) disclosure of interests in a matter before a committee;
2 and
3 (iv) the manner in which questions are to be decided by the
4 committee; and
5 (b) the reconstitution of a committee; and
6 (c) the termination of the consideration of a matter by a
7 committee, and the transfer of matters to another committee.

18-30 Committee must only use information etc. for purposes for which disclosed

- 8
9
10 (1) A person commits an offence if:
11 (a) the person is a member of a committee; and
12 (b) information or a document is disclosed to the person for the
13 purposes of exercising powers or performing functions as a
14 member of the committee; and
15 (c) the person uses or discloses the information or document for
16 any other purpose.

17 Penalty: 50 penalty units.

18 *Exception—information or document disclosed to the*
19 *Inspector-General in Bankruptcy or another committee etc.*

- 20 (2) Subsection (1) does not apply if the information is disclosed:
21 (a) to the Inspector-General in Bankruptcy to assist the
22 Inspector-General to exercise his or her powers or perform
23 his or her functions under the *Bankruptcy Act 1966*; or
24 (b) to a committee convened under Part 2 of Schedule 2 to the
25 *Bankruptcy Act 1966* to assist the committee to exercise its
26 powers or perform its functions under that Part; or
27 (c) to another committee convened under this Part to assist the
28 committee to exercise its powers or perform its functions
29 under this Part; or
30 (d) to enable or assist a body prescribed for the purposes of this
31 paragraph to perform its disciplinary function in relation to
32 its members; or
33 (e) in order to enable or assist an authority or person in:
34 (i) a State or Territory; or
35 (ii) a country outside Australia and the external Territories;

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- 1 to perform or exercise a function or power that corresponds,
2 or is analogous, to any of the committee's or ASIC's
3 functions and powers; or
4 (f) to a court or tribunal in relation to proceedings before the
5 court or tribunal.

6 Note: A defendant bears an evidential burden in relation to the matter in
7 subsection (2); see subsection 13.3(3) of the *Criminal Code*.

8 **Part 3—General rules relating to external** 9 **administrations**

10 **Division 20—Introduction**

11 **20-5 Guide to this Part**

12 *[To be drafted after consultation]*

13 **Division 22—Remuneration and other benefits received by** 14 **external administrators**

15 **Subdivision A—Introduction**

16 **22-5 Guide to this Division**

17 *[To be drafted after consultation]*

18 **Subdivision B—Remuneration of external administrators—** 19 **general rules**

20 **22-7 Application of Subdivision**

21 This Subdivision applies in relation to an external administrator
22 other than:

- 23 (a) a provisional liquidator; or
24 (b) a liquidator appointed by ASIC under section 489EC
25 (winding up by ASIC).

26 Note: For the remuneration of provisional liquidators, see Subdivision C of
27 this Division. For the remuneration of liquidators appointed by ASIC
28 under section 489EC, see Subdivision D of this Division.

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1 **22-10 External administrator's remuneration**

2 *Each external administrator*

- 3 (1) An external administrator is entitled to accrue, in relation to the
4 external administration, the remuneration specified in any
5 remuneration determinations for the external administrator (see
6 section 22-15).

7 *First external administrator*

- 8 (2) The person first appointed as external administrator in relation to
9 an external administration, is entitled to accrue, in relation to the
10 external administration, remuneration not exceeding the default
11 remuneration amount for the external administrator (see
12 section 22-30).
- 13 (3) If, immediately before the external administrator referred to in
14 subsection (2) ceases to be the external administrator in relation to
15 the external administration, the total amount of remuneration
16 accrued by the external administrator in relation to the external
17 administration is less than the default remuneration amount for the
18 external administrator (see section 22-30), the external
19 administrator is entitled to additional remuneration equal to the
20 difference between the amount accrued and the default
21 remuneration amount for the external administrator.

22 **22-15 Remuneration determinations**

23 *Remuneration determinations*

- 24 (1) A determination, specifying the remuneration to which an external
25 administrator (other than an external administrator in a members'
26 voluntary winding up) is entitled in relation to an external
27 administration, may be made:
- 28 (a) by resolution of the creditors; or
29 (b) if the creditors so resolve—by the committee of inspection;
30 or
31 (c) if no determination is made under paragraph (a) or (b)—by
32 the Court.

33 Note: For determinations made by the Court, see also section 22-25 (matters
34 to which the Court must have regard).

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- 1 (2) A determination, specifying the remuneration to which an external
2 administrator in a members' voluntary winding up is entitled in
3 relation to the external administration, may be made:
4 (a) by resolution of the company at a general meeting; or
5 (b) if no determination is made under paragraph (a)—by the
6 Court.

7 Note: For determinations made by the Court, see also section 22-25 (matters
8 to which the Court must have regard).

- 9 (3) A determination under this section may specify the remuneration to
10 which an external administrator is entitled in either or both of the
11 following ways:
12 (a) by specifying an amount of remuneration to which the
13 external administrator is entitled;
14 (b) by specifying a method for working out the amount of
15 remuneration to which the external administrator is entitled.

16 *Remuneration on a time-cost basis*

- 17 (4) If a determination under this section specifies that the external
18 administrator is entitled to remuneration worked out wholly or
19 partly on a time-cost basis, the determination must include a cap on
20 the amount of remuneration worked out on a time-cost basis to
21 which the external administrator is entitled.

22 *More than one remuneration determination may be made*

- 23 (5) To avoid doubt, more than one determination under this section
24 may be made in relation to a particular external administrator and a
25 particular external administration.

26 **22-20 Review of remuneration determinations**

27 *Review on application*

- 28 (1) Any of the following may apply to the Court for a review of a
29 remuneration determination for an external administrator:
30 (a) ASIC;
31 (b) the external administrator;
32 (c) a person with a financial interest in the external
33 administration;

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1 (d) if the company is under administration—an officer of the
2 company.

3 (2) Paragraph (1)(d) has effect despite section 437C.

4 Note: Section 437C deals with powers of officers etc. while a company is
5 under external administration.

6 (3) On application under subsection (1), the Court may, if it considers
7 it appropriate to do so, review the remuneration determination.

8 Note: See also section 22-25 (matters to which the Court must have regard).

9 *Court must affirm, vary or set aside remuneration determination*

10 (4) After reviewing the remuneration determination, the Court must:

11 (a) affirm the remuneration determination; or

12 (b) vary the remuneration determination; or

13 (c) set aside the remuneration determination and substitute
14 another remuneration determination.

15 (5) This Subdivision applies to a determination affirmed, varied or
16 substituted by the Court as if the determination was made by the
17 Court under subsection 22-15(1).

18 *Exception*

19 (6) Subsection (1) does not apply to a remuneration determination
20 made by the Court.

21 **22-25 Matters to which the Court must have regard**

22 In making a remuneration determination under paragraph
23 22-15(1)(c) or (2)(b), or reviewing a remuneration determination
24 under section 22-20, the Court must have regard to whether the
25 remuneration is reasonable, taking into account any or all of the
26 following matters:

27 (a) the extent to which the work performed by the external
28 administrator was reasonably necessary;

29 (b) the extent to which the work likely to be performed by the
30 external administrator is likely to be reasonably necessary;

31 (c) the period during which the work was, or is likely to be,
32 performed by the external administrator;

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- 1 (d) the quality of the work performed, or likely to be performed,
2 by the external administrator;
- 3 (e) the complexity (or otherwise) of the work performed, or
4 likely to be performed, by the external administrator;
- 5 (f) the extent (if any) to which the external administrator was, or
6 is likely to be, required to deal with extraordinary issues;
- 7 (g) the extent (if any) to which the external administrator was, or
8 is likely to be, required to accept a higher level of risk or
9 responsibility than is usually the case;
- 10 (h) the value and nature of any property dealt with, or likely to
11 be dealt with, by the external administrator;
- 12 (i) whether the external administrator was, or is likely to be,
13 required to deal with:
- 14 (i) one or more receivers; or
15 (ii) one or more receivers and managers;
- 16 (j) the number, attributes and behaviour, or the likely number,
17 attributes and behaviour, of the creditors;
- 18 (k) if the remuneration is worked out wholly or partly on a
19 time-cost basis—the time properly taken, or likely to be
20 properly taken, by the external administrator in performing
21 the work;
- 22 (l) if:
- 23 (i) a review has been carried out under Subdivision C of
24 Division 32 (review by another registered liquidator)
25 into a matter that relates to the external administration;
26 and
27 (ii) the matter is, or includes, remuneration accrued by the
28 external administrator under remuneration
29 determinations for the external administrator;
30 the contents of the report on the review that relate to that
31 matter;
- 32 (m) any other relevant matters.

22-30 Default remuneration amount

Default remuneration amount

- 34
35 (1) The *default remuneration amount* for an external administrator is:

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- 1 (a) if the external administrator is appointed in relation to the
2 external administration during the financial year beginning
3 on 1 July 2013—\$5,500; or
4 (b) if the external administrator is appointed in relation to the
5 external administration during a financial year beginning on
6 or after 1 July 2014—the greater of:
7 (i) the amount worked out by multiplying the indexation
8 factor for the financial year, worked out under
9 subsections (3) and (4), by the default remuneration
10 amount for an external administrator appointed during
11 the previous financial year; and
12 (ii) the amount (if any) specified in a regulation for the
13 purposes of this subparagraph.

14 *Rounding*

- 15 (2) Amounts worked out under subsection (1) must be rounded to the
16 nearest whole dollar (rounding 50 cents upwards).

17 *Indexation factor*

- 18 (3) Subject to subsection (4), the ***indexation factor*** for a financial year
19 is the number worked out by dividing the index number for the
20 March quarter immediately preceding that financial year by the
21 index number for the March quarter immediately preceding that
22 first-mentioned March quarter.
- 23 (4) If an indexation factor worked out under subsection (3) would be
24 less than 1, the indexation factor is to be increased to 1.

25 *Changes to CPI reference base and publication of substituted* 26 *index numbers*

- 27 (5) In working out the indexation factor:
28 (a) use only the index numbers published in terms of the most
29 recently published reference base for the Consumer Price
30 Index; and
31 (b) disregard index numbers published in substitution for
32 previously published index numbers (except where the
33 substituted numbers are published to take account of changes
34 in the reference base).

1 *Index number*

2 (6) In this section:

3 *index number*, in relation to a quarter, means the All Groups
4 Consumer Price Index number, being the weighted average of the 8
5 capital cities, published by the Australian Statistician in respect of
6 that quarter.

7 **Subdivision C—Remuneration of provisional liquidators**

8 **22-32 Remuneration of provisional liquidators**

9 A provisional liquidator is entitled to receive such remuneration,
10 by way of percentage or otherwise, as is:

11 (a) determined by the Court; or

12 (b) if:

13 (i) no determination by the Court is in force; and

14 (ii) there is a committee of inspection;

15 determined by agreement between the liquidator and the
16 committee of inspection; or

17 (c) if:

18 (i) no determination by the Court is in force; and

19 (ii) there is no committee of inspection or the liquidator and
20 the committee of inspection fail to agree;

21 determined by resolution of the creditors.

22 **Subdivision D—Remuneration of liquidators in winding up by**
23 **ASIC**

24 **22-34 Remuneration of liquidators in winding up by ASIC**

25 If ASIC orders under section 489EA that a company be wound up,
26 ASIC may determine the remuneration to be paid to the liquidator.

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1 **Subdivision E—Duties of external administrators relating to**
2 **remuneration and benefits etc.**

3 **22-35 External administrator must disclose employment etc. of**
4 **related entities**

5 (1) An external administrator must, before employing or engaging a
6 related entity of the external administrator to provide services in
7 connection with the external administration, disclose the proposed
8 employment or engagement to:

9 (a) the creditors; or

10 (b) in the case of a members' voluntary winding up—the
11 members; or

12 (c) in the case of a provisional liquidator—the Court.

13 (2) A person commits an offence of strict liability if:

14 (a) the person is subject to a requirement under subsection (1);
15 and

16 (b) the person fails to comply with the requirement.

17 Penalty: 50 penalty units.

18 Note: For offences of strict liability, see subsection 6.1(1) of the *Criminal*
19 *Code*.

20 **22-40 External administrator must not derive or confer profits etc.**

21 *Deriving profit etc. from the company*

22 (1) An external administrator must not directly or indirectly derive any
23 profit or advantage from a transaction, sale or purchase for or on
24 account of the company.

25 *Deriving gifts etc. from creditors or members*

26 (2) An external administrator must not directly or indirectly derive any
27 gift, profit or advantage from a creditor or member.

28 *Conferring profit etc. from the company*

29 (3) An external administrator must not directly or indirectly confer on
30 a related entity of the external administrator any profit or

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1 advantage from a transaction, sale or purchase for or on account of
2 the company.

3 *Exception*

4 (4) Subsection (1), (2) or (3) does not apply to the extent that the
5 external administrator's actions are required or permitted by this
6 Act.

7 *Offence*

8 (5) A person commits an offence of strict liability if:
9 (a) the person is subject to a requirement under subsection (1),
10 (2) or (3); and
11 (b) the person fails to comply with the requirement.

12 Penalty: 50 penalty units.

13 Note 1: For offences of strict liability, see subsection 6.1(1) of the *Criminal*
14 *Code*.

15 Note 2: A defendant bears an evidential burden in relation to the matter in
16 subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

17 **22-45 External administrator must not accept extra benefits etc.**

18 (1) Except as provided by this Act, an external administrator must not
19 make an arrangement for receiving, or accept, from any person,
20 any:

- 21 (a) gift; or
22 (b) remuneration; or
23 (c) consideration; or
24 (d) benefit;

25 in connection with the external administration.

26 (2) To avoid doubt, subsection (1) applies to consideration or a benefit
27 whether pecuniary or otherwise.

28 (3) Subsection (1) does not apply to a payment that is:

- 29 (a) made to the external administrator by or on behalf of the
30 Commonwealth or an agency or authority of the
31 Commonwealth; and
32 (b) of a kind prescribed by regulation.

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1 (4) Subsection (1) does not apply to the extent that the external
2 administrator's actions are required or permitted by this Act.

3 (5) A person commits an offence of strict liability if:
4 (a) the person is subject to a requirement under this section; and
5 (b) the person fails to comply with the requirement.

6 Penalty: 50 penalty units.

7 Note 1: For offences of strict liability, see subsection 6.1(1) of the *Criminal*
8 *Code*.

9 Note 2: A defendant bears an evidential burden in relation to the matters in
10 subsections (3) and (4) (see subsection 13.3(3) of the *Criminal Code*).

11 **22-50 External administrator must not give up remuneration**

12 (1) An external administrator must not:
13 (a) make an arrangement for giving up; or
14 (b) give up;
15 to any other person, any or all of the remuneration to which the
16 external administrator is entitled under this Act in relation to an
17 external administration.

18 (2) A person commits an offence of strict liability if:
19 (a) the person is subject to a requirement under subsection (1);
20 and
21 (b) the person fails to comply with the requirement.

22 Penalty: 50 penalty units.

23 Note: For offences of strict liability, see subsection 6.1(1) of the *Criminal*
24 *Code*.

25 **22-55 External administrator must not purchase any assets of the** 26 **company**

27 (1) Except with the leave of the Court, an external administrator must
28 not, directly or indirectly, become the purchaser of any asset of the
29 company.

30 (2) A person commits an offence of strict liability if:
31 (a) the person is subject to a requirement under subsection (1);
32 and
33 (b) the person fails to comply with the requirement.

1 Penalty: 50 penalty units.

2 Note: For offences of strict liability, see subsection 6.1(1) of the *Criminal*
3 *Code*.

4 **Division 24—Funds handling**

5 **24-5 Guide to this Division**

6 *[To be drafted after consultation]*

7 **24-10 Opening, and paying money into, administration account**

8 *Opening administration account*

- 9 (1) An external administrator must open a single bank account (the
10 **administration account**) in relation to the external administration
11 within 5 business days of the external administrator's appointment
12 to act.
- 13 (2) The administration account must comply with the requirements (if
14 any) prescribed by regulation.

15 *Paying money into administration account*

- 16 (3) The external administrator:
17 (a) must:
18 (i) pay all money received by the external administrator on
19 behalf of, or in relation to, the company into the
20 administration account; and
21 (ii) do so within 5 business days of its receipt; and
22 (b) unless subsection (5) applies—must not pay any other money
23 into the administration account.

24 *Exception—direction by the Court*

- 25 (4) Subsection (3) does not apply if the Court directs otherwise.

26 *Exception—pooled groups*

- 27 (5) If the external administrator is a liquidator of a pooled group, the
28 external administrator:

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- 1 (a) is not required to open a separate bank account for each
2 company in the group; and
3 (b) may open a single bank account in relation to the group and
4 pay into it all money received by the external administrator in
5 relation to the liquidation of the companies in the group.

6 *Offence*

- 7 (6) A person commits an offence of strict liability if:
8 (a) the person is subject to a requirement under subsection (1) or
9 (3); and
10 (b) the person fails to comply with the requirement.

11 Penalty: 50 penalty units.

12 Note 1: For offences of strict liability, see subsection 6.1(1) of the *Criminal*
13 *Code*.

14 Note 2: A defendant bears an evidential burden in relation to the matters in
15 subsections (4) and (5) (see subsection 13.3(3) of the *Criminal Code*).

16 **24-15 Consequences for failure to pay money into administration** 17 **account**

- 18 (1) This section applies if:
19 (a) an external administrator:
20 (i) is subject to a requirement under subsection 24-10(3)
21 (paying money into administration account); and
22 (ii) fails to comply with the requirement in relation to an
23 amount of money; and
24 (b) the amount exceeds:
25 (i) \$50; or
26 (ii) if another amount is prescribed by regulation—that
27 other amount; and
28 (c) the external administrator does not satisfy the Court that the
29 external administrator had sufficient reason for failing to
30 comply with the requirement in relation to the amount.
- 31 (2) The external administrator must, as a penalty, pay interest to the
32 Commonwealth on the excess:
33 (a) at the rate of 20% per year; or
34 (b) if another rate is prescribed by regulation—at that other rate.

- 1 (3) The external administrator is personally liable for, and is not
2 entitled to be reimbursed out of the property of the company in
3 relation to, the payment of that interest.

4 **24-20 Paying money out of administration account**

- 5 (1) An external administrator must not pay any money out of the
6 administration account otherwise than:
7 (a) for purposes related to the external administration; or
8 (b) in accordance with this Act; or
9 (c) in accordance with a direction of the Court.
- 10 (2) A payment out of the administration account may be made by
11 cheque or by electronic funds transfer.
- 12 (3) A cheque referred to in subsection (2) must:
13 (a) have the name of the company under external administration
14 written on it; and
15 (b) be signed by the external administrator.
- 16 (4) A person commits an offence of strict liability if:
17 (a) the person is subject to a requirement under subsection (1);
18 and
19 (b) the person fails to comply with the requirement.

20 Penalty: 50 penalty units.

21 Note: For offences of strict liability, see subsection 6.1(1) of the *Criminal*
22 *Code*.

23 **24-35 Receipts for payments into and out of an administration** 24 **account**

- 25 (1) An external administrator must issue a receipt for a payment into
26 an administration account if asked to do so by the person making
27 the payment.
- 28 (2) An external administrator must, wherever practicable, obtain a
29 receipt for a payment made out of an administration account.

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1 **24-40 Handling of securities**

2 *Securities must be deposited with administration account bank*

3 (1) An external administrator must deposit in the bank with which the
4 administration account in relation to the external administration is
5 held:

6 (a) the negotiable instruments; and

7 (b) any other securities;

8 payable to the company or the external administrator within 5
9 business days after they are received by the external administrator.

10 (2) Subsection (1) does not apply if the Court directs otherwise.

11 *Offence*

12 (3) A person commits an offence of strict liability if:

13 (a) the person is subject to a requirement under subsection (1);
14 and

15 (b) the person fails to comply with the requirement.

16 Penalty: 5 penalty units.

17 Note 1: For offences of strict liability, see subsection 6.1(1) of the *Criminal*
18 *Code*.

19 Note 2: A defendant bears an evidential burden in relation to the matter in
20 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

21 *Delivery of securities*

22 (3) The negotiable instruments or other security must be delivered out
23 on the signed request of the registered liquidator.

24 **24-45 Handling of money and securities—Court directions**

25 (1) The Court may, on application, give directions regarding the
26 payment, deposit or custody of:

27 (a) money; and

28 (b) negotiable instruments and other securities;

29 that are payable to, or held by, an external administrator of a
30 company under external administration.

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- 1 (2) The Court may, on application, give directions authorising the
2 external administrator to make payments into and out of a special
3 bank account.
- 4 (3) Without limiting subsection (2), the Court may:
5 (a) authorise the payments for the time and on the terms it thinks
6 fit; and
7 (b) if the Court thinks the account is no longer required—at any
8 time order it to be closed.
- 9 (4) A copy of an order under paragraph (3)(b) must be served by the
10 external administrator on the bank with which the special bank
11 account was opened.
- 12 (5) An application under this section may be made by:
13 (a) a creditor; or
14 (b) the company; or
15 (c) the external administrator; or
16 (d) any other person with a financial interest in the external
17 administration.

18 **24-50 Regulations in relation to consequences for failure to comply** 19 **with this Division**

20 The regulations may make provision in relation to:

- 21 (a) the payment by an external administrator of interest at such
22 rate, on such amount and in respect of such period as is
23 prescribed; and
24 (b) disallowance of all or of such part as is prescribed of the
25 remuneration of an external administrator; and
26 (c) the removal from office of an external administrator by the
27 Court; and
28 (d) the payment by an external administrator of any expenses
29 occasioned by reason of his or her default;
- 30 in cases where an external administrator contravenes or fails to
31 comply with this Division (including regulations made under this
32 Division).

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1 **Division 26—Information**

2 **Subdivision A—Introduction**

3 **26-5 Guide to this Division**

4 *[To be drafted after consultation]*

5 **Subdivision B—Annual administration return**

6 **26-10 Annual administration return**

- 7 (1) This section applies if a person is the external administrator of a
8 company during all or part of a financial year.
- 9 (2) The person must lodge a return in relation to the external
10 administration of the company during the year or part (as the case
11 requires).
- 12 (3) The return must:
- 13 (a) be in the approved form; and
14 (b) be lodged with ASIC within 25 business days after the end of
15 the financial year.

16 Note: Fees for lodging documents and late lodgement fees may be imposed
17 under the *Corporations (Fees) Act 2001*.

- 18 (4) The person must give notice that the return has been lodged:
- 19 (a) in a members' voluntary winding up—to the members of the
20 company; and
21 (b) in a creditors' voluntary winding up—to the creditors and
22 contributories; and
23 (c) in a court-ordered winding up—to the creditors and
24 contributories; and
25 (d) if the external administrator is appointed as a provisional
26 liquidator—to the Court; and
27 (e) if the company is under administration or has executed a
28 deed of company arrangement—to the company;
29 when next forwarding any report, notice of meeting, notice of call
30 or dividend.

31 Note: For notification, see section 600G.

- 1 (5) If:
2 (a) a pooling determination is in force in relation to a group of 2
3 or more companies; or
4 (b) a pooling order is in force in relation to a group of 2 or more
5 companies;
6 then the returns under subsection (2) for the companies in the
7 group may be set out in the same document.

8 **Subdivision C—Record-keeping**

9 **26-15 Books of external administration**

- 10 (1) An external administrator must, for each external administration
11 for which he or she is appointed, keep proper books in which the
12 external administrator must cause to be made:
13 (a) entries or minutes of proceedings at meetings relating to the
14 external administration; and
15 (b) such other entries as are necessary to give a complete and
16 correct record of the external administrator's administration
17 of the company's affairs.
- 18 (2) The external administrator:
19 (a) must ensure that the books are kept at the external
20 administrator's office; and
21 (b) must permit a creditor or contributory, or another person
22 acting on the creditor's or contributory's behalf, to inspect
23 the books at all reasonable times.
- 24 (3) Subsections (1) and (2) do not apply if the external administrator
25 has a reasonable excuse.
- 26 (4) A person commits an offence of strict liability if:
27 (a) the person is subject to a requirement under subsection (1) or
28 (2); and
29 (b) the person fails to comply with the requirement.

30 **Penalty:** 5 penalty units.

31 **Note 1:** For offences of strict liability, see subsection 6.1(1) of the *Criminal*
32 *Code*.

33 **Note 2:** A defendant bears an evidential burden in relation to the matter in
34 subsection (3): see subsection 13.3(3) of the *Criminal Code*.

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1 **26-25 Audit of administration books—ASIC**

- 2 (1) ASIC may cause the books referred to in section 26-15 (books of
3 external administration) to be audited by a registered company
4 auditor.
- 5 (2) The audit may be conducted:
- 6 (a) on ASIC's own initiative; or
7 (b) at the request of the company; or
8 (c) at the request of a creditor or contributory.
- 9 (3) The auditor must prepare a report on the audit.
- 10 (4) If ASIC causes books to be audited under subsection (1):
- 11 (a) ASIC must give a copy of the report prepared by the auditor
12 to:
- 13 (i) the external administrator; and
14 (ii) the person who requested the report (if any); and
15 (b) subsection 1289(5) applies in relation to the report prepared
16 by the auditor as if it were a document required to be lodged.
- 17 (5) The costs of an audit under this section must be determined by
18 ASIC and form part of the expenses of the external administration.

19 **26-30 Audit of administration books—on order of the Court**

- 20 (1) The Court may order that an audit of the books referred to in
21 section 26-15 (books of external administration) be conducted by a
22 registered company auditor.
- 23 (2) The order may be made on application of any person with a
24 financial interest in the external administration of the company.
- 25 (3) The Court may make such orders in relation to the audit as it thinks
26 fit, including:
- 27 (a) the preparation and provision of a report on the audit; and
28 (b) orders as to the costs of the audit.

29 **26-35 External administrator to comply with auditor requirements**

- 30 (1) This section applies if books are audited under section 26-25 or
31 26-30.

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- 1 (2) The external administrator must give the auditor such books,
2 information and assistance as the auditor reasonably requires.
- 3 (3) Subsection (2) does not apply if the external administrator has a
4 reasonable excuse.
- 5 (4) A person commits an offence of strict liability if:
6 (a) the person is subject to a requirement under subsection (2);
7 and
8 (b) the person fails to comply with the requirement.

9 Penalty: 5 penalty units.

10 Note 1: For offences of strict liability, see subsection 6.1(1) of the *Criminal*
11 *Code*.

12 Note 2: A defendant bears an evidential burden in relation to the matter in
13 subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

14 **26-40 Transfer of books to new administrator**

15 *Application*

- 16 (1) This section applies if:
17 (a) a person ceases to be the external administrator of a company
18 (the **former administrator**); and
19 (b) ASIC has not issued a notice to the former administrator
20 under section 26-42; and
21 (c) a registered liquidator (the **new administrator**) is appointed
22 as external administrator of the company instead.

23 *Transfer of books to new administrator*

- 24 (2) The former administrator must transfer to the new administrator:
25 (a) any books that the company or a previous external
26 administrator of the company has given to the former
27 administrator; and
28 (b) any other books relating to the external administration of the
29 company that are in the former administrator's possession or
30 control;
31 within 5 business days after the new administrator is appointed.
- 32 (3) The former administrator may take a copy of any part of the books
33 before transferring them to the new administrator.

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- 1 (4) After the books are transferred, the new administrator must allow
2 the former administrator to inspect them at any reasonable time and
3 take a copy of any part of the books.

4 *Offence*

- 5 (5) A person commits an offence if:
6 (a) the person is subject to a requirement under subsection (2) or
7 (4); and
8 (b) the person intentionally or recklessly fails to comply with the
9 requirement.

10 Penalty: 50 penalty units.

- 11 (6) No lien against the books is prejudiced by the obligation under this
12 section.

13 **26-42 Transfer of books to ASIC**

14 *Transfer of books to ASIC*

- 15 (1) If a person ceases to be the external administrator of a company,
16 ASIC may, by written notice given to the person, require the
17 person to:
18 (a) if the person has books relating to the external administration
19 in his or her possession—transfer those books to ASIC within
20 the period specified in the notice; or
21 (b) otherwise—notify ASIC, within the period and in the manner
22 specified in the notice, that the person does not have books
23 relating to the external administration in his or her
24 possession.

- 25 (2) A person commits an offence if:
26 (a) the person is subject to a requirement under subsection (1);
27 and
28 (b) the person intentionally or recklessly fails to comply with the
29 requirement.

30 Penalty: 50 penalty units.

31 *Transfer of books to new external administrator*

- 32 (3) If:
-

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- 1 (a) books relating to an external administration of a company are
2 transferred to ASIC under this section; and
3 (b) the books are in ASIC's possession; and
4 (c) a person is or becomes an external administrator of the
5 company;
6 ASIC must, as soon as practicable, transfer those books to the
7 person.

8 *Transfer of books to body corporate*

- 9 (4) If:
10 (a) books relating to a company are transferred to ASIC under
11 this section; and
12 (b) the books are in ASIC's possession; and
13 (c) the company ceases to be a company under external
14 administration;
15 ASIC must, as soon as practicable, transfer those books to the
16 company.

17 **26-45 Retention and destruction of books**

18 *Retention period for books*

- 19 (1) The external administrator must retain all books of the company,
20 and of the external administration, that:
21 (a) are relevant to affairs of the company at or after the start of
22 the external administration of the company; and
23 (b) are in the trustee's possession or control at the end of the
24 external administration;
25 for a period (the *retention period*) of 5 years from the end of the
26 external administration.

27 *Exception—reasonable excuse*

- 28 (2) Subsection (1) does not apply if the external administrator has a
29 reasonable excuse.

30 *Exception—consent of ASIC etc.*

- 31 (3) Despite subsection (1), the books may be destroyed within the
32 retention period:

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- 1 (a) in the case of a members' voluntary winding up—as the
2 company by resolution directs; and
3 (b) in the case of a creditor's voluntary winding up or a
4 court-ordered winding up:
5 (i) if there is a committee of inspection—as the committee
6 directs; and
7 (ii) otherwise—as the creditors by resolution direct; and
8 (c) if the external administrator is appointed as a provisional
9 liquidator—as the Court directs; and
10 (d) if the company is under administration or has executed a
11 deed of company arrangement—as the company directs;
12 if ASIC consents to the destruction.

13 *Destruction of books at end of retention period*

- 14 (4) Subject to section 262A (keeping of records) of the *Income Tax*
15 *Assessment Act 1936*, the external administrator may destroy the
16 books at the end of the retention period.

17 *Offence*

- 18 (5) A person commits an offence if:
19 (a) the person is subject to a requirement under subsection (1);
20 and
21 (b) the person intentionally or recklessly fails to comply with the
22 requirement.

23 Penalty: 50 penalty units.

24 Note: A defendant bears an evidential burden in relation to the matters in
25 subsections (2) and (3) (see subsection 13.3(3) of the *Criminal Code*).

26 **26-48 Books of company in external administration—evidence**

27 If a company is in external administration, all books of the
28 company, and of the external administrator, that are relevant to
29 affairs of the company at or after the start of the external
30 administration are, as between the contributories of the company,
31 prima facie evidence of the truth of all matters purporting to be
32 recorded in those books.

1 **Subdivision D—Giving information etc. to creditors and others**

2 **26-50 Right of creditors to request information etc. from external**
3 **administrator**

- 4 (1) The creditors may by resolution request the external administrator
5 of a company to:
6 (a) give information; or
7 (b) provide a report; or
8 (c) produce a document;
9 to the creditors.
- 10 (2) The external administrator must comply with the request unless:
11 (a) the information, report or document is not relevant to the
12 external administration of the company; or
13 (b) the external administrator would breach his or her duties in
14 relation to the external administration of the company if the
15 external administrator complied with the request; or
16 (c) it is otherwise not reasonable for the external administrator to
17 comply with the request.
- 18 (3) The regulations may prescribe circumstances in which a request is,
19 or is not, reasonable.

20 **26-55 Right of individual creditor to request information etc. from**
21 **external administrator**

- 22 (1) A creditor may request the external administrator of a company to:
23 (a) give information; or
24 (b) provide a report; or
25 (c) produce a document;
26 to the creditor.
- 27 (2) The external administrator must comply with the request unless:
28 (a) the information, report or document is not relevant to the
29 external administration of the company; or
30 (b) the external administrator would breach his or her duties in
31 relation to the external administration of the company if the
32 external administrator complied with the request; or

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1 (c) it is otherwise not reasonable for the external administrator to
2 comply with the request.

3 (3) The regulations may prescribe circumstances in which a request is,
4 or is not, reasonable.

5 **26-57 Right of members to request information etc. from external** 6 **administrator in a members' voluntary winding up**

7 (1) This section applies in relation to a members' voluntary winding
8 up.

9 (2) The members of the company may by resolution request the
10 external administrator of the company to:

11 (a) give information; or

12 (b) provide a report; or

13 (c) produce a document;

14 to the members.

15 (3) The external administrator must comply with the request unless:

16 (a) the information, report or document is not relevant to the
17 external administration of the company; or

18 (b) the external administrator would breach his or her duties in
19 relation to the external administration of the company if the
20 external administrator complied with the request; or

21 (c) it is otherwise not reasonable for the external administrator to
22 comply with the request.

23 (4) The regulations may prescribe circumstances in which a request is,
24 or is not, reasonable.

25 **26-59 Right of individual member to request information etc. from** 26 **external administrator in a members' voluntary winding** 27 **up**

28 (1) This section applies in relation to a members' voluntary winding
29 up.

30 (2) A member of the company may request the external administrator
31 of a company to:

32 (a) give information; or

33 (b) provide a report; or

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- 1 (c) produce a document;
2 to the member.
- 3 (3) The external administrator must comply with the request unless:
4 (a) the information, report or document is not relevant to the
5 external administration of the company; or
6 (b) the external administrator would breach his or her duties in
7 relation to the external administration of the company if the
8 external administrator complied with the request; or
9 (c) it is otherwise not reasonable for the external administrator to
10 comply with the request.
- 11 (4) The regulations may prescribe circumstances in which a request is,
12 or is not, reasonable.

13 **26-60 Reporting to creditors and members**

- 14 (1) The regulations may make provision for or in relation to the
15 obligations of external administrators of companies:
16 (a) to give information; and
17 (b) to provide reports; and
18 (c) to produce documents;
19 to creditors or members.
- 20 (2) Without limiting subsection (1), the regulations may provide for:
21 (a) circumstances in which the external administrator of a
22 company must give information, provide a report or produce
23 a document to a creditor or member; and
24 (b) the manner and form in which information is to be given, a
25 report provided or a document produced; and
26 (c) the timeframes in which information is to be given, a report
27 provided or a document produced; and
28 (d) who is to bear the cost of giving information, providing a
29 report or producing a document.
- 30 (3) The regulations may:
31 (a) make different provision in relation to different kinds of
32 external administration; and
33 (b) provide that specified requirements imposed under the
34 regulations may be replaced or modified, by resolution, by:
35 (i) the creditors; or

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- 1 (ii) the members; or
2 (iii) if there is a committee of inspection—the committee.

3 **Subdivision E—Other requests for information**

4 **26-65 Commonwealth may request information**

- 5 (1) This section applies if:
6 (a) a company is under external administration; and
7 (b) either:
8 (i) a former employee of the company has made a claim for
9 financial assistance from the Commonwealth in relation
10 to unpaid employment entitlements; or
11 (ii) the Commonwealth considers that such a claim is likely
12 to be made.
- 13 (2) The Commonwealth may request the external administrator to
14 provide specified information in relation to the external
15 administration.

16 **Subdivision F—External administrator may be compelled to** 17 **comply with requests for information**

18 **26-70 Application of this Subdivision**

19 This Subdivision applies if the external administrator of a company
20 refuses a request made by a person under this Act to give
21 information, provide a report or produce a document (*to give*
22 *relevant material*).

23 **26-75 ASIC may direct external administrator to comply with** 24 **request for information, report or document**

25 *ASIC may direct external administrator to comply with request*

- 26 (1) ASIC may, in writing, direct the external administrator to give all
27 or part of the relevant material to the person or persons who made
28 the request within 5 business days after the direction is given.
- 29 (2) ASIC must not give a direction under this section in relation to the
30 relevant material, or part of the relevant material, if ASIC is
31 satisfied that the external administrator was entitled not to comply

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1 with the request to give the relevant material, or that part of the
2 relevant material, to the person under a provision of this Act, or
3 under any other law.

4 *Procedure before giving a direction*

- 5 (3) Before giving the external administrator a direction under this
6 section, ASIC must give the external administrator notice in
7 writing:
- 8 (a) stating that ASIC proposes to give the external administrator
9 a direction under this section; and
 - 10 (b) identifying:
 - 11 (i) the relevant material, or the part of the relevant material,
12 that ASIC proposes to direct be given; and
 - 13 (ii) the person or persons to whom ASIC proposes to direct
14 that the relevant material, or that part of the relevant
15 material, be given; and
 - 16 (c) inviting the external administrator to make a written
17 submission to ASIC within 10 business days after the notice
18 is given, stating:
 - 19 (i) whether the external administrator has any objection to
20 giving the relevant material, or that part of the relevant
21 material, to a person or persons as proposed; and
 - 22 (ii) if the external administrator has such an objection—the
23 reasons for that objection.
- 24 (4) If the external administrator of the company objects to giving the
25 relevant material, or part of the relevant material, to a person,
26 ASIC must take into account the reasons for that objection when
27 deciding whether to direct that the relevant material, or that part of
28 the relevant material, be given to the person.

29 *Conditions*

- 30 (5) ASIC may, by notice in writing to the person or persons to whom
31 the relevant material is to be given, impose conditions on the use
32 and disclosure of the relevant material, or part of the relevant
33 material, by the person or persons.

34 *Offence*

- 35 (6) A person commits an offence if:
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- 1 (a) ASIC directs that the relevant material, or part of the relevant
2 material, be disclosed to the person subject to a condition in
3 relation to the use or disclosure of that information by the
4 person; and
5 (b) ASIC has given the person notice of the condition under
6 subsection (5); and
7 (c) the person does not comply with the condition.

8 Penalty: 10 penalty units or imprisonment for 3 months, or both.

9 *Directions and notices are not legislative instruments*

- 10 (7) A direction under subsection (1) is not a legislative instrument.
11 (8) Notices under subsections (3) and (5) are not legislative
12 instruments.

13 **26-80 Court may order information etc. to be given**

- 14 (1) The person who made the request may apply to the Court for an
15 order that the external administrator give the person all or part of
16 the relevant material.
17 (2) If ASIC gives the external administrator a direction under
18 section 26-75 in relation to all or part of the relevant material, and
19 the external administrator does not comply with the direction,
20 ASIC may apply to the Court for an order that the external
21 administrator give the person who made the request that part of the
22 relevant material.
23 (3) On application under subsection (1) or (2), the Court may:
24 (a) order the external administrator to give the person who made
25 the request all or part of the relevant material; and
26 (b) make such other orders, including orders as to costs, as it
27 thinks fit.

28 **Division 28—Meetings**

29 **28-5 Guide to this Division**

30 *[To be drafted after consultation]*

1 **28-10 External administrator may convene meetings**

2 The external administrator of a company may convene:

- 3 (a) a meeting of the creditors; or
4 (b) in the case of a members' voluntary winding up—a general
5 meeting of the company;
6 at any time.

7 **28-15 External administrator must convene meeting in certain**
8 **circumstances**

- 9 (1) The external administrator of a company must convene a meeting
10 of the creditors if:
- 11 (a) a request is made by a creditor or contributory under
12 subsection 30-10(1) (committee of inspection—company not
13 in pooled group); or
14 (b) a request is made by a creditor under subsection 30-11(1)
15 (committee of inspection—pooled group); or
16 (c) if there is a committee of inspection—the committee of
17 inspection requests the external administrator to do so; or
18 (d) the creditors direct the external administrator to do so by
19 resolution; or
20 (e) at least 25% in value of the creditors direct the external
21 administrator to do so in writing; or
22 (f) both of the following are satisfied:
- 23 (i) less than 25%, but more than 10%, in value of the
24 creditors direct the external administrator to do so in
25 writing;
26 (ii) security for the cost of holding the meeting is given to
27 the external administrator before the meeting is
28 convened; or
29 (g) all of the following are satisfied:
- 30 (i) the company is being wound up under a creditors'
31 voluntary winding up;
32 (ii) less than 25%, but more than 5%, in value of the
33 creditors direct the external administrator to do so in
34 writing;
35 (iii) none of the creditors who give the direction is a related
36 entity in relation to the company;
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- 1 (iv) the direction is given no more than 2 weeks after the
2 resolution for the voluntary winding up of the company
3 is passed.
- 4 (2) The external administrator of a company must convene a meeting
5 of the contributories if a request is made by a creditor or
6 contributory under subsection 30-10(1) (committee of inspection—
7 company not in pooled group).
- 8 (3) This section does not apply if the external administrator is a
9 provisional liquidator.

10 **28-20 External administrator must convene meeting if required by** 11 **ASIC**

- 12 (1) ASIC may, in writing, direct an external administrator to convene a
13 meeting of the creditors.
- 14 (2) ASIC may include in the direction requirements to be complied
15 with by the external administrator in notifying the creditors of the
16 meeting and conducting the meeting.
- 17 (3) The external administrator must comply with a direction given
18 under subsection (1), and any requirements included in the
19 direction under subsection (2).
- 20 (4) A direction given under subsection (1) is not a legislative
21 instrument.

22 **28-25 External administrator's representative at meetings**

- 23 (1) The external administrator of a company may, by signed writing,
24 appoint a person to represent the external administrator at a
25 meeting.
- 26 (2) If the external administrator is not personally present at a meeting,
27 then a reference in a provision of this Act to the external
28 administrator of a company, in respect of matters occurring at or in
29 connection with the meeting, is a reference to a person so
30 appointed to represent the external administrator at the meeting.

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1 **28-30 ASIC may attend meetings**

- 2 (1) ASIC is entitled to attend any meeting of creditors or contributories
3 held under this Act.
- 4 (2) Subject to any provision of this Act (including any provision in
5 relation to voting), ASIC is entitled to participate in any meeting of
6 creditors held under this Act.

7 **28-35 Commonwealth may attend certain meetings etc.**

- 8 If:
- 9 (a) a former employee of a company under external
10 administration has made a claim for financial assistance from
11 the Commonwealth in relation to unpaid employment
12 entitlements; or
- 13 (b) the Commonwealth considers that such a claim is likely to be
14 made;
- 15 the Commonwealth is entitled to nominate a representative to
16 attend any meeting of creditors or contributories held in relation to
17 the external administration.

18 **28-40 Creditors' or contributories' resolution without meeting**

- 19 (1) The external administrator of a company may at any time put a
20 proposal to the creditors or contributories by giving notice, in
21 writing, under this section.
- 22 (2) The notice must:
- 23 (a) contain a single proposal; and
- 24 (b) include a statement of the reasons for the proposal and the
25 likely impact it will have on creditors or contributories, as the
26 case may be (if it is passed); and
- 27 (c) be given to each creditor or contributory, as the case may be,
28 who would be entitled to receive notice of a meeting of
29 creditors or contributories, as the case may be; and
- 30 (d) invite the creditor or contributory, as the case may be, to
31 either:
- 32 (i) vote Yes or No on the proposal; or
- 33 (ii) object to the proposal being resolved without a meeting
34 of creditors or contributories, as the case may be; and

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- 1 (e) specify a reasonable time by which replies must be received
2 by the external administrator (in order to be taken into
3 account).
- 4 (3) If, within the time specified in the notice:
- 5 (a) at least 1 creditor or contributory, as the case may be, votes
6 in writing; and
- 7 (b) no other creditor or contributory, as the case may be, objects
8 in writing to the proposal being resolved without a meeting
9 of creditors or contributories, as the case may be;
- 10 then the following provisions have effect:
- 11 (c) if the proposal requires a special resolution and there is a Yes
12 vote by a majority in number, and at least 75% in value, of
13 those who voted within the required time—the proposal is
14 taken to have been passed by a special resolution of creditors
15 or contributories, as the case may be, at a meeting;
- 16 (d) if the proposal does not require a special resolution and there
17 is a Yes vote by a majority worked out in accordance with
18 the regulations—the proposal is taken to have been passed by
19 a resolution of creditors or contributories, as the case may be,
20 at a meeting;
- 21 (e) in any other case—the proposal is taken not to have been
22 passed.
- 23 (4) A certificate signed by the external administrator of the company
24 stating any matter relating to a proposal under this section is prima
25 facie evidence of the matter.

26 **28-41 Outcome of voting at creditors' meeting determined by** 27 **related entity—court powers**

- 28 (1) This section applies if, on the application of a creditor of a
29 company under external administration, the Court is satisfied of the
30 following matters:
- 31 (a) a proposed resolution has been voted on at a meeting of the
32 creditors;
- 33 (b) if the vote or votes that a particular related creditor, or
34 particular related creditors, of the company cast on the
35 proposed resolution had been disregarded for the purposes of
36 determining whether or not the proposed resolution was
37 passed, the proposed resolution:

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- 1 (i) if it was in fact passed—would not have been passed; or
2 (ii) if in fact it was not passed—would have been passed;
3 or the question would have had to be decided on a casting
4 vote;
- 5 (c) the passing of the proposed resolution, or the failure to pass
6 it, as the case requires:
- 7 (i) is contrary to the interests of the creditors as a whole or
8 of that class of creditors as a whole, as the case may be;
9 or
10 (ii) has prejudiced, or is reasonably likely to prejudice, the
11 interests of the creditors who voted against the proposed
12 resolution, or for it, as the case may be, to an extent that
13 is unreasonable having regard to the matters in
14 subsection (2).
- 15 (2) The matters are:
- 16 (a) the benefits resulting to the related creditor, or to some or all
17 of the related creditors, from the resolution, or from the
18 failure to pass the proposed resolution, as the case may be;
19 and
20 (b) the nature of the relationship between the related creditor and
21 the company, or of the respective relationships between the
22 related creditors and the company; and
23 (c) any other relevant matter.
- 24 (3) The Court may make one or more of the following:
- 25 (a) if the proposed resolution was passed—an order setting aside
26 the resolution;
- 27 (b) an order that the proposed resolution be considered and voted
28 on at a meeting of the creditors convened and held as
29 specified in the order;
- 30 (c) an order directing that the related creditor is not, or such of
31 the related creditors as the order specifies are not, entitled to
32 vote on:
- 33 (i) the proposed resolution; or
34 (ii) a resolution to amend or vary the proposed resolution;
- 35 (d) such other orders as the Court thinks fit.
- 36 (4) In this section:
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1 *related creditor*, in relation to a company, in relation to a vote,
2 means a person who, when the vote was cast, was a related entity,
3 and a creditor, of the company.

4 **28-42 Creditors' resolution passed on casting vote of person** 5 **presiding at meeting—court review**

- 6 (1) This section applies if:
- 7 (a) a resolution is passed at a meeting of creditors of a company
8 under external administration; and
 - 9 (b) the resolution is passed because the person presiding at the
10 meeting exercises a casting vote.
- 11 (2) A person may apply to the Court for an order setting aside or
12 varying the resolution, but only if:
- 13 (a) the person voted against the resolution in some capacity
14 (even if the person voted for the resolution in another
15 capacity); or
 - 16 (b) a person voted against the resolution on the first-mentioned
17 person's behalf.
- 18 (3) On an application, the Court may:
- 19 (a) by order set aside or vary the resolution; and
 - 20 (b) if it does so—make such further orders, and give such
21 directions, as it thinks necessary.
- 22 (4) On and after the making of an order varying the resolution, the
23 resolution has effect as varied by the order.

24 **28-43 Proposed creditors' resolution lost as casting vote of person** 25 **presiding at meeting—court's powers**

- 26 (1) This section applies if:
- 27 (a) a resolution is not passed at a meeting of creditors of a
28 company under external administration; and
 - 29 (b) the resolution is not passed because the person presiding at
30 the meeting exercises a casting vote, or refuses or fails to
31 exercise such a vote.
- 32 (2) A person may apply to the Court for an order under subsection (3),
33 but only if:
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- 1 (a) the person voted for the proposed resolution in some capacity
2 (even if the person voted against the proposed resolution in
3 another capacity); or
4 (b) a person voted for the proposed resolution on the
5 first-mentioned person's behalf.
- 6 (3) On an application, the Court may:
7 (a) order that the proposed resolution is taken to have been
8 passed at the meeting; and
9 (b) if it does so—make such further orders, and give such
10 directions, as it thinks necessary.
- 11 (4) If an order is made under paragraph (3)(a), the proposed resolution:
12 (a) is taken for all purposes (other than those of subsection (1))
13 to have been passed at the meeting; and
14 (b) is taken to have taken effect:
15 (i) if the order specifies a time when the proposed
16 resolution is taken to have taken effect—at that time,
17 even if it is earlier than the making of the order; or
18 (ii) otherwise—on the making of the order.

19 **28-44 Interim order on application under section 28-41, 28-42 or**
20 **28-43**

- 21 (1) If:
22 (a) an application under subsection 28-41(1), 28-42(2) or
23 28-43(2) has not yet been determined; and
24 (b) the Court is of the opinion that it is desirable to do so;
25 the Court may make such interim orders as it thinks appropriate.
- 26 (2) An interim order must be expressed to apply until the application is
27 determined, but may be varied or discharged.

28 **28-45 Order under section 28-41 or 28-42 does not affect act already**
29 **done pursuant to resolution**

30 An act done pursuant to a resolution as in force before the making,
31 under section 28-41 or 28-42, of an order setting aside or varying
32 the resolution is as valid and binding on and after the making of the
33 order as if the order had not been made.

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1 **28-50 Regulations relating to meetings and resolutions**

- 2 (1) The regulations may make provision for and in relation to meetings
3 and resolutions concerning companies under external
4 administration.
- 5 (2) Without limiting subsection (1), the regulations may make
6 provision in relation to:
7 (a) notice for convening meetings; and
8 (b) agenda; and
9 (c) information to be given in connection with meetings; and
10 (d) who is to preside at meetings; and
11 (e) the number of persons required to constitute a quorum; and
12 (f) proxies and attorneys; and
13 (g) motions; and
14 (h) voting (including casting votes); and
15 (i) when a resolution or special resolution is taken to be passed;
16 and
17 (j) facilities, including electronic communication facilities, to be
18 available at meetings; and
19 (k) minutes.
- 20 (3) Without limiting subsection (1), the regulations may make
21 provision in relation to:
22 (a) costs in relation to meetings and resolutions without meeting
23 under section 28-40, and security for those costs; and
24 (b) the circumstances in which resolutions must or may be put,
25 either in a meeting or without meeting under section 28-40.

26 **Division 30—Committees of inspection**

27 **30-5 Guide to this Division**

28 *[To be drafted after consultation]*

1 **30-10 Appointment and membership of committee of inspection—**
2 **company not in pooled group**

- 3 (1) If requested by a creditor or contributory, the external
4 administrator must convene separate meetings of the creditors and
5 contributories for the purpose of determining:
6 (a) whether a committee of inspection should be appointed; and
7 (b) if a committee of inspection is to be appointed:
8 (i) the numbers of members to represent the creditors and
9 the contributories, respectively; and
10 (ii) the persons who are to be members of the committee
11 representing creditors and contributories, respectively.
- 12 (2) Paragraph (1)(b) is subject to subsection (7).
- 13 (3) If there is a difference between the determination of the meeting of
14 creditors and the determination of the meeting of contributories,
15 the Court may resolve the difference and make such orders as it
16 thinks fit.
- 17 (4) A creditor representing at least 10% in value of the creditors, or a
18 group of creditors who together represent at least 10% in value of
19 the creditors, may appoint a person as a member of the committee.
- 20 (5) The employees of the company (within the meaning of Part 5.8A)
21 representing at least 50% in value of employees owed entitlements
22 (within the meaning of that Part) by the company may appoint a
23 person as a member of the committee.
- 24 (6) A creditor:
25 (a) cannot exercise the power of appointment under both
26 subsections (4) and (5); and
27 (b) can only exercise the power of appointment under either
28 subsection (4) or (5) once;
29 in relation to the external administration.
- 30 (7) If a creditor appoints a person under subsection (4) or (5):
31 (a) the appointment is in addition to the number of members
32 determined by resolution under subparagraph (1)(b)(i); and
33 (b) the creditor is not eligible to vote in relation to the remaining
34 membership of the committee other than:
35 (i) to remove that person as a member of the committee; or

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- 1 (ii) to fill a vacancy of the office of that member.
- 2 (8) This section does not apply in relation to a company if:
- 3 (a) either:
- 4 (i) a pooling determination is in force in relation to a group
- 5 of 2 or more companies; or
- 6 (ii) a pooling order is in force in relation to a group of 2 or
- 7 more companies; and
- 8 (b) the company is in the group.

9 **30-11 Appointment and membership of committee of inspection—**

10 **pooled group**

- 11 (1) If:
- 12 (a) either:
- 13 (i) a pooling determination is in force in relation to a group
- 14 of 2 or more companies; or
- 15 (ii) a pooling order is in force in relation to a group of 2 or
- 16 more companies; and
- 17 (b) each company in the group is being wound up;
- 18 the external administrator or external administrators must, if
- 19 requested by a creditor of a company in the group, convene a
- 20 meeting, on a consolidated basis, of the creditors of the companies
- 21 in the group for the purposes of determining:
- 22 (c) whether a committee of inspection should be appointed for
- 23 the group; and
- 24 (d) if a committee of inspection is to be appointed:
- 25 (i) the number of members to represent the creditors of the
- 26 companies in the group; and
- 27 (ii) the persons who are to be members of the committee
- 28 representing the creditors of the companies in the group.
- 29 (2) A committee of inspection for a group of 2 or more companies is
- 30 taken to be a committee of inspection for each company in the
- 31 group.
- 32 (3) If:
- 33 (a) a determination is made under subsection (1); and
- 34 (b) immediately before the determination was made, a committee
- 35 of inspection was in existence for a company in the group;

1 the committee mentioned in paragraph (b) ceases to exist when the
2 determination is made.

3 **30-12 Committees of inspection—procedures**

4 (1) Subject to subsection (2), a committee of inspection is to determine
5 its own procedures.

6 (2) The regulations may make provision for or in relation to
7 committees of inspection.

8 (3) Without limiting subsection (2), the regulations may make
9 provision for or in relation to:

- 10 (a) eligibility to be appointed as a member of a committee of
11 inspection; and
12 (b) the convening of, conduct of, and procedure and voting at,
13 meetings; and
14 (c) resignation and removal of members; and
15 (d) vacancies in membership.

16 **30-15 Functions of committee of inspection**

17 (1) A committee of inspection has the following functions:

- 18 (a) to advise and assist the external administrator;
19 (b) to give directions to the external administrator;
20 (c) to monitor the conduct of the external administration;
21 (d) such other functions as are conferred on the committee by
22 this Act;
23 (e) to do anything incidental or conducive to the performance of
24 any of the above functions.

25 (2) An external administrator must have regard to any directions given
26 to the external administrator by the committee of inspection, but
27 the external administrator is not required to comply with such
28 directions.

29 **30-20 Committee of inspection may request information etc.**

30 (1) A committee of inspection may request the external administrator
31 to:

- 32 (a) give information; or
-

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- 1 (b) provide a report; or
2 (c) produce a document;
3 to the committee.
- 4 (2) The external administrator need not comply with the request if:
5 (a) the information, report or document is not relevant to the
6 external administration of the company; or
7 (b) the external administrator would breach his or her duties in
8 relation to the external administration of the company if the
9 external administrator complied with the request; or
10 (c) it is otherwise not reasonable for the external administrator to
11 comply with the request.
- 12 (3) The regulations may prescribe circumstances in which a request is,
13 or is not, reasonable.

14 **30-25 Reporting to committee of inspection**

- 15 (1) The regulations may make provision for or in relation to the
16 obligations of external administrators of companies:
17 (a) to give information; and
18 (b) to provide reports; and
19 (c) to produce documents;
20 to committees of inspection.
- 21 (2) Without limiting subsection (1), the regulations may provide for:
22 (a) circumstances in which the external administrator of a
23 company must give information, provide a report or produce
24 a document to a committee of inspection; and
25 (b) the manner and form in which information is to be given, a
26 report provided or a document produced; and
27 (c) the timeframes in which information is to be given, a report
28 provided or a document produced; and
29 (d) who is to bear the cost of giving information, providing a
30 report or producing a document.
- 31 (3) The regulations may:
32 (a) make different provision in relation to different kinds of
33 external administration; and
34 (b) provide that specified requirements imposed under the
35 regulations may be replaced or modified, by resolution, by:
-

- 1 (i) the creditors; or
2 (ii) the committee of inspection.

3 **30-30 Committee of inspection may obtain specialist advice or**
4 **assistance**

- 5 (1) A committee of inspection may resolve that a member of the
6 committee obtain, on behalf of the committee, such advice or
7 assistance as the committee considers desirable in relation to the
8 conduct of the external administration.
- 9 (2) To avoid doubt, an expense incurred under subsection (1) is to be
10 taken to be an expense incurred by a person as a member of the
11 committee.

12 **30-35 Obligations of members of committee of inspection**

13 *Accepting extra benefits etc.*

- 14 (1) Except as provided by this Act or with the leave of the Court, a
15 member of a committee of inspection must not, while acting as a
16 member, make an arrangement for receiving, or accept, from any
17 person, any:
18 (a) gift; or
19 (b) remuneration; or
20 (c) consideration; or
21 (d) benefit;
22 in connection with the external administration.
- 23 (2) To avoid doubt, subsection (1) applies to consideration or a benefit
24 whether pecuniary or otherwise.

25 *Deriving profit etc. from the company*

- 26 (3) Except as provided by this Act or with the leave of the Court, a
27 member of a committee of inspection must not, while acting as a
28 member, directly or indirectly derive any profit or advantage from
29 a transaction, sale or purchase for or on account of the company.

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1 *Deriving gifts etc. from creditors*

2 (4) Except as provided by this Act or with the leave of the Court, a
3 member of a committee of inspection must not, while acting as a
4 member, directly or indirectly derive any gift, profit or advantage
5 from a creditor.

6 *Purchasing company assets*

7 (5) Except as provided by this Act or with the leave of the Court, a
8 member of a committee of inspection must not, while acting as a
9 member, directly or indirectly become the purchaser of any asset of
10 the company.

11 (6) Subsection (5) does not apply if the creditors resolve otherwise.

12 (7) The member of the committee is not entitled to vote on the
13 resolution referred to in subsection (6).

14 (8) Except as provided by this Act or with the leave of the Court, if a
15 member of a committee of inspection is a person authorised by a
16 creditor to act for the creditor in relation to the external
17 administration, the creditor must not, while that person is
18 performing functions as a member of the committee, either directly
19 or indirectly become the purchaser of any asset of the company.

20 *Effect of contravention of this section*

21 (9) A transaction entered into in contravention of this section may be
22 set aside by the Court on the application of a creditor or member.

23 **30-40 Oversight by ASIC**

24 ASIC is entitled to attend any meeting of a committee of
25 inspection.

26 **30-45 Oversight by the Court**

27 The Court may inquire into the conduct of a committee of
28 inspection and make such orders as it thinks fit to ensure the proper
29 conduct of the committee.

1 **Division 32—Review of the external administration of a**
2 **company**

3 **Subdivision A—Introduction**

4 **32-5 Guide to this Division**

5 *[To be drafted after consultation]*

6 **Subdivision B—Court powers to inquire and make orders**

7 **32-10 Court may inquire on own initiative**

- 8 (1) The Court may, on its own initiative, inquire into the external
9 administration of a company.
- 10 (2) The Court may, for the purposes of such an inquiry, require the
11 external administrator of a company to:
- 12 (a) give information; or
13 (b) provide a report; or
14 (c) produce a document;
15 to the Court in relation to the external administration of the
16 company.

17 **32-15 Court may inquire on application of creditors etc.**

- 18 (1) The Court may, on the application of a person mentioned in
19 subsection (2), inquire into the external administration of a
20 company.
- 21 (2) Each of the following persons may make an application for an
22 inquiry:
- 23 (a) a creditor, on his or her own behalf;
24 (b) if the committee of inspection (if any) so resolves—a
25 creditor, on behalf of the committee;
26 (c) the company;
27 (d) the external administrator of the company;
28 (e) any other person with a financial interest in the external
29 administration of the company;
30 (f) ASIC.

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- 1 (3) The Court may, for the purposes of such an inquiry, require the
2 external administrator of the company to:
- 3 (a) give information; or
 - 4 (b) provide a report; or
 - 5 (c) produce a document;
- 6 to the Court.
- 7 (4) If a request is made by a person referred to in paragraph (2)(b),
8 expenses associated with the request are to be taken to be expenses
9 incurred by a person as a member of the committee.

10 **32-20 Court may make orders in relation to external administration**

- 11 (1) The Court may make such orders as it thinks fit in relation to the
12 external administration of a company.
- 13 (2) The Court may exercise the power under subsection (1):
- 14 (a) on its own initiative; or
 - 15 (b) on application under subsection (3).
- 16 (3) Each of the following persons may apply for an order under
17 subsection (1):
- 18 (a) a creditor, on his or her own behalf;
 - 19 (b) if the committee of inspection (if any) so resolves—a
20 creditor, on behalf of the committee;
 - 21 (c) the company;
 - 22 (d) the external administrator;
 - 23 (e) any other person with a financial interest in the external
24 administration of the company;
 - 25 (f) ASIC;
 - 26 (g) if the order is for the appointment of another registered
27 liquidator to conduct the administration of a company
28 because of a vacancy in the office of administrator—an
29 officer of the company.
- 30 (4) Without limiting subsection (1), those orders may include:
- 31 (a) an order that a person cease to be the external administrator
32 of the company; and
 - 33 (b) an order that another registered liquidator be appointed as the
34 external administrator of the company; and

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- 1 (c) an order in relation to the costs of an action (including court
2 action) taken by the external administrator of the company or
3 another person in relation to the external administration of
4 the company; and
5 (d) an order directing the external administrator to make good
6 any loss that the company has sustained because of a breach
7 of duty by the external administrator; and
8 (e) any other order that the Court is permitted to make under this
9 Act.
- 10 (5) Without limiting the matters which the Court may take into
11 account when making orders, the Court may take into account:
12 (a) whether an action or failure to act by the registered liquidator
13 may affect public confidence in registered liquidators as a
14 whole; and
15 (b) whether an order that the Court proposes to make would
16 promote public confidence in registered liquidators as a
17 whole.
- 18 (6) If an application is made by a person referred to in
19 paragraph (3)(b), expenses associated with the application are to be
20 taken to be expenses incurred by a person as a member of the
21 committee.

22 **32-20A Meetings to ascertain wishes of creditors or contributories**

- 23 (1) The Court may, as to all matters relating to the external
24 administration of a company, have regard to the wishes of the
25 creditors or contributories as proved to it by any sufficient
26 evidence.
- 27 (2) The Court may, if it thinks fit for the purpose of ascertaining those
28 wishes, direct meetings of the creditors or contributories to be
29 convened, held and conducted in such manner as the Court directs,
30 and may appoint a person to act as chair of any such meeting and
31 to report the result of the meeting to the Court.
- 32 (3) In the case of creditors, regard is to be had to the value of each
33 creditor's debt.
- 34 (4) In the case of contributories, regard is to be had to the number of
35 votes conferred on each contributory by this Act or the company's
36 constitution.

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1 **Subdivision C—Review by another registered liquidator**

2 **32-21 Application of this Subdivision**

3 This Subdivision applies in relation to a company that is under
4 external administration, other than a company in relation to which
5 a provisional liquidator has been appointed.

6 **32-22 Appointment of reviewing liquidator by ASIC or the Court**

7 *Appointment by ASIC*

- 8 (1) A registered liquidator may be appointed by ASIC to carry out a
9 review into a matter that relates to the external administration of
10 the company, if ASIC considers it appropriate to do so.
- 11 (2) ASIC may exercise the power conferred by subsection (1):
12 (a) on its own initiative; or
13 (b) on application by a person with a financial interest in the
14 external administration.
- 15 (3) An application under paragraph (2)(b) must be lodged with ASIC
16 in the approved form.
- 17 (4) If ASIC appoints a registered liquidator to carry out a review,
18 ASIC must specify:
19 (a) the matters in relation to the external administration of the
20 company which the liquidator is appointed to review; and
21 (b) the way in which the cost of carrying out the review is to be
22 determined.

23 *Appointment by the Court*

- 24 (5) A registered liquidator may be appointed by the Court to carry out
25 a review into a matter that relates to the external administration of
26 the company, if the Court considers it appropriate to do so.
- 27 (6) The Court may exercise the power conferred by subsection (5):
28 (a) on application under subsection (7); and
29 (b) if the Court considers it appropriate to do so.
- 30 (7) Either of the following may make an application under this
31 subsection:

- 1 (a) ASIC;
2 (b) a person with a financial interest in the external
3 administration.
- 4 (8) If the Court appoints a registered liquidator to carry out a review,
5 the Court must specify:
6 (a) the matters in relation to the external administration of the
7 company which the liquidator is appointed to review; and
8 (b) the way in which the cost of carrying out the review is to be
9 determined.

10 *Appointments by ASIC or by the Court—limit*

- 11 (9) A matter referred to in paragraph (4)(a) or (8)(a) cannot relate to
12 remuneration accrued by an external administrator in accordance
13 with subsection 22-10(2) or (3) (default remuneration amount).

14 **32-23 Appointment of reviewing liquidator by creditors etc.**

15 *Appointment by resolution*

- 16 (1) A registered liquidator may be appointed, by resolution, by:
17 (a) the creditors; or
18 (b) if the company is being wound up under a members'
19 voluntary winding up—the company;
20 to carry out a review into either or both of the following matters:
21 (c) remuneration accrued by the external administrator under
22 remuneration determinations for the external administrator;
23 (d) a cost or expense incurred by the external administrator.
- 24 (2) The resolution must specify:
25 (a) the remuneration, costs or expenses which the liquidator is
26 appointed to review; and
27 (b) the way in which the cost of carrying out the review is to be
28 determined.

29 *Appointment by agreement with external administrator*

- 30 (3) A registered liquidator may be appointed, by agreement, in
31 accordance with the regulations, with the external administrator,
32 by:
33 (a) one or more of the creditors; or

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Schedule 1 Uniform insolvency practice rules

- 1 (b) if the company is being wound up under a members'
2 voluntary winding up—one or more of the members;
3 to carry out a review into either or both of the following matters:
4 (c) remuneration accrued by the external administrator under
5 remuneration determinations for the external administrator;
6 (d) a cost or expense incurred by the external administrator.
- 7 (4) The agreement must specify:
8 (a) the remuneration, costs or expenses which the liquidator is
9 appointed to review; and
10 (b) the way in which the cost of carrying out the review is to be
11 determined.

12 **32-24 Review**

13 *Review—general*

- 14 (1) If a reviewing liquidator is appointed under this Subdivision in
15 relation to a matter, the reviewing liquidator must carry out a
16 review into that matter.

17 *Reviews relating to remuneration, costs or expenses*

- 18 (2) If the matter is, or includes, remuneration accrued by the external
19 administrator under remuneration determinations for the external
20 administrator, the review must include an assessment of whether
21 the remuneration was properly accrued by the external
22 administrator.

23 Note: Regulations made under section 32-27 may provide for the meaning of
24 *properly accrued*.

- 25 (3) If the matter is, or includes, a cost or expense incurred by the
26 external administrator, the review must include an assessment of
27 whether the cost or expense was properly incurred by the external
28 administrator.

29 Note: Regulations made under section 32-27 may provide for the meaning of
30 *properly incurred*.

- 31 (4) A reviewing liquidator must not review:
32 (a) remuneration accrued by the external administrator under
33 remuneration determinations for the external administrator;
34 or
-

- 1 (b) a cost or expense incurred by the external administrator;
2 if the remuneration, cost or expense was accrued or incurred (as the
3 case may be) during a period other than:
4 (c) for a reviewing liquidator appointed by the Court under
5 paragraph 32-26(2)(c) or (3)(b)—the period determined by
6 the Court; or
7 (d) otherwise:
8 (i) the 6-month period ending on the day of the
9 appointment of the reviewing liquidator; or
10 (ii) if another period is prescribed by regulation—that other
11 period.

12 *Report of review*

- 13 (5) A reviewing liquidator must prepare a report on the review.

14 **32-25 Who pays for a review?**

- 15 (1) The cost of carrying out a review under this Subdivision:
16 (a) in the case of a reviewing liquidator appointed with the
17 agreement of the external administrator under subsection
18 32-23(3)—is to be borne by the creditors or members
19 referred to in that subsection; or
20 (b) in any other case—forms part of the expenses of the external
21 administration.
22 (2) Subsection (1) has effect subject to an order of the Court under
23 section 32-26.

24 **32-26 Court orders in relation to review**

25 *Application of this section*

- 26 (1) This section applies if:
27 (a) a reviewing liquidator has been appointed under this
28 Subdivision in relation to one or more matters; and
29 (b) the review has not been completed.

30 *Court orders on application by the reviewing liquidator*

- 31 (2) On application by the reviewing liquidator, the Court may make
32 any or all of the following orders in relation to the review:

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Schedule 1 Uniform insolvency practice rules

- 1 (a) requiring the external administrator or any other person to
2 provide books, information or assistance to the reviewing
3 liquidator;
- 4 (b) requiring the reviewing liquidator to carry out a review of
5 one or more matters that relate to the external administration
6 and that are specified in the order instead of, or in addition to,
7 the matters referred to in paragraph (1)(a) of this section;
- 8 (c) accepting the resignation of the reviewing liquidator, and
9 appointing another person as reviewing liquidator for the
10 matter or matters;
- 11 (d) any other order that the Court thinks fit.

12 *Court orders on application by a person with a financial interest*

- 13 (3) On application by a person with a financial interest in the external
14 administration, the Court may make any or all of the following
15 orders in relation to the review:
- 16 (a) requiring the reviewing liquidator to carry out a review of
17 one or more matters that relate to the external administration
18 and that are specified in the order instead of, or in addition to,
19 the matters referred to in paragraph (1)(a) of this section;
- 20 (b) removing from office the reviewing liquidator, and
21 appointing another person as reviewing liquidator for the
22 matter or matters;
- 23 (c) any other order that the Court thinks fit.

24 **32-27 Regulations about reviews**

- 25 (1) The regulations may make provision for and in relation to reviews
26 under this Subdivision.
- 27 (2) Regulations made for the purposes of subsection (1) may make
28 provision for or in relation to any or all of the following matters:
- 29 (a) the giving of notice to the external administrator before
30 appointing, or making an application for the appointment of,
31 a reviewing liquidator under this Subdivision;
- 32 (b) the meaning, for the purposes of section 32-24, of *properly*
33 *accrued* in relation to remuneration accrued by an external
34 administrator under remuneration determinations for the
35 external administrator;

- 1 (c) the meaning, for the purposes of section 32-24, of *properly*
2 *incurred* in relation to costs or expenses incurred by an
3 external administrator;
4 (d) the appointment of reviewing liquidators, including
5 requirements as to who may be appointed;
6 (e) the powers and duties of reviewing liquidators in carrying out
7 a review;
8 (f) the form and content of reports by reviewing liquidators;
9 (g) the preparation and provision of reports by reviewing
10 liquidators.
- 11 (3) Subsection (2) does not limit subsection (1).

12 **Subdivision D—Removal by creditors**

13 **32-30 Application of this Subdivision**

14 This Subdivision applies in relation to a company that is under
15 external administration, other than a company in relation to which
16 a provisional liquidator has been appointed.

17 **32-35 Removal by creditors**

- 18 (1) The creditors may:
19 (a) by resolution at a meeting, remove the external administrator
20 of the company; and
21 (b) by resolution at the same or a subsequent meeting, appoint
22 another registered liquidator as external administrator of the
23 company.
- 24 (2) However, the creditors may not do so unless:
25 (a) at least 5 business days' notice of the meeting is given to all
26 persons who are entitled to receive notice of creditors'
27 meetings; and
28 (b) the notice of the meeting includes a statement:
29 (i) where it is proposed that the external administrator of
30 the company be removed at the meeting—that a motion
31 will be put at the meeting to remove the external
32 administrator; and
33 (ii) where it is proposed that another registered liquidator
34 will be appointed as external administrator of the

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- 1 (2) An external administrator must have regard to any directions so
2 given, but the external administrator is not required to comply with
3 such directions.
- 4 (3) If there is a conflict between directions given by the creditors or
5 contributories of a company under subsection (1) and by the
6 committee of inspection under section 30-15, directions given by
7 the creditors or contributories override any directions given by the
8 committee.

9 **42-10 External administrator may assign right to sue under this Act**

- 10 (1) An external administrator may assign any right to sue that is
11 conferred on the external administrator by this Act.
- 12 (2) Subsection (1) has effect subject to subsection (3).
- 13 (3) If the external administrator's action has already begun, the
14 external administrator cannot assign the right to sue unless the
15 external administrator has the approval of the Court.
- 16 (4) If a right is assigned under this section, a reference in this Act to
17 the external administrator in relation to the action is taken to be a
18 reference to the person to whom the right has been assigned.
19

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Schedule 2 Further amendments

Part 1 Regulator powers

1 **Schedule 2—Further amendments**

2 **Part 1—Regulator powers**

3 *Australian Securities and Investments Commission Act 2001*

4 **1 Section 28**

5 After “30A,” insert “30B”.

6 **2 After section 30A**

7 Insert:

8 **30B Notice to registered liquidators concerning information and**
9 **books**

10 (1) Subject to subsection (2), ASIC may give a registered liquidator a
11 written notice requiring the liquidator:

12 (a) to give specified information; and

13 (b) to produce specified books;

14 to a specified member or staff member at a specified place and
15 time.

16 Note: Failure to comply with a requirement made under this subsection is an
17 offence (see section 63).

18 (2) The power in subsection (1) may only be exercised:

19 (a) for the purposes of the performance or exercise of any of
20 ASIC’s functions and powers in relation to the liquidator
21 requirements; or

22 (b) for the purposes of ascertaining compliance with the
23 liquidator requirements; or

24 (c) in relation to:

25 (i) an alleged or suspected contravention of the liquidator
26 requirements; or

27 (ii) an alleged or suspected contravention of a law of the
28 Commonwealth, or of a State or Territory in this
29 jurisdiction, being a contravention that relates to the
30 performance or exercise of a registered liquidator’s
31 functions, duties or powers and that either concerns the
32 management of the affairs of a body corporate or

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Further amendments **Schedule 2**
Regulator powers **Part 1**

- 1 involves fraud or dishonesty and relates to a body
2 corporate; or
3 (d) for the purposes of an investigation under Division 1 relating
4 to a contravention referred to in paragraph (c).
- 5 (3) The **liquidator requirements** are the requirements in relation to
6 registered liquidators, the external administration of companies and
7 the receivership of the property of corporations under:
8 (a) Chapter 5 of the Corporations Act; and
9 (b) Schedule 2 to the Corporations Act; and
10 (c) other provisions of that Act that relate to that Chapter or
11 Schedule.
- 12 (4) Without limiting subsection (1), a notice under that subsection may
13 specify information or books that relate to any or all of the
14 following:
15 (a) the policies relating to the external administration of
16 companies and the receivership of the property of
17 corporations that the registered liquidator has adopted or
18 proposes to adopt;
19 (b) the procedures relating to the external administration of
20 companies and the receivership of the property of
21 corporations that the registered liquidator has put in place or
22 proposes to put in place;
23 (c) the external administration of a company, or companies, that
24 the registered liquidator has conducted, is conducting or is
25 proposing to conduct;
26 (d) the receivership of the property of a corporation, or
27 corporations, that the registered liquidator has conducted, is
28 conducting or is proposing to conduct;
29 (e) any other matter relating to the external administration of
30 companies or the receivership of the property of corporations
31 that is prescribed by regulation for the purposes of this
32 paragraph.
- 33 (5) Without limiting subsection (1), a notice under that subsection may
34 require the registered liquidator to give information or produce
35 books even if doing so would involve a breach of an obligation of
36 confidentiality that the registered liquidator owes to:
37 (a) a company that is, has been or is likely to be under external
38 administration; or
-

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Schedule 2 Further amendments

Part 1 Regulator powers

1 (b) a corporation the property of which is, has been or is likely to
2 be under receivership.

3 (6) ASIC may, by written notice to a registered liquidator who has
4 received a notice under subsection (1), extend the period within
5 which the registered liquidator must give the information or
6 produce the books to which the notice under that subsection
7 relates.

8 (7) In this section:

9 *external administration* of a company has the same meaning as in
10 Schedule 2 to the Corporations Act.

11 *registered liquidator* means a person who is registered as a
12 liquidator under Schedule 2 to the Corporations Act.

13 **3 At the end of section 33**

14 Add:

15 (3) ASIC may give to a person a written notice requiring the
16 production to a specified member or staff member, at a specified
17 place and time, of specified books that are in the person's
18 possession and that relate to the question whether a registered
19 liquidator has complied with liquidator requirements, within the
20 meaning of subsection 30B(3).

21 **4 Subsection 34(3)**

22 After "30A," insert "30B,".

23 **5 Paragraph 37(5)(b)**

24 Omit "or 30A(2)(a), (b) and (d)", substitute " , 30A(2)(a), (b) and (d) or
25 30B(2)(a), (b) and (d)".

26 **6 At the end of Division 3 of Part 3**

27 Add:

1 **39C ASIC may give information and books in relation to externally**
2 **administered bodies corporate**

3 *Application*

- 4 (1) This section applies if ASIC obtains or generates information or
5 books in the exercise of its powers or the performance of its
6 functions in relation to:
7 (a) a person in that person's capacity as a registered liquidator;
8 or
9 (b) the external administration of a company; or
10 (c) the receivership of property of a corporation.

11 *ASIC may give administration information to certain persons*

- 12 (2) ASIC may give the information, all or part of the books or copies
13 of all or part of the books (*administration information*) to one or
14 more of the following:
15 (a) if the administration information relates to a corporation—the
16 corporation;
17 (b) if the administration information relates to a company that is
18 or has been under external administration—a person who is
19 or has at any time been:
20 (i) the external administrator of the company; or
21 (ii) a related entity of the company; or
22 (iii) an officer of the company; or
23 (iv) a creditor of the company; or
24 (v) a member of a committee of inspection in the external
25 administration of the company;
26 (c) if the administration information relates to property of a
27 corporation that is or has been under receivership—a person
28 who is or has at any time been:
29 (i) the receiver of the property; or
30 (ii) a related entity of the corporation; or
31 (iii) an officer of the corporation; or
32 (iv) a creditor of the corporation;
33 (d) if the administration information relates to a company that is
34 or has been under external administration—a person who is
35 carrying out, or has at any time carried out, a review of the

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Schedule 2 Further amendments

Part 1 Regulator powers

1 external administration of the company under Subdivision C
2 of Division 32 of Schedule 2 to the Corporations Act.

3 *ASIC may only give administration information to persons whose*
4 *affairs affected to a material extent*

- 5 (3) ASIC must not give administration information to a person under
6 this section unless ASIC is satisfied that:
- 7 (a) the administration information is relevant to the person; or
 - 8 (b) the administration information is relevant to the exercise of a
9 power or performance of a function under the Corporations
10 Act by the person in relation to:
 - 11 (i) a registered liquidator; or
 - 12 (ii) the external administration of a company; or
 - 13 (iii) the receivership of property of a corporation; or
 - 14 (c) it is otherwise reasonable to give the administration
15 information to the person.

16 *Process to be observed before administration information given*

- 17 (4) Before giving administration information to a person under this
18 section, ASIC must give the external administrator of the company
19 or the receiver of the property of the corporation (as the case
20 requires) notice in writing:
- 21 (a) identifying:
 - 22 (i) the administration information that ASIC proposes to
23 give; and
 - 24 (ii) the person to whom ASIC proposes to give the
25 information; and
 - 26 (b) inviting the external administrator or receiver (as the case
27 requires) to make a written submission to ASIC within 10
28 business days after the notice is given, stating:
 - 29 (i) whether he or she has any objection to the
30 administration information being given to the person;
31 and
 - 32 (ii) if he or she has such an objection, the reasons for that
33 objection.

- 34 (5) If the external administrator or receiver (as the case requires)
35 objects to the administration information being given to a person,

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1 ASIC must take into account the reasons for that objection when
2 deciding whether to give the information to the person.

3 (6) If the external administrator or receiver (as the case requires) has
4 made a submission objecting to the administration information
5 being given to a person and ASIC decides to give the information
6 to the person, ASIC must give the external administrator or
7 receiver (as the case requires) 5 business days' notice of its
8 decision before giving the information to the person.

9 *Conditions*

10 (7) ASIC may, by notice in writing to the person to whom ASIC gives
11 the administration information, impose conditions on the use and
12 disclosure of administration information by the person.

13 (8) A person commits an offence if:

14 (a) ASIC gives administration information to the person subject
15 to a condition in relation to the use or disclosure of that
16 information by the person; and

17 (b) ASIC has given the person notice of the condition under
18 subsection (7); and

19 (c) the person does not comply with the condition.

20 Penalty: 10 penalty units or imprisonment for 3 months, or both.

21 *Notices are not legislative instruments*

22 (9) Notices under subsections (4) and (7) are not legislative
23 instruments.

24 (10) In this section:

25 *external administration* of a company, has the same meaning as in
26 Schedule 2 to the Corporations Act.

27 *external administrator* of a company, has the same meaning as in
28 Schedule 2 to the Corporations Act.

29 *registered liquidator* means a person who is registered as a
30 liquidator under Schedule 2 to the Corporations Act.

31 **7 Paragraph 63(1)(c)**

32 After "30A," insert "30B,".

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Schedule 2 Further amendments

Part 1 Regulator powers

1 **8 After paragraph 80(1)(aa)**

2 Insert:

3 (ab) a matter referred to in paragraph 30B(2)(a); or

4 **9 Paragraph 127(4)(d)**

5 Repeal the paragraph, substitute:

6 (d) will enable or assist:

7 (i) a prescribed professional disciplinary body to perform
8 one of its functions; or

9 (ii) another prescribed body to perform a function in
10 relation to registered liquidators;

11 **10 Subsection 127(4EA)**

12 Omit “paragraph (4)(d)”, substitute “subparagraph (4)(d)(i)”.

13 **11 After subsection 127(4EA)**

14 Insert:

15 (4EB) If ASIC discloses information to a prescribed body under
16 subparagraph (4)(d)(ii), the body or a member of the body:

17 (a) must not disclose the information to any other person; and

18 (b) must not use the information for any purpose other than the
19 performance of functions in relation to registered liquidators.

20 Penalty: Imprisonment for 2 years.

21 **12 At the end of subsection 136(2)**

22 Add:

23 ; (k) information about the activities that ASIC has undertaken in
24 exercise of its powers, and performance of its functions,
25 under Chapter 5 of, or Schedule 2 to, the Corporations Act
26 and any provisions of that Act that relate to that Chapter or
27 Schedule.

28 ***Bankruptcy Act 1966***

29 **13 At the end of section 12**

30 Add:

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- (5) The Inspector-General may disclose information obtained by the Inspector-General in the course of exercising powers or performing functions under this 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) an Agency within the meaning of the *Financial Management and Accountability Act 1997*;
 - (b) a Commonwealth authority within the meaning of the *Commonwealth Authorities and Companies Act 1997*.

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Schedule 2 Further amendments

Part 2 Statements and reports of affairs etc.

1 **Part 2—Statements and reports of affairs etc.**

2 ***Bankruptcy Act 1966***

3 **14 Subsection 54(1) (penalty)**

4 Omit “25 penalty units”, substitute “50 penalty units”.

5 **15 Subsection 54(2) (penalty)**

6 Omit “5 penalty units”, substitute “50 penalty units”.

7 **16 Subsection 56F(1) (penalty)**

8 Omit “25 penalty units”, substitute “50 penalty units”.

9 **17 Subsection 267B(1)**

10 Omit “77CA or”.

11 **18 At the end of section 267B**

12 Add:

13 (3) A person must not refuse or fail to comply with a notice given to
14 the person under section 77CA.

15 Penalty: 50 penalty units.

16 (4) Subsection (3) does not apply if the person has a reasonable
17 excuse.

18 Note: A defendant bears an evidential burden in relation to the matter in
19 subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

20 ***Corporations Act 2001***

21 **19 Section 206B (at the end of the heading)**

22 Add “—convictions, bankruptcy and foreign court orders etc.”.

23 **20 Section 206BA (heading)**

24 Repeal the heading, substitute:

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Further amendments **Schedule 2**
Statements and reports of affairs etc. **Part 2**

1 **206BA Extension of period of automatic disqualification under**
2 **section 206B**

3 **21 After section 206BA**

4 Insert:

5 **206BB Automatic disqualification—failure to give report etc. to**
6 **external administrator**

7 *Disqualification*

- 8 (1) A person becomes disqualified from managing corporations if the
9 person:
10 (a) is given a notice (a **warning notice**) under subsection (2); and
11 (b) is given a notice (a **compliance notice**) under subsection (4);
12 and
13 (c) fails to comply with the compliance notice.

14 *Warning notice*

- 15 (2) ASIC may give a person a warning notice if the person:
16 (a) fails to comply with a requirement (the **reporting**
17 **requirement**) to give (however described) a report in relation
18 to a company under any of the following provisions:
19 (i) paragraph 429(2)(b) (reports to controllers);
20 (ii) subsection 438B(2) (reports to administrators);
21 (iii) subsection 475(1) (reports to court-appointed
22 liquidators);
23 (iv) subsection 497(4) (reports to liquidators in a creditors'
24 voluntary winding up); or
25 (b) fails to comply with a notice (the **notice requirement**) given
26 to the person in relation to a company under either of the
27 following provisions:
28 (i) subsection 438C(3) (delivering books to
29 administrators);
30 (ii) subsection 530B(4) (delivering books to liquidators).
- 31 (3) A warning notice must:
32 (a) be in the prescribed form; and
33 (b) set out the effect of this section.

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Schedule 2 Further amendments

Part 2 Statements and reports of affairs etc.

1

Compliance notice

2

(4) ASIC may give a person a compliance notice on a particular day (the *compliance notice day*) if:

3

4

(a) the person has been given a warning notice in relation to a particular reporting requirement or notice requirement; and

5

6

(b) the warning notice was given at least 10 business days before the compliance notice day; and

7

8

(c) as at the compliance notice day, the person has not complied with the reporting requirement or the notice requirement (as the case may be).

9

10

11

(5) A compliance notice must:

12

(a) be in the prescribed form; and

13

(b) require the person:

14

(i) to comply with the reporting requirement or the notice requirement (as the case may be); and

15

16

(ii) to lodge a declaration in the prescribed form that the person has complied with the reporting requirement or the notice requirement (as the case may be);

17

18

within the period (the *compliance notice period*) of 20 business days beginning on the day the compliance notice is given.

19

20

21

22

When period of disqualification starts

23

(6) Subject to an order of the Court under subsection (10), the period of disqualification under subsection (1) starts 45 business days after the end of the compliance notice period.

24

25

26

When period of disqualification ends

27

(7) Subject to subsection (8), the period of disqualification under subsection (1) ends at the earliest of the following times:

28

29

(a) when the person:

30

(i) complies with the reporting requirement or the notice requirement (as the case may be); and

31

32

(ii) lodges a declaration, in the form prescribed for the purposes of subparagraph (5)(b)(ii), that the person has complied with the reporting requirement or the notice requirement (as the case may be);

33

34

35

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Statements and reports of affairs etc. **Part 2**

- 1 (b) at the end of the external administration to which the
2 reporting requirement or notice requirement relates;
3 (c) 3 years after the day the period of disqualification starts.
- 4 (8) If the person has previously been disqualified under this section on
5 2 or more occasions, the period of disqualification ends 5 years
6 after the day the period of disqualification starts.
- 7 *Court order if person has reasonable excuse*
- 8 (9) A person who fails to comply with a compliance notice may, at any
9 time before the period for which the person is disqualified starts,
10 apply to the Court for an order under subsection (10).
- 11 (10) The Court may make an order under this subsection if the Court
12 considers that the person has a reasonable excuse for failing to
13 comply with the compliance notice.
- 14 (11) If the Court makes an order under subsection (10), subsection (1)
15 does not apply, and is taken never to have applied, to the person in
16 relation to the reporting requirement or notice requirement that is
17 the subject of the compliance notice.
- 18 (12) If the Court makes an order under subsection (10), the person to
19 whom the order relates must, within 10 business days after the
20 making of the order, lodge a copy of the order.

22 Paragraph 429(2)(b)

22 Omit “14 days”, substitute “10 business days”.

23 Subsection 438B(2)

24 Omit “statement”, substitute “report in the prescribed form”.

24 After subsection 438B(2)

26 Insert:

- 27 (2A) The administrator must, within 5 business days after receiving a
28 report under subsection (2), lodge a copy of the report.

25 Subsection 438B(4)

29 After “(2)”, insert “, (2A)”.

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Schedule 2 Further amendments

Part 2 Statements and reports of affairs etc.

1 **26 Subsection 475(4)**

2 Omit “14 days”, substitute “10 business days”.

3 **27 Paragraph 1274AA(1)(a)**

4 After “section”, insert “206BB,”.

5 **28 Schedule 3 (after table item 120)**

6 Insert:

7

120A Paragraph 429(2)(b) 50 penalty units.

8 **29 Schedule 3 (table item 123)**

9 Repeal the table item, substitute:

10

123 Subsection 438B(4) (a) if the offence relates to a provision other than subsection 438B(2A)—50 penalty units or imprisonment for 1 year, or both;
(b) if the offence relates to subsection 438B(2A)—5 penalty units.

11 **30 Schedule 3 (table item 130)**

12 Repeal the table item, substitute:

13

130 Subsection 475(9) (a) if the offence relates to a provision other than subsection 475(4)—25 penalty units or imprisonment for 6 months, or both;
(b) if the offence relates to subsection 475(4)—50 penalty units.

14 **31 Schedule 3 (table item 133)**

15 Repeal the table item, substitute:

16

133 Subsection 497(1) 10 penalty units or imprisonment for 3 months, or both.

133A Subsection 497(4) 50 penalty units.

133B Subsection 497(7) 5 penalty units.

17

1 **Part 3—Miscellaneous**

2 ***Bankruptcy Act 1966***

3 **32 After section 4**

4 Insert:

5 **4A Insolvency Practice Rules**

6 Schedule 2 has effect.

7 Note: Schedule 2 [*description to be drafted when Guide to Schedule is*
8 *drafted*].

9 **33 Subsection 5(1) (definition of *approved form*)**

10 Repeal the definition, substitute:

11 ***approved form***: a document is in the ***approved form*** if it is in
12 accordance with section 6D.

13 **34 Subsection 5(1)**

14 Insert:

15 ***bank*** means an ADI or any other bank.

16 **35 Subsection 5(1)**

17 Insert:

18 ***business day*** means a day that is not a Saturday, a Sunday or a
19 public holiday or bank holiday in the place concerned.

20 **36 Subsection 5(1) (definition of *registered trustee*)**

21 Repeal the definition, substitute:

22 ***registered trustee*** has the same meaning as in section 2-5.

23 **37 At the end of Part IA**

24 Add:

25 **6D Approved forms**

26 (1) A document that this Act requires to be in an approved form must:

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Schedule 2 Further amendments

Part 3 Miscellaneous

- 1 (a) be in the form approved by the Inspector-General for the
2 document; and
- 3 (b) include the information, statements, explanations or other
4 matters required by the form; and
- 5 (c) be accompanied by any other material required by the form.
- 6 (2) A reference in this Act to a document in the approved form,
7 includes a reference to any other material included with or
8 accompanying the document as required by the relevant form.
- 9 (3) If:
- 10 (a) this Act requires a document to be in an approved form; and
11 (b) a provision of this Act specifies, or provides for regulations
12 to specify, information, statements, explanations or other
13 matters that must be included in the document, or other
14 material that must accompany the document;
15 that other provision is not taken to exclude or limit the operation of
16 subsection (1) in relation to the approved form (and so the
17 approved form may also require information etc. to be included in
18 the form or material to accompany the form).
- 19 (4) The regulations may make provision in relation to:
- 20 (a) methods of verifying any information required by or in
21 approved forms; and
- 22 (b) the manner in which, the persons by whom, and the
23 directions or requirements in accordance with which,
24 approved forms are required or permitted to be signed,
25 prepared, or completed.

26 **38 Subsection 63A(1) (definition of *working day*)**

27 Repeal the definition.

28 **39 Paragraph 64C(b)**

29 Omit “working day”, substitute “business day”.

30 **40 Subsection 73(1A)**

31 Omit “working days”, substitute “business days”.

32 **41 Subsection 73(1B)**

33 Repeal the subsection.

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Further amendments **Schedule 2**
Miscellaneous **Part 3**

- 1 **42 Subsection 125(3) (definition of *bank*)**
2 Repeal the definition.
- 3 **43 Section 139ZIB (definition of *working day*)**
4 Repeal the definition.
- 5 **44 Subparagraph 139ZIE(1)(a)(i)**
6 Omit “working days”, substitute “business days”.
- 7 **45 Subsection 139ZIE(5)**
8 Omit “working days”, substitute “business days”.
- 9 **46 Paragraph 139ZIF(1)(a)**
10 Omit “working days”, substitute “business days”.
- 11 **47 Section 185 (definition of *bank*)**
12 Repeal the definition.
- 13 **48 Section 185 (definition of *working day*)**
14 Repeal the definition.
- 15 **49 Subsections 185LB(1), 185LC(1) and 185N(5)**
16 Omit “working days”, substitute “business days”.
- 17 **50 Subsection 188(5)**
18 Omit “working days”, substitute “business days”.
- 19 **51 Subsection 188(5A)**
20 Repeal the subsection.
- 21 **52 Paragraphs 194(1)(a) and (b)**
22 Omit “working days”, substitute “business days”.
- 23 **53 Subsection 194(3)**
24 Repeal the subsection.
- 25 **54 Subsection 224A(5)**
26 Omit “working days”, substitute “business days”.
-

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Schedule 2 Further amendments

Part 3 Miscellaneous

1 **55 Subsection 224A(6)**

2 Repeal the subsection.

3 ***Corporations Act 2001***

4 **56 Section 9 (at the end of the definition of *property*)**

5 Add:

6 ; and (i) in Schedule 2 (Insolvency Practice Rules)—has a meaning
7 affected by section 3-25.

8 **57 Section 9 (definition of *registered liquidator*)**

9 Repeal the definition, substitute:

10 *registered liquidator* has the same meaning as in section 2-5.

11 **58 After subsection 477(2B)**

12 Insert:

13 (2C) Subsection (2B) does not apply to an agreement if the costs and
14 expenses of the company under the agreement are to be paid out of
15 money paid to the liquidator:

- 16 (a) by ASIC on behalf of the Commonwealth; and
17 (b) for the purpose of paying the costs and expenses.

18 **59 Section 497**

19 Repeal the section, substitute:

20 **497 Information about the company's affairs**

21 (1) The liquidator of the company must, within 5 business days after
22 the day of the meeting of the company at which the resolution for
23 voluntary winding up is passed:

- 24 (a) send to each creditor:
25 (i) a summary of the affairs of the company in the
26 prescribed form; and
27 (ii) a list setting out the names of all creditors, the addresses
28 of those creditors and the estimated amounts of their
29 claims, as shown in the records of the company; and
30 (b) lodge a copy of the documents sent in accordance with
31 paragraph (a).
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Further amendments **Schedule 2**
Miscellaneous **Part 3**

- 1 Note: For notification under paragraph (a), see section 600G.
- 2 (2) The list referred to in subparagraph (1)(a)(ii) must identify any
3 creditors that are related entities of the company.
- 4 (3) Unless the Court orders otherwise, nothing in subsection (1)
5 requires the liquidator to send the list referred to in
6 subparagraph (1)(a)(ii) to a creditor whose debt does not exceed
7 \$1,000.
- 8 (4) Within 5 business days after the day of the meeting of the company
9 at which the resolution for voluntary winding up is passed or such
10 longer period as the liquidator allows, the directors of the company
11 must:
12 (a) give the liquidator; and
13 (b) lodge with ASIC;
14 a report, in the prescribed form, about the company's business,
15 property, affairs and financial circumstances.
- 16 (5) An offence based on subsection (4) is an offence of strict liability.
17 Note: For strict liability, see section 6.1 of the *Criminal Code*.
- 18 (6) The liquidator must, within 5 business days after receiving a report
19 under subsection (4), lodge a copy of the report.
- 20 (7) A person must not contravene subsection (6).
- 21 (8) An offence based on subsection (7) is an offence of strict liability.
22 Note: For strict liability, see section 6.1 of the *Criminal Code*.
- 23 (9) Subsection (7) does not apply to the extent that the person has a
24 reasonable excuse.
25 Note: A defendant bears an evidential burden in relation to the matter in this
26 subsection, see subsection 13.3(3) of the *Criminal Code*.

60 Section 509

28 Repeal the section, substitute:

509 Final account and deregistration

- 30 (1) As soon as the affairs of the company are fully wound up, the
31 liquidator must:
-

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Schedule 2 Further amendments

Part 3 Miscellaneous

1 (a) make up an account showing how the winding up has been
2 conducted and the property of the company has been
3 disposed of; and

4 (b) lodge the account with ASIC.

5 *ASIC must deregister at the end of 3 month period*

6 (2) ASIC must deregister the company at the end of the 3 month
7 period after the account was lodged.

8 *ASIC must deregister on a day specified by the Court*

9 (3) On application by the liquidator or any other interested party, the
10 Court may make an order that ASIC deregister the company on a
11 specified day. The Court must make the order before the end of the
12 3 month period after the account was lodged.

13 (4) The person on whose application an order under subsection (3) is
14 made must, within 10 business days after the making of the order,
15 lodge a copy of the order.

16 **61 At the end of Part 5.9**

17 Add:

18 **Division 4—Insolvency Practice Rules**

19 **600K Insolvency Practice Rules**

20 Schedule 2 has effect.

21 Note: Schedule 2 [description to be drafted when Guide to Schedule is
22 drafted].

23 **62 Paragraph 1317B(1)(c)**

24 Omit “Board.”, substitute “Board; or”.

25 **63 At the end of subsection 1317B(1)**

26 Add:

27 (d) a committee convened under Part 2 of Schedule 2.

28 **64 Paragraph 1317C(j)**

29 Omit “section 1317DAI.”, substitute “section 1317DAI; or”.

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Further amendments **Schedule 2**
Miscellaneous **Part 3**

1 **65 At the end of section 1317C**

2 Add:

3 (k) a decision of ASIC to give a direction under section 26-75
4 (which deals with directing external administrators to comply
5 with requests for information etc.).

6 **66 Subsection 1317D(1)**

7 Omit “ASIC or the Companies Auditors and Liquidators Disciplinary
8 Board”, substitute “ASIC, the Companies Auditors Disciplinary Board
9 or a committee convened under Part 2 of Schedule 2”.