# Insolvency Law Reform Act 2016

# No. 11, 2016

## An Act to amend the law in relation to personal and corporate insolvency, and for related purposes

Note: An electronic version of this Act is available in ComLaw (http://www.comlaw.gov.au/)

# Contents


1 Short title ..... 1
2 Commencement ..... 1
3 Schedules ..... 3

**Schedule 1—Amendments relating to the Insolvency Practice Schedule (Bankruptcy)** 4

Part 1—Insolvency Practice Schedule (Bankruptcy) 4

*Bankruptcy Act 1966* 4

Part 2—Amendments consequential on the introduction of the Insolvency Practice Schedule (Bankruptcy) 102

*Bankruptcy Act 1966* 102

*Bankruptcy (Estate Charges) Act 1997* 114

Part 3—Transition to the Insolvency Practice Schedule (Bankruptcy) 115

Division 1—Introduction 115

Division 2—Application of Part 2 of the Insolvency Practice Schedule (Bankruptcy) and related consequential amendments 116

Division 3—Application of Part 3 of the Insolvency Practice Schedule (Bankruptcy) and related consequential amendments 127

Division 4—Administrative review 142

Division 5—Application of other consequential amendments 143

Division 6—Regulations 145

**Schedule 2—Amendments relating to the Insolvency Practice Schedule (Corporations)** 146

Part 1—Insolvency Practice Schedule (Corporations) 146

*Corporations Act 2001* 146

Part 2—Amendments consequential on the introduction of the Insolvency Practice Schedule (Corporations) 265

*Aged Care (Accommodation Payment Security) Act 2006* 265

*Australian Securities and Investments Commission Act 2001* 265

*Banking Act 1959* 274

*Bankruptcy Act 1966* 275

*Carbon Credits (Carbon Farming Initiative) Act 2011* 275
*Cheques Act 1986* 275
*Commonwealth Serum Laboratories Act 1961* 276
*Corporations (Aboriginal and Torres Strait Islander) Act 2006* 276
*Corporations Act 2001* 278
*Corporations (Review Fees) Act 2003* 317
*Cross-Border Insolvency Act 2008* 318
*Income Tax Assessment Act 1997* 319
*Insurance Act 1973* 319
*Life Insurance Act 1995* 320
*Medical Indemnity Act 2002* 320
*National Consumer Credit Protection Act 2009* 322
*National Greenhouse and Energy Reporting Act 2007* 322
*Paid Parental Leave Act 2010* 323
*Payment Systems and Netting Act 1998* 323
*Private Health Insurance (Prudential Supervision) Act 2015* 323
*Qantas Sale Act 1992* 324
*Superannuation Industry (Supervision) Act 1993* 324
*Taxation Administration Act 1953* 325
*Tradex Scheme Act 1999* 325

Part 3—Transition to the Insolvency Practice Schedule (Corporations) 326
*Australian Securities and Investments Commission Act 2001* 326
*Corporations Act 2001* 329

**Schedule 3—Other amendments** 369

Part 1—Payments for property 369
*Corporations Act 2001* 369

Part 2—Contravention of deed of company arrangement 370
*Corporations Act 2001* 370
*Private Health Insurance (Prudential Supervision) Act 2015* 371

Part 3—Company's former name 372

*Corporations Act 2001* 372
Part 4—Termination of deed of company arrangement 373
*Corporations Act 2001* 373
Part 5—Relation-back day 377
*Corporations Act 2001* 377
Part 6—Miscellaneous amendments 384
*Corporations Act 2001* 384
Part 7—Application of amendments 388
*Corporations Act 2001* 388

# Insolvency Law Reform Act 2016

**No. 11, 2016**

## An Act to amend the law in relation to personal and corporate insolvency, and for related purposes

[*Assented to 29 February 2016*]

The Parliament of Australia enacts:

### 1 Short title

This Act may be cited as the *Insolvency Law Reform Act 2016*.

### 2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
|---|---|---|
| **Column 1** | **Column 2** | **Column 3** |
| **Provisions** | **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. | 29 February 2016 |
| 2. Schedule 1 | A single day to be fixed by Proclamation.<br>However, if the provisions do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period. | |
| 3. Schedule 2, items 1 to 93 | At the same time as the provisions covered by table item 2. | |
| 4. Schedule 2, item 94 | The later of:<br>(a) the commencement of the provisions covered by table item 2; and<br>(b) immediately after the commencement of item 13 of Schedule 3 to the *Treasury Legislation Amendment (Repeal Day 2015) Act 2016*.<br>However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur. | |
| 5. Schedule 2, items 95 to 302 | At the same time as the provisions covered by table item 2. | |
| 6. Schedule 2, item 303 | The later of:<br>(a) the commencement of the provisions covered by table item 2; and<br>(b) immediately after the commencement of item 48 of Schedule 2 to the *Carbon Farming Initiative Amendment Act 2014*. | |
| 7. Schedule 2, items 304 to 322 | At the same time as the provisions covered by table item 2. | |
| 8. Schedule 3 | Immediately after the commencement of the provisions covered by table item 2. | |

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

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

## 3 Schedules

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

# Schedule 1—Amendments relating to the Insolvency Practice Schedule (Bankruptcy)

## Part 1—Insolvency Practice Schedule (Bankruptcy)

### *Bankruptcy Act 1966*

#### 1 After section 4

Insert:

#### 4A Insolvency Practice Schedule

Schedule 2 has effect.

#### 2 At the end of the Act

Add:

# Schedule 2—Insolvency Practice Schedule (Bankruptcy)

Note: See section 4A.

## Part 1—Introduction

### Division 1—Introduction

#### 1-1 Object of this Schedule

(1) The object of this Schedule is to ensure that any person registered as a trustee:
  (a) has an appropriate level of expertise; and
  (b) behaves ethically; and
  (c) maintains sufficient insurance to cover his or her liabilities in practising as a registered trustee.

(2) The object of this Schedule is also:

(a) to regulate the administration of regulated debtors' estates consistently, unless there is a clear reason to treat a matter that arises in relation to a particular kind of estate differently; and
(b) to regulate the administration of regulated debtors' estates to give greater control to creditors.

## 1-5 Simplified outline of this Schedule

*Registering trustees*

Under this Act, only the Official Trustee or a registered trustee can act as the trustee of a regulated debtor's estate.

Part 2 of this Schedule sets out the process for registering trustees, and also deals with disciplining registered trustees.

*Consistently regulating the administration of regulated debtors' estates*

Part 3 of this Schedule sets out provisions to regulate the administration of regulated debtors' estates consistently.

A regulated debtor is a bankrupt, a person whose property is subject to control under Division 2 of Part X, a debtor under a personal insolvency agreement or a deceased person whose estate is being administered under Part XI.

*Other provisions*

There are other matters relevant to the administration of regulated debtors' estates in this Act.

This Schedule also gives authority for a legislative instrument, the Insolvency Practice Rules, to deal with some matters.

Many of the terms in this Schedule are defined. The Dictionary in section 5-5 contains a list of every term that is defined in this Schedule. Other terms are defined in section 5 of this Act.

# Division 5—Definitions

## Subdivision A—Introduction

### 5-1 Simplified outline of this Division

Terms used in this Schedule are defined in the Dictionary. In some cases, the definition is a signpost to another provision of the Schedule in which the meaning of the term is explained.

Some of the key terms, the meaning of which is explained in this Division, are regulated debtor, regulated debtor's estate and trustee of a regulated debtor's estate.

## Subdivision B—The Dictionary

### 5-5 The Dictionary

In this Schedule:

***adequate and appropriate fidelity insurance*** has a meaning affected by subsection 25-1(2).

***adequate and appropriate professional indemnity insurance*** has a meaning affected by subsection 25-1(2).

***administration account***: see section 65-5.

***annual administration return*** means the return required to be lodged under subsection 70-5(2).

***annual trustee return*** means the return required to be lodged under subsection 30-1(1).

***committee of inspection*** for a regulated debtor's estate means a committee appointed under sections 80-10 to 80-25 in relation to the administration of the estate.

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

***current conditions***: see section 5-10.

***end of an administration*** of a regulated debtor's estate means:

(a) in the case of a bankruptcy—the day on which the bankrupt is discharged or the bankruptcy is annulled, whichever happens first; and

(b) in the case of an administration under Part X—the day 3 years after the day on which a personal insolvency agreement made by the debtor for the administration of the debtor's estate took effect; and

(c) in the case of an administration under Part XI—the day 3 years after the day on which the administration is taken to have commenced under section 247A.

***financial interest***: a person has a ***financial interest*** in the administration of a regulated debtor's estate in the circumstances set out in section 5-30.

***GST*** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

***Insolvency Practice Rules*** means the rules made by the Minister under section 105-1.

***Insolvency Practice Schedule (Corporations)*** means Schedule 2 to the *Corporations Act 2001*, and includes rules made under section 105-1 of that Schedule.

***March quarter*** means the period of 3 months beginning on 1 January.

***maximum default amount*** for a trustee of a regulated debtor's estate: see section 60-15.

***notified estate charge***: see subsection 20-75(7).

***prescribed*** means prescribed by the Insolvency Practice Rules.

***registered trustee*** means an individual who is registered as a trustee under Part 2 of this Schedule.

***Register of Trustees*** means the register established and maintained by the Inspector-General under section 15-1.

***regulated debtor***: see section 5-15.

***regulated debtor's estate***: see section 5-16.

***remuneration determination***, for a trustee of a regulated debtor's estate, means a determination made:

(a) under section 60-10 or 60-11 in relation to the trustee; and

(b) in accordance with section 60-12.

***this Schedule*** includes the Insolvency Practice Rules.

***trustee of a regulated debtor's estate***: see section 5-20 and 5-25.

## Subdivision C—Other definitions

### 5-10 Meaning of *current conditions*

(1) Each of the following is a ***current condition*** imposed on a registered trustee:

(a) a condition that a committee decides that the registered trustee is to be subject to under subsection 20-20(5) or (6), subject to any variation that a committee has decided should be made to the condition under section 20-55;

(b) a condition imposed on all registered trustees, or on registered trustees of the trustee's class, under section 20-35;

(c) a condition imposed under subsection 40-15(2) (direction not to accept further appointments);

(d) a condition that a committee decides that the registered trustee is to be subject to under paragraph 40-55(1)(f) or (g) (conditions as a result of disciplinary action), subject to any variation that a committee has decided should be made to the condition under section 20-55;

(e) a condition imposed on the registered trustee by the Court under section 45-1.

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

(a) a condition that a committee has decided to remove under section 20-55; or

(b) a condition that is removed under subsection 40-15(4) (condition removed because a direction not to accept further appointments has been withdrawn); or

(c) a condition that the Court has ordered be removed under section 45-1.

### 5-15 Meaning of *regulated debtor*

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

(a) a bankrupt; or

(b) a person whose property is subject to control under Division 2 of Part X; or

(c) a debtor under a personal insolvency agreement; or

(d) a deceased person whose estate is being administered under Part XI.

### 5-16 Meaning of *regulated debtor's estate*

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

(a) in relation to a bankrupt—the estate of the bankrupt, other than any estate of the bankrupt administered under Part XI because the bankrupt is a deceased person; and

(b) in relation to a person whose property is subject to control under Division 2 of Part X—the estate of the person; and

(c) in relation to a debtor under a personal insolvency agreement—the estate of the debtor; and

(d) in relation to a deceased person whose estate is being administered under Part XI—the estate of the person being administered under that Part.

### 5-20 Meaning of *trustee of a regulated debtor's estate*

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

(a) in relation to a bankrupt—the trustee of the bankrupt's estate; and

(b) in relation to a person whose property is subject to control under Division 2 of Part X—the controlling trustee; and

(c) in relation to a debtor under a personal insolvency agreement—the trustee of the agreement; and

(d) in relation to a deceased person whose estate is being administered under Part XI—the trustee administering the estate under that Part.

### 5-25 References to the trustee of a regulated debtor's estate

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

(a) in relation to a regulated debtor's estate in respect of which there are 2 or more joint trustees—as a reference to all of the trustees; and

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

### 5-30 Persons with a *financial interest* in the administration of a regulated debtor's estate

A person has a ***financial interest*** in the administration of a regulated debtor's estate:

(a) if the person is one of the following:

(i) the regulated debtor;

(ii) a creditor;

(iii) the trustee; or

(b) in any other circumstances prescribed.

## Division 6—Application of this Schedule to Official Trustee

### 6-1 Schedule generally does not apply to the Official Trustee

A provision of this Schedule does not apply to the Official Trustee unless the provision is expressed to apply to the Official Trustee.

# Part 2—Registering and disciplining practitioners

## Division 10—Introduction

### 10-1 Simplified outline of this Part

*Registering trustees*

An individual may apply to the Inspector-General to be registered as a trustee. The Inspector-General will refer the application to a

committee who will consider the applicant's qualifications, conduct and fitness and whether the applicant will take out appropriate insurance. Registration may be subject to conditions, is for 3 years and may be renewed.

A registered trustee must:

(a) lodge an annual return with the Inspector-General that includes proof that the trustee has appropriate insurance; and

(b) give the Inspector-General notice if the trustee's circumstances change or if certain other events happen.

*Disciplining registered trustees*

If a registered trustee fails to comply with certain requirements, such as the requirement to lodge a document or give information, the Inspector-General may give directions that may result in the trustee being unable to accept further appointments. The Inspector-General may also seek a Court order.

The Inspector-General may suspend or cancel a trustee's registration in certain circumstances. The Inspector-General may also give the trustee a show-cause notice. If such a notice is given and no sufficient explanation is given, the Inspector-General may take further disciplinary action on the decision of a committee.

Industry bodies may notify the Inspector-General where they suspect there are grounds for disciplinary action.

*Court powers*

The Court has broad powers to make orders in relation to registered trustees (including imposing conditions on registration).

## 10-5 Working cooperatively with ASIC

In performing his or her functions and exercising his or her powers under this Act in relation to persons who are, have been or may become both registered trustees under this Act and registered liquidators under the *Corporations Act 2001*, the Inspector-General must work cooperatively with ASIC.

# Division 15—Register of trustees

## 15-1 Register of Trustees

(1) The Inspector-General must establish and maintain a Register of Trustees.

(2) The Register of Trustees may be kept in any form that the Inspector-General considers appropriate.

(3) The Insolvency Practice Rules may provide for and in relation to the Register of Trustees.

(4) Without limiting subsection (3), the Insolvency Practice Rules may provide for and in relation to:
  (a) the details to be entered on the Register of Trustees; and
  (b) the parts of the Register that are to be made available to the public.

(5) Without limiting paragraph (4)(a), those details may include:
  (a) details of any disciplinary action decided by a committee under section 40-55; and
  (b) details of persons who have had their registration as a trustee under this Act suspended or cancelled.

# Division 20—Registering trustees

## Subdivision A—Introduction

### 20-1 Simplified outline of this Division

An individual may apply to the Inspector-General to be registered as a trustee. The application will be referred to a committee, which will assess the application against specified criteria (the applicant's qualifications, conduct and fitness and whether the applicant will take out appropriate insurance). The committee will report its decision to the Inspector-General and, if the committee decides that the applicant should be registered, the Inspector-General will register the applicant as a trustee.

A registration may be subject to conditions. Conditions may be imposed on a particular registered trustee by the committee, or on all registered trustees or a class of registered trustees by the Insolvency Practice Rules. A registered trustee may apply to the Inspector-General to have a condition imposed by a committee removed or varied. That application will be referred to a committee.

Registration is for 3 years, but may be renewed. An application for renewal may be made to the Inspector-General within specified time periods.

A decision of a committee about an application for registration or about a condition of registration is reviewable by the Administrative Appeals Tribunal (see Division 96 of this Schedule).

## Subdivision B—Registration

### 20-5 Application for registration

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

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

(3) The application must be accompanied by the application fee determined by the Minister by legislative instrument.

(4) The application is properly made if subsections (2) and (3) are complied with.

### 20-10 Inspector-General may convene a committee to consider

(1) The Inspector-General may convene a committee for the purposes of considering an application, or applications, for registration as a trustee.

(2) The committee must consist of:
  (a) the Inspector-General; and
  (b) a registered trustee chosen by a prescribed body; and

(c) a person appointed by the Minister.

Note 1: Section 50-5 sets out the knowledge and experience that a prescribed body must be satisfied a person has before making an appointment under paragraph (2)(b).

Note 2: Section 50-10 sets out the matters of which the Minister must be satisfied before making an appointment under paragraph (2)(c).

## 20-15 Inspector-General must refer applications to a committee

(1) The Inspector-General must refer an application for registration as a trustee that is properly made to a committee convened under section 20-10 for consideration.

(2) The Inspector-General must do so within 2 months after receiving the application.

## 20-20 Committee to consider applications

*Committee must consider referred applications*

(1) If an application for registration as a trustee is referred to a committee, the committee must consider the application.

(2) For the purposes of considering the application, the committee:
(a) must interview the applicant; and
(b) may require the applicant to sit for an exam.

*Decision of committee*

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

(4) The committee must decide that the applicant should be registered as a trustee if it is satisfied that the applicant:
(a) has the qualifications, experience, knowledge and abilities prescribed; and
(b) will take out:
(i) adequate and appropriate professional indemnity insurance; and
(ii) adequate and appropriate fidelity insurance;

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

(c) has not been convicted, within 10 years before making the application, of an offence involving fraud or dishonesty; and

(d) is not, and has not been within 10 years before making the application, an insolvent under administration; and

(e) has not had his or her registration as a trustee under this Act cancelled within 10 years before making the application, other than in response to a written request by the applicant to have the registration cancelled; and

(f) has not had his or her registration as a liquidator under the *Corporations Act 2001* cancelled within 10 years before making the application, other than in response to a written request by the applicant to have the registration cancelled; and

(g) is not disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001*, or under a law of an external Territory or a law of a foreign country; and

(h) is otherwise a fit and proper person; and

(i) is resident in Australia or in another prescribed country.

(5) The committee may decide that the applicant should be registered even if the committee is not satisfied of a matter mentioned in paragraph (4)(a), (e), (f) or (i), provided the committee is satisfied that the applicant would be suitable to be registered as a trustee if the applicant complied with conditions specified by the committee.

*Registration may be subject to conditions*

(6) The committee may decide that the applicant's registration is to be subject to any other conditions specified by the committee.

*Spent convictions*

(7) Nothing in this section affects the operation of Part VIIC of the *Crimes Act 1914*.

Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them.

## 20-25 Committee to report

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

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

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

(c) if the committee decides under subsection 20-20(5) or (6) that the applicant should be registered subject to a condition:

(i) the condition; and

(ii) the committee's reasons for imposing the condition.

## 20-30 Registration

*Registration as trustee*

(1) The Inspector-General must register the applicant as a trustee if:

(a) the committee has decided that the applicant should be registered; and

(b) the applicant has produced evidence in writing to the Inspector-General that the applicant has taken out:

(i) adequate and appropriate professional indemnity insurance; and

(ii) adequate and appropriate fidelity insurance;

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

(c) the applicant has paid the registration fee determined by the Minister by legislative instrument.

(2) The Inspector-General registers an applicant by entering on the Register of Trustees the details relating to the applicant prescribed for the purposes of subsection 15-1(3).

*Registration subject to current conditions*

(3) The registration is subject to the current conditions imposed on the registered trustee.

*Certificate of registration*

(4) After registering a person as a trustee, the Inspector-General must give the person a certificate of registration.

(5) The certificate may be given electronically.

*Period of registration*

(6) The registration has effect for 3 years.

### 20-35 Conditions imposed on all registered trustees or a class of registered trustees

(1) The Insolvency Practice Rules may impose conditions on all registered trustees, or registered trustees of a specified class.

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

## Subdivision C—Varying etc. conditions of registration

### 20-40 Application to vary etc. conditions of registration

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

(2) However, an application cannot be made:
  (a) if the person's registration as a trustee is suspended; or
  (b) if the condition is of a prescribed kind; or
  (c) in prescribed circumstances.

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

(4) The application is properly made if:
  (a) an application can be made; and
  (b) subsection (3) is complied with.

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

### 20-45 Inspector-General may convene a committee to consider applications

(1) The Inspector-General may convene a committee for the purposes of considering an application, or applications, made under section 20-40.

(2) The committee must consist of:
  (a) the Inspector-General; and
  (b) a registered trustee chosen by a prescribed body; and
  (c) a person appointed by the Minister.

Note 1: Section 50-5 sets out the knowledge and experience that a prescribed body must be satisfied a person has before making an appointment under paragraph (2)(b).

Note 2: Section 50-10 sets out the matters of which the Minister must be satisfied before making an appointment under paragraph (2)(c).

### 20-50 Inspector-General must refer applications to a committee

(1) The Inspector-General must refer an application that is properly made under section 20-40 to a committee convened under section 20-45 for consideration.

(2) The Inspector-General must do so within 2 months after receiving the application.

### 20-55 Committee to consider applications

(1) If an application to vary or remove a condition of registration is referred to a committee, the committee must consider the application.

(2) Unless the applicant otherwise agrees, the committee must, for the purposes of considering the application, interview the applicant.

(3) The committee must, within 20 business days after interviewing the applicant or obtaining the agreement of the applicant as referred to in subsection (2):
  (a) decide whether the condition to which the application relates should be varied or removed; and
  (b) if a condition is to be varied, specify the way in which it is to be varied.

### 20-60 Committee to report

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

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

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

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

### 20-65 Committee's decision given effect

If the committee decides that a condition imposed on a registered trustee is to be varied or removed, the condition is varied or removed in accordance with that decision.

## Subdivision D—Renewal

### 20-70 Application for renewal

(1) An individual may apply to the Inspector-General to have the individual's registration as a trustee renewed.

(2) The application must be lodged with the Inspector-General, in the approved form, before the applicant's registration as a trustee ceases to have effect.

Note: The Court may extend the time within which an application must be lodged: see paragraph 33(1)(c).

(3) If an individual applies to have his or her registration as a trustee renewed, the individual must, at least 1 month before the registration ceases to have effect, pay the renewal fee determined by the Minister by legislative instrument. If the renewal fee is not paid at least 1 month before the registration ceases to have effect, an additional amount equal to 20% of the renewal fee is payable by the applicant by way of penalty.

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

## 20-75 Renewal

*Renewal of registration*

(1) On application under section 20-70, the Inspector-General must renew the registration of the applicant as a trustee if:

(a) the application is properly made; and

(b) the applicant has produced evidence in writing to the Inspector-General that the applicant maintains:

(i) adequate and appropriate professional indemnity insurance; and

(ii) adequate and appropriate fidelity insurance;

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

(c) the applicant has complied with any condition dealing with continuing professional education to which the applicant is subject during the applicant's current registration; and

(d) the applicant has paid the renewal fee determined by the Minister under subsection 20-70(3), and any late payment penalty under that subsection; and

(e) the applicant does not owe more than the prescribed amount of notified estate charges.

(2) The Inspector-General renews the registration of the applicant by entering, or maintaining, on the Register of Trustees the details relating to the applicant prescribed for the purposes of subsection 15-1(3).

*Registration subject to current conditions*

(3) The renewed registration is subject to the current conditions imposed on the registered trustee.

*Certificate of registration*

(4) After renewing the registration of a person as a trustee, the Inspector-General must give the person a certificate of registration.

(5) The certificate may be given electronically.

*Period of registration*

(6) The renewed registration has effect for 3 years, beginning on the day after the person's immediately preceding registration as a trustee ceased to have effect.

*When a notified estate charge is owed*

(7) A person owes a ***notified estate charge*** if:
  (a) the person owes either of the following:
    (i) a charge under the *Bankruptcy (Estate Charges) Act 1997* (the ***estate charge***);
    (ii) a penalty under section 281 (late payment penalty) of this Act in respect of that charge; and
  (b) the Inspector-General notified the person of the unpaid estate charge at least one month and 10 business days before the person's registration as a trustee ceases to have effect.

## Subdivision E—Offences relating to registration

### 20-80 False representation that a person is a registered trustee

A person commits an offence if:
  (a) the person makes a representation; and
  (b) the representation is that the person is a registered trustee; and
  (c) the representation is false.

Penalty: 30 penalty units.

# Division 25—Insurance

### 25-1 Registered trustees to maintain insurance

*Registered trustee must maintain insurance*

(1) A registered trustee must maintain:
  (a) adequate and appropriate professional indemnity insurance; and
  (b) adequate and appropriate fidelity insurance;

against the liabilities that the trustee may incur working as a registered trustee.

(2) The Inspector-General may, by legislative instrument, determine what constitutes adequate and appropriate professional indemnity insurance, and adequate and appropriate fidelity insurance, in relation to either or both of the following:
  (a) specified circumstances;
  (b) one or more specified classes of registered trustees.

*Offence*

(3) A person commits an offence if:
  (a) the person is subject to a requirement under subsection (1); and
  (b) the person intentionally or recklessly fails to comply with the requirement.

Penalty: 1,000 penalty units.

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

Penalty: 60 penalty units.

## Division 30—Annual trustee returns

### 30-1 Annual trustee returns

*Registered trustee must lodge annual return*

(1) A person who is a registered trustee during all or part of a trustee return year for the person must, within 1 month after the end of that year, lodge with the Inspector-General a return that conforms with subsection (3).

(2) Each of the following is a ***trustee return year*** for a person who is or was registered as a trustee under section 20-30:
  (a) the period of 12 months beginning on the day on which that registration first began;

(b) each subsequent period of 12 months.

(3) A return under subsection (1) must:
(a) be in the approved form; and
(b) include evidence that the person has, during the whole of any period of the year during which the person was registered as a trustee, maintained:
(i) adequate and appropriate professional indemnity insurance; and
(ii) adequate and appropriate fidelity insurance;
against the liabilities that the person may incur working as a registered trustee.

(4) The Inspector-General may, on the application of the registered trustee made before the end of the period for lodging a return under subsection (1), extend, or further extend, that period.

*Offence*

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

Penalty: 5 penalty units.

Note: See also section 277B (about infringement notices).

## Division 35—Notice requirements

### 35-1 Notice of significant events

*Registered trustee must lodge notice*

(1) A registered trustee must lodge with the Inspector-General a notice, in the approved form, if any of the following events occur:
(a) the trustee becomes an insolvent under administration;
(b) a bankruptcy notice is issued under this Act in relation to the trustee as debtor, or a corresponding notice is issued in relation to the trustee as debtor under a law of an external Territory or a law of a foreign country;

(c) the trustee is convicted of an offence involving fraud or dishonesty;

(d) 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;

(e) the trustee ceases to have:

(i) adequate and appropriate professional indemnity insurance; or

(ii) adequate and appropriate fidelity insurance;

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

(f) the trustee is issued with a notice under section 40-40 of Schedule 2 to the *Corporations Act 2001* (a show-cause notice) in relation to the trustee's registration as a liquidator under that Act;

(g) the trustee's registration as a liquidator under the *Corporations Act 2001* is suspended or cancelled;

(h) any other event prescribed.

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

*Offence*

(2) A person commits an offence if:

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

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

Penalty: 100 penalty units.

## 35-5 Notice of other events

*Registered trustee must lodge notice*

(1) A registered trustee must lodge with the Inspector-General a notice, in the approved form, if any of the following events occur:

(a) information included in an annual trustee return, or in an annual administration return, prepared by or on behalf of the trustee is or becomes inaccurate in a material particular;

(b) any other event prescribed.

The notice must be lodged within 10 business days after the registered trustee could reasonably be expected to be aware that the event has occurred.

*Offence*

(2) A person commits an offence if:

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

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

Penalty: 5 penalty units.

Note: See also section 277B (about infringement notices).

# Division 40—Disciplinary and other action

## Subdivision A—Introduction

### 40-1 Simplified outline of this Division

*Remedying failure to lodge documents or give information or documents*

The Inspector-General may direct a registered trustee to comply with a requirement to lodge a document, or give any information or document, to the Inspector-General. If the trustee fails to comply with the direction, the Inspector-General can direct that the trustee accept no further appointments or seek an order from the Court directing the trustee to comply.

*Correcting and completing information given to the Inspector-General*

If the Inspector-General reasonably suspects that information that a registered trustee is required to give the Inspector-General under

this Act is incomplete or inaccurate, the Inspector-General can direct the trustee to confirm, complete or correct the information. The Inspector-General can also direct the trustee to tell someone about the defect in the information. If the trustee fails to comply with a direction, the Inspector-General can direct that the trustee accept no further appointments or seek an order from the Court directing the trustee to comply.

*Other grounds for a direction not to accept further appointments*

There are other grounds on which the Inspector-General can issue a direction not to accept further appointments, for example, if the registered trustee fails to comply with a direction to convene a meeting.

*Suspending or cancelling registration*

An individual's registration as a trustee can be suspended or cancelled.

The registration is automatically cancelled if the registered trustee becomes an insolvent under administration or dies.

In some circumstances, the Inspector-General can suspend or cancel the registration of a person as a trustee. The Inspector-General can also give a registered trustee notice to show-cause why the trustee should continue to be registered. If the Inspector-General is not satisfied with the answer, the Inspector-General can refer the matter to a committee which will make a decision on what action should be taken.

An industry body can give the Inspector-General notice of possible grounds for disciplinary action.

If a registration is suspended, the trustee can apply to the Inspector-General to have the suspension lifted or shortened.

A decision about the suspension or cancellation of the registration of a trustee is reviewable by the Administrative Appeals Tribunal (see Division 96 of this Schedule).

## Subdivision B—Direction to comply

### 40-5 Registered trustee to remedy failure to lodge documents or give information or documents

*Application of this section*

(1) This section applies if a registered trustee fails to comply with a requirement to lodge any document, or give any information or document, that the trustee is required under this Act to lodge with or give to the Inspector-General.

*Inspector-General may give direction to comply*

(2) The Inspector-General may, in writing, direct the trustee to comply with the requirement within 10 business days after the notice is given.

(3) The Inspector-General may, on the application of a registered trustee made before the end of the period referred to in subsection (2), extend, or further extend, that period.

*Consequences for failing to comply*

(4) If the trustee does not comply within the period, the Inspector-General may do either or both of the following:
  (a) give a direction under subsection 40-15(1) (direction not to accept further appointments);
  (b) apply to the Court for an order, under section 30 (general powers of Courts in bankruptcy), section 45-1 of this Schedule or any other provision that is relevant, directing the trustee to comply with the requirement within such time as is specified in the order.

*Direction is not a legislative instrument*

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

*Relationship with other laws*

(6) Nothing in this section limits the operation of any other provision of this Act, or any other law, in relation to a person who fails to

comply with a requirement to lodge a document with, or give information or a document to, the Inspector-General.

## 40-10 Registered trustee to correct inaccuracies etc.

*Application of this section*

(1) This section applies if the Inspector-General reasonably suspects that information that a registered trustee is required under this Act to give the Inspector-General (whether in a document lodged or given to the Inspector-General or otherwise) is incomplete or incorrect in any particular.

*Inspector-General may give direction to correct information etc.*

(2) The Inspector-General may, in writing, direct the trustee to do one or more of the following within a period of 10 business days after the direction is given:
  (a) confirm to the Inspector-General that the information is complete and correct;
  (b) complete or correct the information (as the case requires);
  (c) notify any persons specified by the Inspector-General in the direction of the addition or correction.

(3) The Inspector-General may, on the application of a registered trustee made before the end of the period referred to in subsection (2), extend, or further extend, that period.

*Consequences for failing to comply*

(4) If the trustee does not comply within the period, the Inspector-General may do either or both of the following:
  (a) give a direction under subsection 40-15(1) (direction not to accept further appointments);
  (b) apply to the Court for an order, under section 30 (general powers of Courts in bankruptcy), section 45-1 of this Schedule or any other provision that is relevant, directing the trustee to comply with the requirement within such time as is specified in the order.

*Direction is not a legislative instrument*

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

*Relationship with other laws*

(6) Nothing in this section limits the operation of any other provision of this Act, or any other law, in relation to a person giving incomplete or incorrect information.

## 40-15 Direction not to accept further appointments

*Inspector-General may give direction not to accept further appointments*

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

(a) the trustee has failed to comply with a direction given to the trustee under section 40-5 (direction to remedy failure to lodge documents, or give information or documents); or

(b) the trustee has failed to comply with a direction given to the trustee under section 40-10 (direction to correct inaccuracies); or

(c) a committee has decided under paragraph 40-55(1)(d) that the Inspector-General should give the direction referred to in that paragraph; or

(d) the trustee has failed to comply with a direction given to the trustee under section 70-70 (direction to give relevant material); or

(e) the trustee has failed to comply with a direction given to the trustee under subsection 75-20(1) or (2) (direction to convene a meeting of creditors or comply with requirements in relation to such a meeting).

*Condition of registration to comply with direction*

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

*Withdrawal of direction*

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

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

*Direction is not a legislative instrument*

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

*Relationship with other laws*

(6) Nothing in this section limits the operation of any other provision of this Act, or any other law, in relation to:
  (a) a person who fails to comply with a requirement to lodge a document with, or give information or a document to, the Inspector-General; or
  (b) a person giving incomplete or incorrect information; or
  (c) any matter in relation to which a committee makes a decision under subsection 40-55(1).

(7) Nothing in this section limits the power of the Inspector-General under this Act, or any other law, to apply to the Court for an order in relation to a failure to comply with a direction mentioned in subsection (1).

## Subdivision C—Automatic cancellation

### 40-20 Automatic cancellation

(1) The registration of a person as a trustee is cancelled if:
  (a) the person becomes an insolvent under administration; or
  (b) the person dies.

(2) The cancellation takes effect on the day the event mentioned in subsection (1) happens.

## Subdivision D—Inspector-General may suspend or cancel registration

### 40-25 Inspector-General may suspend registration

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

(a) the person 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

(b) the person ceases to have:

(i) adequate and appropriate professional indemnity insurance; or

(ii) adequate and appropriate fidelity insurance;

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

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

(d) the person owes more than the prescribed amount of notified estate charges; or

(e) if the Court has made an order under section 90-15 that the person repay remuneration—the person has failed to repay the remuneration; or

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

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

(2) Nothing in this section affects the operation of Part VIIC of the *Crimes Act 1914*.

Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them.

## 40-30 Inspector-General may cancel registration

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

(a) the person 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

(b) the person ceases to have:

(i) adequate and appropriate professional indemnity insurance; or

(ii) adequate and appropriate fidelity insurance;

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

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

(d) the person owes more than the prescribed amount of notified estate charges; or

(e) if the Court has made an order under section 90-15 that the person repay remuneration—the person has failed to repay the remuneration; or

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

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

(2) Nothing in this section affects the operation of Part VIIC of the *Crimes Act 1914*.

Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them.

## 40-35 Notice of suspension or cancellation

*Application of this section*

(1) This section applies if the Inspector-General decides under section 40-25 or 40-30 to suspend or cancel the registration of a person as a trustee.

*Inspector-General must give notice of decision*

(2) The Inspector-General must, within 10 business days after making the decision, give the person a written notice setting out the decision, and the reasons for the decision.

*When decision comes into effect*

(3) The decision comes into effect on the day after the notice is given to the person.

*Failure to give notice does not affect validity of decision*

(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

### 40-40 Inspector-General may give a 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 under paragraph 20-20(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:

(i) adequate and appropriate professional indemnity insurance; or

(ii) adequate and appropriate fidelity insurance;

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

(e) the trustee has breached a current condition imposed on the trustee; or

(f) the trustee has contravened a provision of this Act; or

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

(h) the trustee owes more than the prescribed amount of notified estate charges; or

(i) if the Court has made an order under section 90-15 that the trustee repay remuneration—the trustee has failed to repay the remuneration; or

(j) the trustee has been convicted of an offence involving fraud or dishonesty; or

(k) the trustee is permanently or temporarily unable to perform the functions and duties of a trustee because of physical or mental incapacity; or

(l) the trustee has failed to carry out adequately and properly (whether in Australia or in an external Territory or in a foreign country):

(i) the duties of a trustee; or

(ii) any other duties or functions that a registered trustee is required to carry out under a law of the Commonwealth or of a State or Territory, or under the general law; or

(m) if the trustee is or was the administrator of a debt agreement—the trustee has failed to carry out adequately and properly (whether in Australia or in an external Territory or in a foreign country) the duties of an administrator in relation to a debt agreement; or

(n) the trustee is not a fit and proper person; or

(o) the trustee is not resident in Australia or in another prescribed country; or

(p) the trustee has failed to comply with a standard prescribed for the purposes of subsection (4).

(2) A notice under subsection (1) is not a legislative instrument.

(3) Nothing in this section affects the operation of Part VIIC of the *Crimes Act 1914*.

Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them.

(4) The Insolvency Practice Rules may prescribe standards applicable to the exercise of powers, or the carrying out of duties, of registered trustees.

### 40-45 Inspector-General may convene a committee

(1) The Inspector-General may convene a committee to make a decision of a kind mentioned in section 40-55 in relation to a registered trustee, or registered trustees.

(2) The committee must consist of:
  (a) the Inspector-General; and
  (b) a registered trustee chosen by a prescribed body; and
  (c) a person appointed by the Minister.

Note 1: Section 50-5 sets out the knowledge and experience that a prescribed body must be satisfied a person has before making an appointment under paragraph (2)(b).

Note 2: Section 50-10 sets out the matters of which the Minister must be satisfied before making an appointment under paragraph (2)(c).

### 40-50 Inspector-General may refer matters to the committee

The Inspector-General may refer a registered trustee to a committee convened under section 40-45 if the Inspector-General:
  (a) gives the trustee a notice under section 40-40 (a show-cause notice); and
  (b) either:
    (i) does not receive an explanation within 20 business days after the notice is given; or
    (ii) is not satisfied by the explanation.

### 40-55 Decision of the committee

(1) If a registered trustee is referred to a committee under section 40-50, the committee must decide one or more of the following:
  (a) that the trustee should continue to be registered;

(b) that the trustee's registration should be suspended for a period, or until the occurrence of an event, specified in the decision;

(c) that the trustee's registration should be cancelled;

(d) that the Inspector-General should direct the trustee not to accept any further appointments as trustee, or not to accept any further appointments as trustee during the period specified in the decision;

(e) that the trustee should be publicly admonished or reprimanded;

(f) that a condition specified in the decision should be imposed on the trustee;

(g) that a condition should be imposed on all other registered trustees that they must not allow the trustee to carry out any of the functions or duties, or exercise any of the powers, of a trustee on their behalf (whether as employee, agent, consultant or otherwise) for a period specified in the decision of no more than 10 years;

(h) that the Inspector-General should publish specified information in relation to the committee's decision and the reasons for that decision.

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

(a) a condition that the trustee engage in, or refrain from engaging in, specified conduct;

(b) a condition that the trustee engage in, or refrain from engaging in, specified conduct except in specified circumstances;

(c) a condition that the trustee publish specified information;

(d) a condition that the trustee notify a specified person or class of persons of specified information;

(e) a condition that the trustee publish a specified statement;

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

(3) In making its decision, the committee may have regard to:

(a) any information provided to the committee by the Inspector-General; and

(b) any explanation given by the trustee; and

(c) any other information given by the trustee to the committee; and
(d) if the trustee is or was also a registered liquidator under the *Corporations Act 2001*—any information in relation to the trustee given to the committee by ASIC or a committee convened under the Insolvency Practice Schedule (Corporations); and
(e) any other matter that the committee considers relevant.

### 40-60 Committee to report

The committee must give the registered trustee and the Inspector-General a report setting out:
(a) the committee's decision in relation to the trustee; and
(b) the committee's reasons for that decision; and
(c) if the committee decides under paragraph 40-55(1)(f) that the trustee should be registered subject to a condition:
(i) the condition; and
(ii) the committee's reasons for imposing the condition; and
(d) if the committee decides under paragraph 40-55(1)(g) that a condition should be imposed on all other registered trustees in relation to the trustee:
(i) the condition; and
(ii) the committee's reasons for imposing the condition.

### 40-65 Inspector-General must give effect to the committee's decision

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

## Subdivision F—Lifting or shortening suspension

### 40-70 Application to lift or shorten suspension

*Application of this section*

(1) This section applies if a person's registration as a trustee has been suspended.

*Suspended trustee may apply to the Inspector-General*

(2) The person may apply to the Inspector-General:
  (a) for the suspension to be lifted; or
  (b) for the period of the suspension to be shortened.

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

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

### 40-75 Inspector-General may convene a committee to consider applications

(1) The Inspector-General may convene a committee for the purposes of considering an application, or applications, made under section 40-70.

(2) The committee must consist of:
  (a) the Inspector-General; and
  (b) a registered trustee chosen by a prescribed body; and
  (c) a person appointed by the Minister.

Note 1: Section 50-5 sets out the knowledge and experience that a prescribed body must be satisfied a person has before making an appointment under paragraph (2)(b).

Note 2: Section 50-10 sets out the matters of which the Minister must be satisfied before making an appointment under paragraph (2)(c).

### 40-80 Inspector-General must refer applications to a committee

(1) The Inspector-General must refer an application that is properly made under section 40-70 to a committee convened under section 40-75 for consideration.

(2) The Inspector-General must do so within 2 months after receiving the application.

### 40-85 Committee to consider applications

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

(2) Unless the applicant otherwise agrees, the committee must interview the applicant for the purposes of considering the application.

(3) Within 10 business days after interviewing the applicant or obtaining the agreement of the applicant as referred to in subsection (2), the committee must:
  (a) decide whether the suspension should be lifted, or the period of the suspension shortened; and
  (b) if the period of the suspension is to be shortened—specify when the suspension is to end.

### 40-90 Committee to report

The committee must give the applicant and the Inspector-General a report setting out:
  (a) the committee's decision on the application; and
  (b) the committee's reasons for that decision; and
  (c) if the committee decides that the period of the suspension should be shortened—when the suspension is to end.

### 40-95 Committee's decision given effect

If the committee decides that a suspension is to be lifted or shortened, the suspension is lifted or shortened in accordance with the decision.

## Subdivision G—Action initiated by industry body

### 40-100 Notice by industry bodies of possible grounds for disciplinary action

*Industry body may lodge notice*

(1) An industry body may lodge with the Inspector-General a notice in the approved form (an ***industry notice***):
  (a) stating that the body reasonably suspects that there are grounds for the Inspector-General:
    (i) to suspend the registration of a registered trustee under section 40-25; or

(ii) to cancel the registration of a registered trustee under section 40-30; or

(iii) to give a registered trustee a notice under section 40-40 (a show-cause notice); or

(iv) to impose a condition on a registered trustee under another provision of this Schedule; and

(b) identifying the registered trustee; and

(c) including the information and copies of any documents upon which the suspicion is founded.

*Inspector-General must consider information and documents*

(2) The Inspector-General must consider the information and the copies of any documents included with the industry notice.

*Inspector-General must give notice if no action to be taken*

(3) If, after such consideration, the Inspector-General decides to take no action in relation to the matters raised by the industry notice, the Inspector-General must give the industry body written notice of that fact.

*45 business days to consider and decide*

(4) The consideration of the information and the copies of any documents included with the industry notice must be completed and, if the Inspector-General decides to take no action, a notice under subsection (3) given, within 45 business days after the industry notice is lodged.

*Inspector-General not precluded from taking action*

(5) The Inspector-General is not precluded from:

(a) suspending the registration of a registered trustee under section 40-25; or

(b) cancelling the registration of a registered trustee under section 40-30; or

(c) giving a registered trustee a notice under section 40-40 (a show-cause notice); or

(d) imposing a condition on a registered trustee under another provision of this Schedule;

wholly or partly on the basis of information or a copy of a document included with the industry notice, merely because the Inspector-General has given a notice under subsection (3) in relation to the matters raised by the industry notice.

*Notice to industry body if Inspector-General takes action*

(6) If the Inspector-General does take action of the kind mentioned in subsection (5) wholly or partly on the basis of information or a copy of a document included with the industry notice, the Inspector-General must give the industry body notice of that fact.

*Notices are not legislative instruments*

(7) A notice under subsection (3) or (6) is not a legislative instrument.

### 40-105 No liability for notice given in good faith etc.

(1) An industry body is not liable civilly, criminally or under any administrative process for giving a notice under subsection 40-100(1) if:
   (a) the body acted in good faith in giving the notice; and
   (b) the suspicion that is the subject of the notice is a reasonable suspicion.

(2) A person who, in good faith, makes a decision as a result of which the industry body gives a notice under subsection 40-100(1) is not liable civilly, criminally or under any administrative process for making the decision.

(3) A person who, in good faith, gives information or a document to an industry body that is included, or a copy of which is included, in a notice under subsection 40-100(1) is not liable civilly, criminally or under any administrative process for giving the information or document.

### 40-110 Meaning of *industry bodies*

The Insolvency Practice Rules may prescribe ***industry bodies*** for the purposes of this Subdivision.

## Division 45—Court oversight of registered trustees

### 45-1 Court may make orders in relation to registered trustees

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

(2) The Court may exercise the power under subsection (1):
  (a) on its own initiative, during proceedings before the Court; or
  (b) on application under subsection (3).

(3) Each of the following persons may apply for an order under subsection (1):
  (a) the registered trustee;
  (b) the Inspector-General.

(4) Without limiting the matters which the Court may take into account when making orders, the Court may take into account:
  (a) whether the registered trustee has faithfully performed, or is faithfully performing, the registered trustee's duties; and
  (b) whether an action or failure to act by the registered trustee is in compliance with this Act and the Insolvency Practice Rules; and
  (c) whether an action or failure to act by the registered trustee is in compliance with an order of the Court; and
  (d) whether any person has suffered, or is likely to suffer, loss or damage because of an action or failure to act by the registered trustee; and
  (e) the seriousness of the consequences of any action or failure to act by the registered trustee, including the effect of that action or failure to act on public confidence in registered trustees as a group.

(5) This section does not limit the Court's powers under any other provision of this Act, or under any other law.

### 45-5 Court may make orders about costs

(1) Without limiting section 45-1, the Court may make orders in relation to a registered trustee that deal with the costs of a matter considered by the Court.

(2) Those orders may include an order that:
  (a) the registered trustee is personally liable for some or all of those costs; and
  (b) the registered trustee is not entitled to be reimbursed by a regulated debtor's estate or creditors in relation to some or all of those costs.

(3) This section does not limit the Court's powers under any other provision of this Act, or under any other law.

## Division 50—Committees under this Part

### 50-1 Simplified outline of this Division

This Division sets out common rules for committees established under this Part.

If a prescribed body appoints a person to a committee, that person must have the prescribed knowledge or experience or, if no knowledge or experience is prescribed, the knowledge and experience necessary to carry out the functions to be performed. If the Minister appoints a person to a committee, that person must have knowledge or experience in a field such as business, law (including the law of bankruptcy) or public policy relating to bankruptcy.

A single committee may consider more than one matter. The consideration of a matter is not affected by a change in the membership of the committee. A matter may be adjourned or transferred to another committee. The Insolvency Practice Rules may prescribe procedures and make other rules for committees.

The use and disclosure of information given to a committee is restricted to listed purposes.

### 50-5 Prescribed body appointing a person to a committee

*Application of this section*

(1) This section applies if a prescribed body is to appoint a person to a committee under this Part.

*Prescribed body must only appoint a person with appropriate knowledge and experience*

(2) The prescribed body is to appoint a person as a member of the committee only if the prescribed body is satisfied that the person has:

(a) if any knowledge or experience is prescribed in relation to appointments of the kind to be made—that knowledge or experience; or

(b) if no knowledge or experience is prescribed in relation to appointments of the kind to be made—the knowledge and experience necessary to carry out the person's functions as a member of the committee if appointed.

## 50-10 Minister appointing a person to a committee

*Application of this section*

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

*Matters of which the Minister must be satisfied before appointing*

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

(a) business;

(b) law, including the law relating to bankruptcy;

(c) economics;

(d) accounting;

(e) public policy relating to bankruptcy.

## 50-15 Single committee may consider more than one matter

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

(a) a matter or matters relating to one applicant for registration as a trustee;

(b) a matter or matters relating to more than one applicant for registration as a trustee;

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

### 50-20 Ongoing consideration of matters by committee

If a committee is convened under this Part to consider a matter:
(a) the committee's powers, functions and duties in relation to the matter are not affected by a change in the membership of the committee; and
(b) the committee may adjourn its consideration of the matter, and may do so more than once; and
(c) the matter may be transferred to another committee with powers, functions and duties under this Part in relation to matters of that kind.

### 50-25 Procedure and other rules relating to committees

The Insolvency Practice Rules may provide for and in relation to:
(a) the manner in which the committees convened under this Part are to perform their functions, including:
(i) meetings of committees; and
(ii) the number of committee members required to constitute a quorum; and
(iii) disclosure of interests in a matter before a committee; and
(iv) the manner in which questions are to be decided by the committee; and
(b) the reconstitution of a committee; and
(c) the termination of the consideration of a matter by a committee, and the transfer of matters to another committee.

### 50-30 Remuneration of committee members

(1) A member of a committee convened under this Part is entitled to receive the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is entitled to receive such remuneration as the Minister determines in writing.

(2) A member is entitled to receive such allowances as the Minister determines in writing.

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

### 50-35 Committee must only use information etc. for purposes for which disclosed

*Offence*

(1) A person commits an offence if:
  (a) the person is or was a member of a committee convened under this Part; and
  (b) information or a document is or was disclosed to the person for the purposes of exercising powers or performing functions as a member of the committee; and
  (c) the person uses or discloses the information or document.

Penalty: 50 penalty units.

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

(2) Subsection (1) does not apply if the information or document:
  (a) is used or disclosed by the person for the purposes of exercising powers or performing functions as a member of the committee mentioned in subsection (1); or
  (b) is disclosed:
    (i) to ASIC to assist ASIC to exercise its powers or perform its functions under Chapter 5 of the *Corporations Act 2001* or the Insolvency Practice Schedule (Corporations); or
    (ii) to a committee convened under Part 2 of the Insolvency Practice Schedule (Corporations) to assist the committee to exercise its powers or perform its functions under that Part; or
    (iii) to another committee convened under this Part to assist the committee to exercise its powers or perform its functions under this Part; or

(iv) to enable or assist a body prescribed for the purposes of this paragraph to perform its disciplinary function in relation to its members; or

(v) in order to enable or assist an authority or person in a State or Territory, or a foreign country, to perform or exercise a function or power that corresponds, or is analogous, to any of the committee's or the Inspector-General's functions and powers; or

(vi) to a court or tribunal in relation to proceedings before the court or tribunal.

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

Note 2: Chapter 5 of the *Corporations Act 2001* deals with external administration of companies.

# Part 3—General rules relating to estate administrations

## Division 55—Introduction

### 55-1 Simplified outline of this Part

This Part sets out requirements for conducting the administration of a regulated debtor's estate.

The main provisions deal with:

(a) the remuneration of the trustee; and

(b) the duties of the trustee in handling the money and other property of the estate; and

(c) conflicts of interest; and

(d) the duties of the trustee to keep appropriate records, to report to the Inspector-General and to give information, documents and reports to creditors and others; and

(e) creditor meetings; and

(f) the creation and conduct of a committee to monitor the administration (called a committee of inspection); and

(g) the rights of creditors to review the administration; and

(h) the rights of creditors to remove the trustee and appoint another; and

(i) the review of the administration by the Court.

There are additional rules that apply to the administration of a regulated debtor's estate (for example, about appointment of the trustee) in this Act.

# Division 60—Remuneration and other benefits received by the trustee

## Subdivision A—Introduction

### 60-1 Simplified outline of this Division

*Remuneration*

The trustee of a regulated debtor's estate is entitled to receive remuneration for necessary work properly performed by the trustee in relation to the administration.

The amount of remuneration will usually be set under a remuneration determination. Remuneration determinations are made in most cases by the creditors or the committee of inspection (if there is one).

However, if there is no remuneration determination, the trustee will be entitled to receive a reasonable amount for the work. The maximum amount that the trustee may receive in this way is $5,000 (exclusive of GST and indexed).

The Court may review the remuneration of the trustee of a regulated debtor's estate and may also make orders under Division 90 about remuneration (including ordering repayment of remuneration).

*Other benefits*

The trustee of a regulated debtor's estate must not:

(a) employ a related entity, unless certain requirements are met; or
(b) purchase any assets of the estate; or
(c) get any other benefits or profits from the administration of the estate.

## Subdivision B—Remuneration of trustees

### 60-5 Trustee's remuneration

*Remuneration in accordance with remuneration determinations*

(1) The trustee of a regulated debtor's estate is entitled to receive remuneration for necessary work properly performed by the trustee in relation to the administration of the regulated debtor's estate, in accordance with the remuneration determinations (if any) for the trustee (see sections 60-10 and 60-11).

*Remuneration for trustees if no remuneration determination made*

(2) If no remuneration determination is made in relation to necessary work properly performed by a trustee in relation to the administration of the regulated debtor's estate, the trustee is entitled to receive reasonable remuneration for the work. However, that remuneration must not exceed the maximum default amount.

*Remuneration to be paid from the funds in the estate*

(3) The remuneration is to be paid from the funds in the regulated debtor's estate.

### 60-10 Remuneration determinations—creditors or committee of inspection

A determination, specifying remuneration that a trustee of a regulated debtor's estate is entitled to receive for necessary work properly performed by the trustee in relation to the administration of the estate, may be made:

(a) by resolution of the creditors; or

(b) if there is a committee of inspection and a determination is not made under paragraph (a)—by the committee of inspection.

### 60-11 Remuneration determinations—Inspector-General

(1) The Inspector-General may, in prescribed circumstances, make a determination specifying remuneration that a trustee of a regulated debtor's estate is entitled to receive for necessary work properly performed by the trustee in relation to the administration of the estate.

(2) The Inspector-General must have regard to any matter prescribed in making a determination under subsection (1).

(3) Insolvency Practice Rules made for the purposes of subsection (2) may provide for and in relation to:
(a) a matter referred to in section 60-12; or
(b) any other matter.

### 60-12 Remuneration determinations—general rules

*Manner in which remuneration may be specified*

(1) A determination under section 60-10 or 60-11 may specify remuneration that the trustee is entitled to receive in either or both of the following ways:
(a) by specifying an amount of remuneration;
(b) by specifying a method for working out an amount of remuneration.

*Remuneration on a time-cost basis*

(2) If a determination under section 60-10 or 60-11 specifies that the trustee is entitled to receive remuneration worked out wholly or partly on a time-cost basis, the determination must include a cap on the amount of remuneration worked out on a time-cost basis that the trustee is entitled to receive.

*Remuneration on a percentage basis*

(3) If a determination under section 60-10 or 60-11 specifies that the trustee is entitled to receive remuneration worked out wholly or partly on the basis of a specified percentage of money received by the trustee in respect of the regulated debtor's estate:
  (a) the determination must specify the money to which the specified percentage applies; and
  (b) the specified percentage must not be greater than the percentage prescribed for the purposes of this paragraph.

*More than one remuneration determination may be made*

(4) To avoid doubt, more than one determination under section 60-10 or 60-11 may be made in relation to a particular trustee and a particular regulated debtor's estate.

## 60-15 Maximum default amount

*Maximum default amount*

(1) The ***maximum default amount*** for a trustee is an amount (exclusive of GST) worked out as follows:
  (a) if the trustee is appointed as the trustee of the regulated debtor's estate during the financial year beginning on 1 July 2016—$5,000;
  (b) if the trustee is appointed as the trustee of the regulated debtor's estate during a financial year beginning on or after 1 July 2017—the greater of:
    (i) the amount worked out by multiplying the indexation factor for the financial year (worked out under subsections (3) and (4)) by the maximum default amount for a trustee appointed as the trustee of a regulated debtor's estate during the previous financial year; and
    (ii) the amount (if any) prescribed for the purposes of this subparagraph.

*Rounding*

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

*Indexation factor*

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

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

*Changes to CPI index reference period and publication of substituted index numbers*

(5) In working out the indexation factor:

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

(b) disregard index numbers published in substitution for previously published index numbers (except where the substituted numbers are published to take account of changes in the index reference period).

*Definition—index number*

(6) In this section:

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

## Subdivision E—Duties of trustees relating to remuneration and benefits etc.

### 60-20 Trustee must not derive profit or advantage from the administration of the estate

*Deriving profit or advantage from the estate*

(1) A trustee of a regulated debtor's estate must not directly or indirectly derive any profit or advantage from the administration of the estate.

*Circumstances in which profit or advantage is taken to be derived*

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

(a) the trustee directly or indirectly derives a profit or advantage from a transaction (including a sale or purchase) entered into for or on account of the estate; or

(b) the trustee directly or indirectly derives a profit or advantage from a creditor of the estate; or

(c) a related entity of the trustee directly or indirectly derives a profit or advantage from the administration of the estate.

*Exceptions*

(3) Subsection (1) does not apply to the extent that:

(a) another provision of this Act, or of another law, requires or permits the trustee to derive the profit or advantage; or

(b) the Court gives leave to the trustee to derive the profit or advantage.

Note: Subsection (1) would not, for example, prevent the trustee from recovering remuneration for necessary work properly performed by the trustee in relation to the administration of the estate, as the trustee is permitted to do so under other provisions of this Act.

(4) Despite paragraph (2)(c), subsection (1) does not apply to the extent that:

(a) the profit or advantage arises because the trustee employs or engages a person to provide services in connection with the administration of the regulated debtor's estate; and

(b) the person is a related entity of the trustee; and

(c) one of the following is satisfied:

(i) the trustee does not know, and could not reasonably be expected to know, that the person employed or engaged is a related entity of the trustee;

(ii) the creditors, by resolution, agree to the related entity being employed or engaged;

(iii) it is not reasonably practicable in all the circumstances to obtain the agreement, by resolution, of the creditors to the related entity being employed or engaged and the cost of employing the related entity is reasonable in all the circumstances.

(5) Subsection (1) does not apply to the extent that the profit or advantage is a payment that:
  (a) is made to the trustee by or on behalf of the Commonwealth or an agency or authority of the Commonwealth; and
  (b) is of a kind prescribed.

*Offence*

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

Penalty: 50 penalty units.

Note: A defendant bears an evidential burden in relation to the matters in subsections (3), (4) and (5) (see subsection 13.3(3) of the *Criminal Code*).

*Effect of contravention of this section*

(7) A transaction or any other arrangement entered into in contravention of this section may be set aside by the Court.

## 60-21 Inducements to be appointed as trustee

(1) A person must not give, or agree or offer to give, to another person any valuable consideration with a view to:
  (a) securing the first person's appointment or nomination as a trustee of a regulated debtor's estate; or
  (b) securing or preventing the appointment or nomination of a third person as a trustee of a regulated debtor's estate.

*Strict liability offence*

(2) A person commits an offence of strict liability if a person contravenes subsection (1).

Penalty: 50 penalty units or imprisonment for 3 months, or both.

### 60-26 Payments in respect of performance by third parties

*No payments for performance of trustee's ordinary duties by another person*

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

*Exception*

(2) Subsection (1) does not apply to a payment if the payment was authorised by resolution of:
  (a) the creditors; or
  (b) the committee of inspection (if any).

*Offence*

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

Penalty: 50 penalty units.

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

## Division 65—Funds handling

### 65-1 Simplified outline of this Division

The trustee of a regulated debtor's estate has duties to:
- (a) promptly pay all money of the estate into an account (called an administration account); and
- (b) promptly deposit instruments such as securities with a bank; and
- (c) not pay any money into the account unless it is money of a regulated debtor's estate for which the account is held; and

(d) only pay money out of the account if it is for a legitimate purpose.

The trustee may keep a single account for more than one estate.

People with a financial interest in the administration of a regulated debtor's estate (such as creditors) may ask the Court to give directions to the trustee about the way money and other property of the estate is to be handled.

If the trustee of a regulated debtor's estate does not comply with this Division, the trustee may have to pay penalties, be paid less remuneration or be removed as trustee.

## 65-5 Trustee must pay all money into the administration account

*Trustee must pay money into the administration account*

(1) The trustee of a regulated debtor's estate must pay all money received by the trustee on behalf of, or in relation to, the estate into an administration account for the estate within 5 business days after receipt.

*Exception*

(2) If the Court gives a direction that is inconsistent with subsection (1), that subsection does not apply to the extent of the inconsistency.

*Offence*

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

Penalty: 50 penalty units.

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

## 65-10 Administration accounts

A bank account is an ***administration account*** in relation to a regulated debtor's estate if:

(a) the account is maintained in relation to the regulated debtor's estate; and

(b) if any requirements are prescribed in relation to administration accounts of regulated debtors' estates, it complies with those requirements.

## 65-15 Trustee must not pay other money into the administration account

*Trustee must not pay other money into the administration account*

(1) The trustee of a regulated debtor's estate must not pay any money into the administration account for the estate if it is not received by the trustee on behalf of, or in relation to:

(a) the estate; or

(b) where the trustee maintains the account in relation to more than one estate of a regulated debtor or regulated debtors—one of those estates.

*Exception*

(2) If the Court gives a direction that is inconsistent with subsection (1), that subsection does not apply to the extent of the inconsistency.

*Offence*

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

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

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

Penalty: 50 penalty units.

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

## 65-20 Consequences for failure to pay money into administration account

*Application of this section*

(1) This section applies if:

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

(i) is subject to a requirement under subsection 65-5(1) (paying money into administration account); and

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

(b) the amount exceeds:

(i) $50; or

(ii) if another amount is prescribed—that other amount.

*Exception*

(2) Subsection (1) does not apply if, on the application of the trustee of the regulated debtor's estate, the Court is satisfied that the trustee had sufficient reason for failing to comply with the requirement in relation to the amount.

*Trustee must pay penalty on excess*

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

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

(b) if another rate is prescribed—at that other rate;

for the period during which the trustee fails to comply with the requirement.

(4) The trustee is personally liable for, and is not entitled to be reimbursed by the estate in relation to, the payment of that interest.

## 65-25 Paying money out of administration account

*Money only to be paid out of administration account in accordance with this Act etc.*

(1) The trustee of a regulated debtor's estate must not pay any money out of the administration account for the estate otherwise than:

(a) for purposes related to the administration of the estate; or
(b) in accordance with this Act; or
(c) in accordance with a direction of the Court.

*Offence*

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

Penalty: 50 penalty units.

## 65-31 Interest on administration account

(1) The trustee of a regulated debtor's estate is entitled, in his or her personal capacity, to each payment of interest on the administration account for the estate, less an amount equal to the bank fees or charges (if any) paid or payable on the account during the period to which the interest relates.

(2) If, under subsection (1), the trustee is only entitled to part of a payment of interest, the rest of that payment:
(a) if the administration account contains money from only one estate of a regulated debtor—forms part of that estate; or
(b) if the administration account contains money from more than one estate of a regulated debtor or regulated debtors—forms part of those estates in proportion to the respective amounts of money held in the administration account on account of each of those estates.

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

## 65-32 Reconciliation of administration account

*Application of this section*

(1) This section applies if the trustee maintains a single bank account for more than one estate of a regulated debtor or regulated debtors.

*Trustee must maintain separate records*

(2) The trustee must:

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

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

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

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

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

## 65-40 Handling securities

*Securities must be deposited with administration account bank*

(1) The trustee of a regulated debtor's estate must deposit in a bank:

(a) the bills of exchange; and

(b) the promissory notes; and

(c) any other negotiable instrument or security;

payable to the regulated debtor or the trustee as soon as practicable after they are received by the trustee.

*Exception*

(2) If the Court gives a direction that is inconsistent with subsection (1), that subsection does not apply to the extent of the inconsistency.

*Offence*

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

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

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

Penalty: 5 penalty units.

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

Note 2: See also section 277B (about infringement notices).

*Delivery of securities*

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

## 65-45 Handling of money and securities—Court directions

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

(a) money; and

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

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

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

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

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

(b) if the Court thinks the account is no longer required—at any time order it to be closed.

(4) A copy of an order under paragraph (3)(b) must be served by the trustee on the bank with which the special bank account was opened.

(5) An application under this section may be made by a person with a financial interest in the administration of the regulated debtor's estate.

## 65-46 Review of payments to third parties

(1) The Insolvency Practice Rules may provide for and in relation to the review by the Inspector-General of a bill of costs for services provided by a person in relation to the administration of a regulated debtor's estate.

(2) Without limiting subsection (1), the Insolvency Practice Rules may provide for and in relation to:

(a) the application for the review (including who may apply); and

(b) the powers available to the Inspector-General in relation to the review; and

(c) the provision of information or documents to the Inspector-General for the purposes of the review; and

(d) the decisions that may be made by the Inspector-General in relation to the review; and

(e) the notification of decisions made by the Inspector-General; and

(f) the consideration of the decisions made by the Inspector-General in relation to the review by the Court.

### 65-50 Rules in relation to consequences for failure to comply with this Division

The Insolvency Practice Rules may provide for and in relation to:

(a) the payment by the trustee of a regulated debtor's estate of interest at such rate, on such amount and in respect of such period as is prescribed; and

(b) disallowance of all or of such part as is prescribed of the remuneration of the trustee of a regulated debtor's estate; and

(c) the removal from office of the trustee of a regulated debtor's estate by the Court; and

(d) the payment by the trustee of a regulated debtor's estate of any expenses occasioned by reason of his or her default;

in cases where the trustee of a regulated debtor's estate contravenes or fails to comply with this Division (including Insolvency Practice Rules made under this Division).

## Division 70—Information

## Subdivision A—Introduction

### 70-1 Simplified outline of this Division

| |
|---|
| The trustee of a regulated debtor's estate must: |

(a) give annual reports of the administration of the estate (called annual administrative returns) to the Inspector-General; and
(b) keep books of meetings and other affairs of the estate; and
(c) allow those books to be audited if required to do so; and
(d) allow access to those books by creditors; and
(e) give creditors and others requested information, documents and reports relating to the administration.

The committee of inspection (if there is one) may also request information, documents and reports from the trustee under Division 80.

If the trustee does not comply with a request, the Inspector-General may direct the trustee to do so. If the trustee does not comply with the direction, the Inspector-General may ask the Court to order compliance. Alternatively, the person who requested the information may ask the Court to order compliance with the request.

## Subdivision B—Annual administration return

### 70-5 Annual administration return

*Application of this section*

(1) This section applies if a person is the trustee of a regulated debtor's estate during all or part of a financial year.

*Annual administration return to be lodged*

(2) The person must lodge a return in relation to the person's administration of that estate during that year or part of that year (as the case requires).

(3) The return must:
(a) be in the approved form; and
(b) be lodged with the Inspector-General within 25 business days after the end of the financial year.

*Late lodgement fee payable*

(4) If the person does not lodge the return within the period mentioned in paragraph (3)(b), the person must pay a late lodgement fee, determined by the Minister by legislative instrument, by way of penalty.

## Subdivision C—Record-keeping

### 70-6 Subdivision applies to the Official Trustee

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

### 70-10 Administration books

*Trustee must keep proper books*

(1) The trustee of a regulated debtor's estate must keep proper books in which the trustee must cause to be made:
  (a) entries or minutes of proceedings at meetings relating to the administration of the estate; and
  (b) such other entries as are necessary to give a complete and correct record of the trustee's administration of the estate.

(2) The trustee must:
  (a) ensure that the books are available at the trustee's office for inspection; and
  (b) permit a creditor, or another person acting on the creditor's behalf, to inspect the books at all reasonable times.

*Exception*

(3) Subsections (1) and (2) do not apply if the trustee has a reasonable excuse.

*Offence*

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

Penalty: 5 penalty units.

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

Note 2: See also section 277B (about infringement notices).

## 70-11 Trustee's books when trading

*Trustee must keep trading books etc.*

(1) If the trustee of a regulated debtor's estate carries on a business previously carried on by the regulated debtor, the trustee must:
  (a) keep such books as are usually kept in relation to the carrying on of a business of that kind; and
  (b) permit a creditor, or another person acting on the creditor's behalf, to inspect the books at all reasonable times.

*Offence*

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

Penalty: 5 penalty units.

Note: See also section 277B (about infringement notices).

## 70-15 Audit of administration books—Inspector-General

*Inspector-General may audit books, or cause them to be audited*

(1) The Inspector-General may audit, or cause to be audited, the books referred to in section 70-5 (annual administration return), 70-10 (administration books) or 70-11 (books when trading).

*Audit on the Inspector-General's initiative or on request*

(2) The audit may be conducted:
  (a) on the Inspector-General's own initiative; or
  (b) at the request of the regulated debtor; or
  (c) at the request of a creditor.

*Auditor must prepare a report*

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

*Inspector-General must give a copy of the report*

(4) The Inspector-General must give a copy of the report to:
  (a) the trustee of the estate; and
  (b) the person who requested the report (if any).

*Costs of an audit*

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

*Qualified privilege in relation to audit reports*

(6) A person who conducts an audit under this section has qualified privilege (within the meaning of the *Corporations Act 2001*) in respect of any report prepared under subsection (3) that is given to a person under subsection (4) or otherwise published.

### 70-20 Audit of administration books—on order of the Court

(1) The Court may order that the Inspector-General audit, or cause to be audited, the books referred to in section 70-5 (annual administration return), 70-10 (administration books) or 70-11 (books when trading).

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

(3) The Court may make such orders in relation to the audit as it thinks fit, including:
  (a) the preparation and provision of a report on the audit; and
  (b) orders as to the costs of the audit.

## 70-25 Trustee to comply with auditor requirements

*Application of this section*

(1) This section applies if books are audited under section 70-15 or 70-20.

*Trustee must give assistance etc.*

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

*Exception*

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

*Offence*

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

Penalty: 5 penalty units.

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

Note 2: See also section 277B (about infringement notices).

## 70-30 Transfer of books to new trustee

*Application of this section*

(1) This section applies if:
  (a) a person (the ***former trustee***) ceases to be the trustee of a regulated debtor's estate; and
  (b) a registered trustee (the ***new trustee***) is appointed as trustee of the estate instead.

*Transfer of books to new trustee*

(2) The former trustee must transfer to the new trustee, within the handover period, possession or control of any books relating to the administration of the estate that are in the former trustee's possession or control.

(3) The ***handover period*** is:
  (a) the period of 10 business days beginning on the day after the new trustee is appointed; or
  (b) if another period is agreed between the former trustee and the new trustee—that other period.

(4) The former trustee may take a copy of any part of the books before transferring possession or control of them to the new trustee.

*New trustee must accept the books*

(5) The new trustee must take possession or accept control of any books relating to the administration of the regulated debtor's estate.

*New trustee must allow inspection etc.*

(6) After possession or control of the books is transferred, the new trustee must allow the former trustee to inspect them at any reasonable time and take a copy of any part of the books.

*Offence*

(7) A person commits an offence if:
  (a) the person is subject to a requirement under subsection (2), (5) or (6); and
  (b) the person intentionally or recklessly fails to comply with the requirement.

Penalty: 50 penalty units.

*Lien against books not prejudiced*

(8) If the new trustee is entitled to take possession or control of the books under this section:
  (a) a person is not entitled, as against the new trustee, to claim a lien on the books; and

(b) such a lien is not otherwise prejudiced.

### 70-35 Retention, return or destruction of books

*Retention period for books*

(1) The last trustee to administer a regulated debtor's estate must retain all books that:

(a) relate to the administration of the estate; and

(b) are in the last trustee's possession or control at the end of the administration;

for a period (the ***retention period***) of 7 years from the end of the administration.

*Exception—reasonable excuse*

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

*Exception—books given by regulated debtor*

(3) Despite subsection (1), any books that the regulated debtor has given to the trustee of the estate may be returned to the regulated debtor within the retention period:

(a) if there is a committee of inspection—as the committee directs; or

(b) otherwise—as the creditors by resolution direct.

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

(4) The trustee may return the books to the regulated debtor, or destroy the books, at the end of the retention period.

*Offence*

(5) A person commits an offence if:

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

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

Penalty: 50 penalty units.

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*).

*Relationship with other laws*

(6) Subsections (3) and (4) do not apply to the extent that the trustee is under an obligation to retain the books, or a part of the books, under another provision of this Act or under any other law.

### 70-36 Return or destruction of irrelevant books

(1) 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:
  (a) the regulated debtor has given to any trustee of the estate; and
  (b) the trustee considers will not help the administration of the estate.

(2) Despite subsection (1), the trustee is not permitted to return the books to the regulated debtor, or to destroy them, if the trustee knows, or reasonably ought to know, that:
  (a) another person had a lien over the books before the trustee took possession of them; or
  (b) another person has a legal right to possession of the books; or
  (c) the trustee is not permitted to return the books to the regulated debtor or destroy them (as the case requires), because of another provision of this Act, or a provision of any other law.

## Subdivision D—Giving information etc. to creditors and others

### 70-37 Subdivision applies to the Official Trustee

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

### 70-40 Right of creditors to request information etc. from trustee

(1) The creditors may by resolution request the trustee of a regulated debtor's estate to:
  (a) give information; or
  (b) provide a report; or

(c) produce a document;

to the creditors.

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

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

(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

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

(3) The Insolvency Practice Rules may prescribe circumstances in which it is, or is not, reasonable for a trustee to comply with a request of a kind mentioned in subsection (1).

### 70-45 Right of individual creditor to request information etc. from trustee

(1) A creditor may request the trustee of a regulated debtor's estate to:

(a) give information; or

(b) provide a report; or

(c) produce a document;

to the creditor.

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

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

(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

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

(3) The Insolvency Practice Rules may prescribe circumstances in which it is, or is not, reasonable for the trustee of a regulated debtor's estate to comply with a request of a kind mentioned in subsection (1).

### 70-50 Reporting to creditors

(1) The Insolvency Practice Rules may provide for and in relation to the obligations of trustees of regulated debtors' estates:
  (a) to give information; and
  (b) to provide reports; and
  (c) to produce documents;
to creditors or the regulated debtor.

(2) Without limiting subsection (1), the Insolvency Practice Rules may provide for and in relation to:
  (a) other circumstances in which the trustee of a regulated debtor's estate must give information, provide a report or produce a document to a creditor or the regulated debtor; and
  (b) the manner and form in which information is to be given, a report provided or a document produced; and
  (c) the timeframes in which information is to be given, a report provided or a document produced; and
  (d) who is to bear the cost of giving information, providing a report or producing a document.

(3) The Insolvency Practice Rules may:
  (a) make different provision in relation to different kinds of estate administration; and
  (b) provide that specified requirements imposed under the Insolvency Practice Rules may be replaced or modified, by resolution, by:
    (i) the creditors; or
    (ii) if there is a committee of inspection—the committee.

## Subdivision E—Other requests for information etc.

### 70-51 Subdivision applies to the Official Trustee

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

## 70-55 Commonwealth may request information etc.

*Application of this section*

(1) This section applies if either:

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

(b) the Commonwealth considers that such a claim is likely to be made.

*Commonwealth may request information etc.*

(2) The Commonwealth may request the trustee of the regulated debtor's estate to provide specified information, reports or documents in relation to the administration of the regulated debtor's estate.

(3) The trustee must comply with the request.

(4) The Insolvency Practice Rules may provide for and in relation to who is to bear the cost of providing the information, reports or documents.

## 70-56 Right of regulated debtor to request information etc. from trustee

(1) A regulated debtor may request the trustee of the regulated debtor's estate to:

(a) give information; or

(b) provide a report; or

(c) produce a document;

to the regulated debtor.

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

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

(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

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

(3) The Insolvency Practice Rules may prescribe circumstances in which it is, or is not, reasonable for a trustee of a regulated debtor's estate to comply with a request of a kind mentioned in subsection (1).

## Subdivision F—Reporting to the Inspector-General

### 70-60 Insolvency Practice Rules may provide for reporting to Inspector-General

(1) The Insolvency Practice Rules may provide for and in relation to the obligations of trustees of regulated debtor's estates:
  (a) to give information; and
  (b) to provide reports; and
  (c) to produce documents;
to the Inspector-General.

(2) Without limiting subsection (1), the Insolvency Practice Rules may provide for and in relation to:
  (a) the manner and form in which information is to be given, a report provided or a document produced; and
  (b) the timeframes in which information is to be given, a report provided or a document produced; and
  (c) who is to bear the cost of giving information, providing a report or producing a document.

(3) The Insolvency Practice Rules may make different provision in relation to different kinds of estate administration.

Note: A failure to give information, provide a report or produce a document to the Inspector-General in accordance with the Insolvency Practice Rules may lead to disciplinary action under Subdivision B of Division 40 of Part 2 of this Schedule.

## Subdivision G—Trustee may be compelled to comply with requests for information etc.

### 70-65 Application of this Subdivision

(1) This Subdivision applies if the trustee of a regulated debtor's estate refuses a request made by a person under:
  (a) Subdivision D; or

(b) a rule made under section 70-50; or
(c) Subdivision E; or
(d) section 80-40;

to give information, provide a report or produce a document.

(2) In this Subdivision:
(a) the information, report or document is referred to as the ***relevant material***; and
(b) the request is referred to as the ***request for relevant material***; and
(c) giving the information, providing the report or producing the document is referred to as ***giving*** the relevant material.

### 70-70 Inspector-General may direct trustee to comply with the request for relevant material

(1) The Inspector-General may, in writing, direct the trustee to give all or part of the relevant material to the person or persons who made the request for the relevant material within 5 business days after the direction is given.

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

### 70-75 Inspector-General must notify trustee before giving a direction under section 70-70

(1) Before giving the trustee a direction under section 70-70, the Inspector-General must give the trustee notice in writing:
(a) stating that the Inspector-General proposes to give the trustee a direction under that section; and
(b) identifying:
(i) the relevant material, or the part of the relevant material, that the Inspector-General proposes to direct be given; and
(ii) the person or persons to whom the Inspector-General proposes to direct that the relevant material, or that part of the relevant material, be given; and
(c) inviting the trustee to make a written submission to the Inspector-General within 10 business days after the notice is given, stating:

(i) whether the trustee has any objection to giving the relevant material, or that part of the relevant material, to a person or persons as proposed; and

(ii) if the trustee has such an objection—the reasons for that objection.

(2) If the trustee objects to giving the relevant material, or part of the relevant material, to a person, the Inspector-General must take into account the reasons for that objection when deciding whether to direct that the relevant material, or that part of the relevant material, be given to the person.

(3) A notice under subsection (1) is not a legislative instrument.

### 70-80 Inspector-General must not direct trustee to give the relevant material if trustee entitled not to comply with the request

The Inspector-General must not give a direction under section 70-70 to give the relevant material, or part of the relevant material, to a person if the Inspector-General is satisfied that the trustee was entitled, under a provision of this Act or any other law, not to comply with the request for the relevant material, or that part of the relevant material, to the person.

### 70-85 Inspector-General may impose conditions on use of the relevant material

*Inspector-General may, by notice, impose conditions*

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

*Offence*

(2) A person commits an offence if:

(a) the Inspector-General directs that the relevant material, or part of the relevant material, be given to the person; and

(b) the Inspector-General has given the person notice under subsection (1) imposing a condition in relation to the use or disclosure of that material by the person; and

(c) the person does not comply with the condition.

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

*Notice is not a legislative instrument*

(3) A notice under subsection (1) is not a legislative instrument.

### 70-90 Court may order relevant material to be given

(1) The person or persons who made the request for the relevant material may apply to the Court for an order that the trustee give the person all or part of the relevant material.

(2) If:
(a) the Inspector-General gives the trustee a direction under section 70-70 in relation to all or part of the relevant material; and
(b) the trustee does not comply with the direction;
the Inspector-General may apply to the Court for an order that the trustee comply with the direction.

(3) On application under subsection (1) or (2), the Court may:
(a) order the trustee to give the person, or any or all of the persons, who made the request for the relevant material all or part of that material; and
(b) make such other orders, including orders as to costs, as it thinks fit.

## Division 75—Meetings of creditors

### 75-1 Simplified outline of this Division

The trustee of a regulated debtor's estate may convene creditor meetings at any time and must convene them in particular circumstances, for example when directed to do so by certain creditors or by the Inspector-General.

Requirements for convening and holding meetings (including notice, agenda, quorum, voting on proposals and costs) are set out in the Insolvency Practice Rules.

There is a mechanism for resolving a matter without holding a meeting.

### 75-2 Division applies to the Official Trustee

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

### 75-5 Other obligations to convene meetings not affected

Nothing in this Division limits the operation of any other provision of this Act, or any other law, imposing an obligation to convene a meeting in relation to a regulated debtor, or the administration of a regulated debtor's estate.

### 75-10 Trustee may convene meetings

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

### 75-15 Trustee must convene meeting in certain circumstances

(1) The trustee of a regulated debtor's estate must convene a meeting of the creditors if:
  (a) where there is a committee of inspection—the committee of inspection directs the trustee to do so; or
  (b) the creditors direct the trustee to do so by resolution; or
  (c) at least 25% in value of the creditors direct the trustee to do so in writing; or
  (d) both of the following are satisfied:
    (i) less than 25%, but more than 10%, in value of the creditors direct the trustee to do so in writing;
    (ii) security for the cost of holding the meeting is given to the trustee before the meeting is convened.

(2) However, the trustee of a regulated debtor's estate need not comply with the direction if the direction is not reasonable.

(3) The Insolvency Practice Rules may prescribe circumstances in which a direction is, or is not, reasonable.

(4) For the purposes of paragraphs (1)(c) and (d), the value of the creditors is to be worked out by reference to the value of the creditors' claims against the regulated debtor's estate that are known at the time the direction is given.

### 75-20 Trustee must convene meeting if required by the Inspector-General

(1) The Inspector-General may, in writing, direct the trustee of a regulated debtor's estate to convene a meeting of the creditors.

(2) The Inspector-General may include in the direction requirements to be complied with by the trustee in notifying the creditors of the meeting and in conducting the meeting.

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

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

### 75-25 Trustee's representative at meetings

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

(2) Subsection (1) does not apply to a meeting of a kind prescribed.

(3) If the trustee is not personally present at a meeting, then a reference in a provision of this Act to a trustee, in respect of matters occurring at or in connection with the meeting, is a reference to a person appointed to represent the trustee at the meeting.

### 75-30 Inspector-General may attend meetings

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

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

## 75-35 Commonwealth may attend certain meetings etc.

If:

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

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

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

## 75-40 Proposals to creditors without meeting

*Proposal by notice to creditors*

(1) The trustee of a regulated debtor's estate may at any time put a proposal to the creditors by giving notice, in writing, under this section.

*Content and service of notice*

(2) The notice must:

(a) contain a single proposal; and

(b) include a statement of the reasons for the proposal and the likely impact it will have on creditors (if it is passed); and

(c) be given to each creditor who would be entitled to receive notice of a meeting of creditors; and

(d) invite the creditor to either:

(i) vote Yes or No on the proposal; or

(ii) object to the proposal being resolved without a meeting of creditors; and

(e) specify a reasonable time by which replies must be received by the trustee (in order to be taken into account).

*Evidentiary certificate relating to proposals*

(3) A certificate signed by the trustee of the regulated debtor's estate stating any matter relating to a proposal under this section is prima facie evidence of the matter.

*Insolvency Practice Rules relating to proposals*

(4) The Insolvency Practice Rules may provide for and in relation to proposals without meeting under this section.

(5) Without limiting subsection (4), the Insolvency Practice Rules may provide for and in relation to:
  (a) the circumstances in which a proposal is taken to be passed; and
  (b) whether a proposal, if passed, is to be taken to have been passed as a resolution or a special resolution; and
  (c) costs and security for those costs in relation to a proposal.

## 75-50 Rules relating to meetings

(1) The Insolvency Practice Rules may provide for and in relation to meetings of creditors.

(2) Without limiting subsection (1), the Insolvency Practice Rules may provide for and in relation to:
  (a) the circumstances in which meetings must or may be convened; and
  (b) notice for convening meetings; and
  (c) agenda; and
  (d) information to be given to creditors; and
  (e) who is to preside at meetings; and
  (f) the number of creditors required to constitute a quorum; and
  (g) proxies and attorneys; and
  (h) motions; and
  (i) voting (including casting votes); and
  (j) the circumstances in which a resolution or a special resolution must or may be put to creditors in a meeting; and
  (k) the circumstances in which a resolution or a special resolution put to creditors in a meeting is passed; and
  (l) facilities, including electronic communication facilities, to be available at meetings; and
  (m) minutes; and
  (n) costs in relation to meetings and security for those costs.

# Division 80—Committees of inspection

## 80-1 Simplified outline of this Division

Creditors of a regulated debtor's estate may decide that there is to be a committee of inspection to monitor the administration of the estate and to give assistance to the trustee.

*Appointing the committee*

Each of the following have rights to appoint members to the committee (and to remove those members and fill the vacancy):

(a) the creditors by resolution;

(b) a single creditor who is owed, or a group of creditors who together are owed, a large amount;

(c) a single employee who is owed, or a group of employees who together are owed, a large amount.

Once a person exercises a right in one capacity to appoint a member, the person cannot exercise a right in another capacity to do so. A person can exercise the right in a particular capacity to appoint only one person (unless the person is filling a vacancy in that appointment).

*Procedures and powers*

This Division also deals with the procedures and powers of committees of inspection (including directing that information, documents and reports be provided by the trustee and obtaining specialist advice).

The trustee of a regulated debtor's estate must have regard to directions of the committee but is not obliged to comply.

*Review*

The Court may inquire into and make orders about the conduct of committees of inspection.

### 80-2 Division applies to the Official Trustee

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

### 80-5 Application of sections 80-10 to 80-25

The rules in sections 80-10 to 80-25 apply if the trustee of a regulated debtor's estate convenes a meeting of creditors for the purpose of determining either or both of the following:

(a) whether there is to be a committee of inspection for the regulated debtor's estate;

(b) if there is, or is to be, a committee of inspection—who are to be appointed members of the committee.

### 80-10 Committee of inspection

The creditors of a regulated debtor's estate may, by resolution, determine that there is to be a committee of inspection in relation to the administration of the estate.

### 80-15 Appointment and removal of members of committee of inspection by creditors generally

(1) The creditors of a regulated debtor's estate may, by resolution, appoint members of a committee of inspection in relation to the administration of the estate.

(2) The creditors of a regulated debtor's estate may by resolution:

(a) remove a person appointed as a member of the committee under this section; and

(b) appoint another person to fill a vacancy in the office of a member of the committee appointed under this section.

(3) A person is not entitled to vote on a resolution to appoint or remove a member of a committee of inspection under this section if:

(a) the person, acting either alone or with others, appoints a person as a member of the committee under section 80-20; or

(b) the person, acting either alone or with others, appoints a person as a member of the committee under section 80-25.

### 80-20 Appointment of committee member by large creditor

(1) A creditor representing at least 10% in value of the creditors, or a group of creditors who together represent at least 10% in value of the creditors, of a regulated debtor's estate may appoint a person as a member of a committee of inspection in relation to the administration of the estate.

(2) If a creditor or a group of creditors appoints a person as a member of a committee of inspection under this section, the creditor or group of creditors may:

(a) remove the person as a member of the committee; and

(b) appoint another person to fill a vacancy in the office of that member of the committee.

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

(a) the creditor votes on a resolution to appoint or remove a member of the committee under section 80-15; or

(b) the creditor, acting either alone or with others, appoints a member of the committee under subsection 80-25(1); or

(c) the creditor, acting either alone or with others, has already appointed a member of the committee under subsection (1) of this section.

### 80-25 Appointment of committee member by employees

(1) Either:

(a) an employee of the regulated debtor; or

(b) the employees of the regulated debtor;

representing at least 50% in value of amounts owed to or in respect of employees by the regulated debtor, in respect of services rendered to or for the regulated debtor, may appoint a person as a member of a committee of inspection to represent the employees.

(2) If an employee or a group of employees appoints a person under this section, the employee or group of employees may:

(a) remove the person as a member of the committee; and

(b) appoint another person to fill a vacancy in the office of that member of the committee.

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

(a) the employee votes on a resolution to appoint or remove a member of the committee under section 80-15; or

(b) the employee, acting either alone or with others, appoints a member of the committee under subsection 80-20(1); or

(c) the employee, acting either alone or with others, has already appointed a member of the committee under subsection (1) of this section.

### 80-30 Committees of inspection—procedures etc.

(1) Subject to subsection (2), a committee of inspection is to determine its own procedures.

(2) The Insolvency Practice Rules may provide for and in relation to committees of inspection.

(3) Without limiting subsection (2), the Insolvency Practice Rules may provide for and in relation to:

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

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

(c) resignation and removal of members; and

(d) vacancies in membership.

### 80-35 Functions of committee of inspection

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

(a) to advise and assist the trustee of the regulated debtor's estate;

(b) to give directions to the trustee of the regulated debtor's estate;

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

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

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

(2) The trustee of a regulated debtor's estate must have regard to any directions given to the trustee by the committee of inspection, but the trustee is not required to comply with such directions.

(3) If the trustee of a regulated debtor's estate does not comply with a direction, the trustee must make a written record of that fact, along with the trustee's reasons for not complying with the direction.

### 80-40 Committee of inspection may request information etc.

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

(a) give information; or

(b) provide a report; or

(c) produce a document;

to the committee.

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

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

(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

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

(3) The Insolvency Practice Rules may prescribe circumstances in which it is, or is not, reasonable for a trustee to comply with a request of a kind mentioned in subsection (1).

### 80-45 Reporting to committee of inspection

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

(a) to give information; and

(b) to provide reports; and

(c) to produce documents;

to committees of inspection.

(2) Without limiting subsection (1), the Insolvency Practice Rules may provide for and in relation to:

(a) other circumstances in which the trustee must give information, provide a report or produce a document to a committee of inspection; and
(b) the manner and form in which information is to be given, a report provided or a document produced; and
(c) the timeframes in which information is to be given, a report provided or a document produced; and
(d) who is to bear the cost of giving information, providing a report or producing a document.

(3) The Insolvency Practice Rules may:
(a) make different provision in relation to different classes of regulated debtor, or regulated debtor's estates; and
(b) provide that specified requirements imposed under the Insolvency Practice Rules may be replaced or modified, by resolution, by:
(i) the creditors; or
(ii) the committee of inspection.

### 80-50 Committee of inspection may obtain specialist advice or assistance

(1) A committee of inspection may resolve that a member of the committee obtain, on behalf of the committee, such advice or assistance as the committee considers desirable in relation to the conduct of the administration of the regulated debtor's estate.

(2) The committee of inspection must obtain the approval of the trustee of the regulated debtor's estate or the Court before expenses are incurred in obtaining the advice or assistance.

(3) To avoid doubt, an expense incurred under subsection (2) is to be taken to be an expense of the administration of the estate, unless the Court orders otherwise.

## 80-55 Obligations of members of committee of inspection

*Deriving profit or advantage from the estate*

(1) A member of a committee of inspection must not directly or indirectly derive any profit or advantage from the administration of the regulated debtor's estate.

*Circumstances in which profit or advantage is taken to be derived*

(2) To avoid doubt, a member of a committee of inspection is taken to derive a profit or advantage from the administration of the regulated debtor's estate if:

(a) the member directly or indirectly derives a profit or advantage from a transaction (including a sale or purchase) entered into for or on account of the estate; or

(b) the member directly or indirectly derives a profit or advantage from a creditor of the estate; or

(c) a related entity of the member directly or indirectly derives a profit or advantage from the administration of the estate.

*Exceptions*

(3) Subsection (1) does not apply if the creditors resolve otherwise.

(4) The member of the committee is not entitled to vote on the resolution referred to in subsection (3).

(5) Subsection (1) does not apply to the extent that:

(a) another provision of this Act, or of another law, requires or permits the member of the committee of inspection to derive the profit or advantage; or

(b) the Court gives leave to the member of the committee to derive the profit or advantage.

Note: Subsection (1) would not, for example, prevent a creditor from recovering debts proved in the bankruptcy, as this is permitted under Division 2 of Part VI.

(6) Despite paragraph (2)(c), subsection (1) does not apply to the extent that:

(a) the profit or advantage arises because the trustee employs or engages a person to provide services in connection with the administration of the regulated debtor's estate; and

(b) the person is a related entity of a member of the committee of inspection; and

(c) one of the following applies:

(i) the member does not know, and could not reasonably be expected to know, that the trustee has employed or engaged a related entity of the member;

(ii) the creditors, by resolution, agree to the related entity being employed or engaged.

*Offence*

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

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

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

Penalty: 50 penalty units.

Note: A defendant bears an evidential burden in relation to the matters in subsections (3), (5) and (6) (see subsection 13.3(3) of the *Criminal Code*).

*Effect of contravention of this section*

(8) A transaction or any other arrangement entered into in contravention of this section may be set aside by the Court.

## 80-60 Obligations of creditor appointing a member of committee of inspection

*Application of this section*

(1) This section applies if a creditor representing at least 10% in value of the creditors of a regulated debtor's estate appoints a person under section 80-20 as a member of a committee of inspection in relation to the administration of the estate.

(2) The creditor must not directly or indirectly become the purchaser of any part of the regulated debtor's estate.

*Exceptions*

(3) Subsection (2) does not apply if the creditors resolve otherwise.

(4) The creditor is not entitled to vote on the resolution referred to in subsection (3).

(5) Subsection (2) does not apply to the extent that:
  (a) another provision of this Act, or of another law, requires or permits the creditor to purchase the property; or
  (b) the Court gives leave to the creditor to purchase the property.

*Offence*

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

Penalty: 50 penalty units.

Note: A defendant bears an evidential burden in relation to the matters in subsections (3) and (5) (see subsection 13.3(3) of the *Criminal Code*).

*Effect of contravention of this section*

(7) A transaction or any other arrangement entered into in contravention of this section may be set aside by the Court.

### 80-65 The Inspector-General may attend committee meetings

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

### 80-70 The Court may inquire into conduct of the committee

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.

# Division 85—Directions by creditors

## 85-1 Simplified outline of this Division

The trustee of a regulated debtor's estate must have regard to directions given to the trustee by the creditors of the estate but is not obliged to comply with those directions.

## 85-2 Division applies to the Official Trustee

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

## 85-5 Trustee to have regard to directions given by creditors

(1) The creditors may, by resolution, give directions to the trustee of a regulated debtor's estate in relation to the administration of the estate.

(2) The trustee must have regard to any directions mentioned in subsection (1), but the trustee is not required to comply with such directions.

(3) If the trustee does not comply with a direction, the trustee must make a written record of that fact, along with the trustee's reasons for not complying with the direction.

(4) If there is a conflict between directions given by the creditors under subsection (1) and by the committee of inspection under section 80-35, directions given by the creditors override any directions given by the committee.

# Division 90—Review of the administration of a regulated debtor's estate

## Subdivision A—Introduction

## 90-1 Simplified outline of this Division

*Review by the Court*

The Court may inquire into the administration of a regulated debtor's estate either on its own initiative or on the application of the Inspector-General or a person with a financial interest in the administration of the regulated debtor's estate.

The Court has wide powers to make orders, including orders replacing the trustee or dealing with losses resulting from a breach of duty by the trustee.

*Review by the Inspector-General*

The Inspector-General may review a decision of the trustee of a regulated debtor's estate to withdraw funds from the estate for payment for the trustee's remuneration.

The Insolvency Practice Rules may set the powers and duties of the Inspector-General in conducting such a review and may deal with issues relating to the review process.

*Removal of trustee by creditors*

The creditors of a regulated debtor's estate may remove the trustee of the estate and appoint another. However, the trustee may apply to the Court to be reappointed.

## Subdivision B—Court powers to inquire and make orders

### 90-2 Subdivision applies to the Official Trustee

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

### 90-5 Court may inquire on own initiative

(1) The Court may, on its own initiative during proceedings before the Court, inquire into the administration of a regulated debtor's estate.

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

(a) give information; or

(b) provide a report; or
(c) produce a document;

to the Court in relation to the administration of the estate.

(3) This section does not limit the Court's powers under any other provision of this Act, or under any other law.

### 90-10 Court may inquire on application of creditors etc.

(1) The Court may, on the application of a person mentioned in subsection (2), inquire into the administration of a regulated debtor's estate.

(2) Each of the following persons may make an application for an inquiry:
(a) a person with a financial interest in the administration of the regulated debtor's estate;
(b) if the committee of inspection (if any) so resolves—a creditor, on behalf of the committee;
(c) the Inspector-General.

(3) The Court may, for the purposes of such an inquiry, require a person who is or has at any time been the trustee of the regulated debtor's estate to:
(a) give information; or
(b) provide a report; or
(c) produce a document;

to the Court in relation to the administration of the estate.

(4) If an application is made by a person referred to in paragraph (2)(b), the reasonable expenses associated with the application are to be taken to be expenses of the administration of the estate unless otherwise ordered by the Court.

(5) This section does not limit the Court's powers under any other provision of this Act, or under any other law.

## 90-15 Court may make orders in relation to estate administration

*Court may make orders*

(1) The Court may make such orders as it thinks fit in relation to the administration of a regulated debtor's estate.

*Orders on own initiative or on application*

(2) The Court may exercise the power under subsection (1):
  (a) on its own initiative, during proceedings before the Court; or
  (b) on application under section 90-20.

*Examples of orders that may be made*

(3) Without limiting subsection (1), those orders may include any one or more of the following:
  (a) an order determining any question arising in the administration of the estate;
  (b) an order that a person cease to be the trustee of the estate;
  (c) an order that another person be appointed as the trustee of the estate;
  (d) an order in relation to the costs of an action (including court action) taken by the trustee of the estate or another person in relation to the administration of the estate;
  (e) an order in relation to any loss that the estate has sustained because of a breach of duty by the trustee;
  (f) an order in relation to remuneration, including an order requiring a person to repay to the estate of a regulated debtor, or the creditors of a regulated debtor, remuneration paid to the person as trustee.

*Matters that may be taken into account*

(4) Without limiting the matters which the Court may take into account when making orders, the Court may take into account:
  (a) whether the trustee has faithfully performed, or is faithfully performing, the trustee's duties; and
  (b) whether an action or failure to act by the trustee is in compliance with this Act and the Insolvency Practice Rules; and

(c) whether an action or failure to act by the trustee is in compliance with an order of the Court; and

(d) whether the regulated debtor's estate or any person has suffered, or is likely to suffer, loss or damage because of an action or failure to act by the trustee; and

(e) the seriousness of the consequences of any action or failure to act by the trustee, including the effect of that action or failure to act on public confidence in registered trustees as a group.

*Costs orders*

(5) Without limiting subsection (1), an order mentioned in paragraph (3)(d) in relation to the costs of an action may include an order that:

(a) the trustee or another person is personally liable for some or all of those costs; and

(b) the trustee or another person is not entitled to be reimbursed by the regulated debtor's estate or creditors in relation to some or all of those costs.

*Orders to make good loss sustained because of a breach of duty*

(6) Without limiting subsection (1), an order mentioned in paragraph (3)(e) in relation to a loss may include an order that:

(a) the trustee is personally liable to make good some or all of the loss; and

(b) the trustee is not entitled to be reimbursed by the regulated debtor's estate or creditors in relation to the amount made good.

*Section does not limit Court's powers*

(7) This section does not limit the Court's powers under any other provision of this Act, or under any other law.

## 90-20 Application for Court order

(1) Each of the following persons may apply for an order under section 90-15:

(a) a person with a financial interest in the administration of the regulated debtor's estate;

(b) if the committee of inspection (if any) so resolves—a creditor, on behalf of the committee;

(c) the Inspector-General.

(2) If an application is made by a person referred to in paragraph (1)(b), the reasonable expenses associated with the application are to be taken to be expenses of the administration of the estate.

## Subdivision C—Review by Inspector-General

### 90-21 Review by Inspector-General

(1) The Inspector-General may carry out a review of the remuneration received by the trustee of a regulated debtor's estate for services performed by the trustee in relation to the administration of the estate.

(2) The Inspector-General may carry out a review under this Subdivision:

(a) on his or her own initiative; or

(b) on application by the regulated debtor or a creditor.

(3) The trustee, the regulated debtor or a creditor of the regulated debtor may apply to the Court for an order in relation to a decision of the Inspector-General in relation to the review.

(4) In making an order under subsection (3), the Court must have regard to whether the remuneration received by the trustee is reasonable, taking into account any or all of the following matters:

(a) the extent to which the work by the trustee was necessary and properly performed;

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

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

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

(e) the complexity (or otherwise) of the work performed, or likely to be performed, by the trustee;

(f) the extent (if any) to which the trustee was, or is likely to be, required to deal with extraordinary issues;
(g) the extent (if any) to which the trustee was, or is likely to be, required to accept a higher level of risk or responsibility than is usually the case;
(h) the value and nature of any property dealt with, or likely to be dealt with, by the trustee;
(i) the number, attributes and conduct, or the likely number, attributes and conduct, of the creditors;
(j) if the remuneration is worked out wholly or partly on a time-cost basis—the time properly taken, or likely to be properly taken, by the trustee in performing the work;
(k) any other relevant matters.

### 90-22 Rules about reviews

(1) The Insolvency Practice Rules may provide for and in relation to reviews under this Subdivision.

(2) Without limiting subsection (1), the Insolvency Practice Rules may provide for and in relation to any or all of the following matters:
(a) the giving of notice to the trustee before beginning a review, or making an application for a review, under this Subdivision;
(b) the powers and duties of the Inspector-General in carrying out a review;
(c) the decisions that may be made by the Inspector-General in relation to the review;
(d) the repayment of remuneration by the trustee as a consequence of a review under this Subdivision.

## Subdivision D—Removal by creditors

### 90-30 Subdivision applies to the Official Trustee

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

## 90-35 Removal by creditors

*Creditors may remove trustee and appoint another*

(1) The creditors may:
  (a) by resolution at a meeting, remove the trustee of a regulated debtor's estate; and
  (b) by resolution at the same or a subsequent meeting, appoint another person as trustee of the regulated debtor's estate.

Note: For the general rules relating to meetings, see Division 75.

(2) However, the creditors may not do so unless at least 5 business days' notice of the meeting is given to all persons who are entitled to receive notice of creditors' meetings.

*Former trustee may apply to Court to be reappointed*

(3) A person (the ***former trustee***) who has been removed as trustee of the regulated debtor's estate by resolution of the creditors may apply to the Court to be reappointed as trustee of the regulated debtor's estate.

(4) If the former trustee makes such an application, the former trustee must:
  (a) record all costs incurred by the former trustee and the debtor's estate in relation to the application; and
  (b) do so in a way that separates those costs from the costs incurred by the former trustee and the regulated debtor's estate in relation to other matters.

(5) The Court may order that the former trustee be reappointed as trustee of the regulated debtor's estate if the Court is satisfied that the removal of the former trustee was an improper use of the powers of one or more creditors.

(6) The Court may make such other orders in relation to the application as it thinks fit, including orders in relation to:
  (a) the costs of the application; and
  (b) the remuneration of the former trustee.

# Part 4—Other matters

## Division 95—Introduction

### 95-1 Simplified outline of this Part

This Part deals with a variety of matters:

(a) the trustee of a regulated debtor's estate may assign a right to sue; and

(b) the Minister has power to make rules to be called the Insolvency Practice Rules.

## Division 96—Administrative review

### 96-1 Review by the Administrative Appeals Tribunal

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

(a) a decision of a committee under section 20-20 in relation to an application for registration as a trustee;

(b) a decision of a committee under section 20-55 in relation to an application for the variation or removal of a condition of registration;

(c) a decision of the Inspector-General to give a direction to a registered trustee under section 40-15 not to accept further appointments;

(d) a decision of the Inspector-General to suspend the registration of a person as a trustee under section 40-25;

(e) a decision of the Inspector-General to cancel the registration of a person as a trustee under section 40-30;

(f) a decision of a committee under section 40-55 (disciplinary action by committee);

(g) a decision of a committee under section 40-85 in relation to an application to lift or shorten the suspension of a person's registration as a trustee.

## Division 100—Other matters

### 100-1 Division applies to the Official Trustee

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

### 100-5 Trustee may assign right to sue under this Act

(1) Subject to subsections (2) and (3), the trustee of a regulated debtor's estate may assign any right to sue that is conferred on the trustee by this Act.

(2) If the trustee's action has already begun, the trustee cannot assign the right to sue unless the trustee has the approval of the Court.

(3) Before assigning any right under subsection (1), the trustee must give written notice to the creditors of the proposed assignment.

(4) If a right is assigned under this section, a reference in this Act to the trustee in relation to the action is taken to be a reference to the person to whom the right has been assigned.

## Division 105—The Insolvency Practice Rules

### 105-1 The Insolvency Practice Rules

(1) The Minister may, by legislative instrument, make rules providing for matters:
  (a) required or permitted by this Act to be provided by the rules; or
  (b) necessary or convenient to be provided in order to carry out or give effect to this Act.

(2) Rules made under subsection (1) may include offences.

(3) The penalties for offences described in subsection (2) must not be more than 50 penalty units for an individual or 250 penalty units for a body corporate.

(4) To avoid doubt, the rules may not do the following:
  (a) create a civil penalty;

(b) provide powers of:
  (i) arrest or detention; or
  (ii) entry, search or seizure;
(c) impose a tax;
(d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
(e) directly amend the text of this Act.

(5) Rules that are inconsistent with the regulations have no effect to the extent of the inconsistency, but rules are taken to be consistent with the regulations to the extent that the rules are capable of operating concurrently with the regulations.

(6) Despite subsection 10(1), the Minister's power to make rules under this section may not be delegated to any other person.

(7) In this section:

***this Act*** does not include the regulations or rules made under this section.

# Part 2—Amendments consequential on the introduction of the Insolvency Practice Schedule (Bankruptcy)

## *Bankruptcy Act 1966*

### 3 Subsection 5(1) (definition of *approved form*)

Repeal the definition, substitute:

> ***approved form***: a document is in the ***approved form*** if it is in accordance with section 6D.

### 4 Subsection 5(1)

Insert:

> ***bank*** means an ADI or any other bank.

### 5 Subsection 5(1)

Insert:

> ***business day*** means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place concerned.

### 6 Subsection 5(1)

Insert:

> ***Insolvency Practice Rules*** means the rules made by the Minister under section 105-1 of Schedule 2.

### 7 Subsection 5(1) (definition of *registered trustee*)

Repeal the definition, substitute:

> ***registered trustee*** has the same meaning as in section 5-5 of Schedule 2.

### 8 Subsection 5(1)

Insert:

***Register of Trustees*** has the same meaning as in section 15-1 of Schedule 2.

## 9 Subsection 5(1) (definition of *resolution*)

Repeal the definition, substitute:

***resolution***: a ***resolution*** is passed by creditors of a regulated debtor's estate:

(a) in a meeting—in the circumstances prescribed under paragraph 75-50(2)(k) of Schedule 2; or

(b) without a meeting—in the circumstances prescribed under paragraph 75-40(5)(b) of Schedule 2.

## 10 Subsection 5(1) (definition of *special resolution*)

Repeal the definition, substitute:

***special resolution***: a ***special resolution*** is passed by creditors of a regulated debtor's estate:

(a) in a meeting—in the circumstances prescribed under paragraph 75-50(2)(k) of Schedule 2; or

(b) without a meeting—in the circumstances prescribed under paragraph 75-40(5)(b) of Schedule 2.

## 11 Subsection 5(1) (at the end of the definition of *this Act*)

Add "and the Insolvency Practice Rules".

## 12 At the end of Part IA

Add:

### 6D Approved forms

(1) A document that this Act requires to be in an approved form must:

(a) be in the form approved by the Inspector-General for the document; and

(b) include the information, statements, explanations or other matters required by the form; and

(c) be accompanied by any other material required by the form.

(2) A reference in this Act to a document in the approved form, includes a reference to any other material included with or accompanying the document as required by the relevant form.

(3) If:

(a) this Act requires a document to be in an approved form; and

(b) a provision of this Act specifies, or provides for the Insolvency Practice Rules to specify, information, statements, explanations or other matters that must be included in the document, or other material that must accompany the document;

that other provision is not taken to exclude or limit the operation of subsection (1) in relation to the approved form (and so the approved form may also require information etc. to be included in the form or material to accompany the form).

(4) The Insolvency Practice Rules may make provision for and in relation to:

(a) methods of verifying any information required by or in approved forms; and

(b) the manner in which, the persons by whom, and the directions or requirements in accordance with which, approved forms are required or permitted to be signed, prepared, or completed.

## 13 Subsection 12(4)

Repeal the subsection, substitute:

(4) 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) a Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*);

(b) a prescribed professional disciplinary body.

## 14 Paragraph 19(1)(d)

Repeal the paragraph.

## 15 At the end of subsection 19(1)

Add:

; (l) the duties imposed on the trustee under Schedule 2.

## 16 At the end of Division 1 of Part II

Add:

### 19B Trustee to give Official Receiver information etc.

(1) The trustee of the estate of a bankrupt must give the Official Receiver such information, access to and facilities for inspecting the bankrupt's books and generally such assistance as is necessary for enabling the Official Receiver to perform his or her duties.

(2) This section does not apply to the Official Trustee.

## 17 Paragraph 40(1)(f)

Omit "resolution of a majority of the creditors present at the meeting either in person or by attorney", substitute "resolution of the creditors".

## 18 Paragraph 43(2)(b)

Omit "74(5)", substitute "74(1)".

## 19 Subsection 54(1) (penalty)

Omit "25 penalty units", substitute "50 penalty units".

## 20 Subsection 54(2) (penalty)

Omit "5 penalty units", substitute "50 penalty units".

## 21 Paragraphs 55(8)(b) and 56E(3)(b)

Omit "74(5)", substitute "74(1)".

## 22 Subsection 56F(1) (penalty)

Omit "25 penalty units", substitute "50 penalty units".

## 23 Paragraph 57(10)(b)

Omit "74(5)", substitute "74(1)".

## 24 Divisions 5 and 5A of Part IV

Repeal the Divisions.

## 25 Subsection 73(1A)

Omit "working days", substitute "business days".

## 26 Subsection 73(1B)

Repeal the subsection.

## 27 Subsections 73(2) to (5)

Repeal the subsections.

## 28 Section 73A

Repeal the section.

## 29 Subsection 73B(4)

Repeal the subsection.

## 30 Section 73C

Repeal the section.

## 31 Subsection 74(5)

Repeal the subsection, substitute:

(1) If the proposal is accepted by a special resolution of creditors at a meeting held in accordance with the Insolvency Practice Rules, the bankruptcy is annulled, by force of this subsection, on the day the special resolution was passed.

## 32 Subsection 74A(4)

Omit "would be entitled under section 64A (as that section applies in accordance with section 76A)", substitute "are entitled".

## 33 Section 76 (heading)

Repeal the heading, substitute:

### 76 Application of Part VIII and Schedule 2 to trustee of a composition or arrangement

#### 34 Subsection 76(1)

Omit "Part VIII applies", substitute "Part VIII and Schedule 2 apply".

#### 35 Subsection 76(2)

After "Part VIII", insert "or Schedule 2".

#### 36 Section 76A

Repeal the section.

#### 37 Paragraph 109(1)(a)

Omit "section 175", substitute "section 70-15 or 70-20 of Schedule 2".

#### 38 Subsections 109(7) to (7B)

Repeal the subsections.

#### 39 Subsection 125(3) (definition of *bank*)

Repeal the definition.

#### 40 Subsection 134(4)

Repeal the subsection (including the note).

#### 41 Section 139ZIB (definition of *working day*)

Repeal the definition.

#### 42 Subparagraph 139ZIE(1)(a)(i)

Omit "working days", substitute "business days".

#### 43 Subsection 139ZIE(5)

Omit "working days", substitute "business days".

#### 44 Paragraph 139ZIF(1)(a)

Omit "working days", substitute "business days".

#### 45 Subsection 139ZIO(2)

Omit "The", substitute "Subject to subsection (2A), the".

## 46 After subsection 139ZIO(2)

Insert:

*Interaction with Insolvency Practice Rules*

(2A) The Inspector-General may refuse to review a reviewable decision if the Court is exercising powers, under section 45-1, 90-5, 90-10 or 90-15 of Schedule 2, in relation to the decision.

(2B) If:

(a) the Inspector-General is reviewing a reviewable decision; and

(b) the Court begins to exercise powers, under section 45-1, 90-5, 90-10 or 90-15 of Schedule 2, in relation to the decision;

the period referred to in subsection (5) of this section is extended by one day for each day during the period:

(c) beginning when the Court begins to exercise powers as referred to in paragraph (b); and

(d) ending when the Court ceases to exercise those powers.

## 47 Sections 154A to 155K

Repeal the sections.

## 48 Subsections 156A(4) to (7)

Repeal the subsections.

## 49 Subsections 157(6) to (9)

Repeal the subsections.

## 50 Section 161A

Repeal the section.

## 51 Division 2 of Part VIII (heading)

Repeal the heading, substitute:

## Division 2—Remuneration and costs of the Official Trustee and Official Receiver

### 52 Sections 161B and 162

Repeal the sections.

### 53 Sections 164 to 167

Repeal the sections.

### 54 Divisions 3 and 4 of Part VIII

Repeal the Divisions.

### 55 Section 181

Repeal the section.

### 56 Subsection 181A(2)

Omit "would be entitled under section 64A", substitute "are entitled".

### 57 Section 182

Repeal the section.

### 58 Section 185 (definition of *bank*)

Repeal the definition.

### 59 Section 185

Insert:

> ***Chapter 5 body corporate*** has the same meaning as in the *Corporations Act 2001*.

### 60 Section 185 (definition of *externally-administered body corporate*)

Repeal the definition.

### 61 Section 185 (definition of *working day*)

Repeal the definition.

### 62 Subsections 185LB(1), 185LC(1) and 185N(5)

Omit "working days", substitute "business days".

### 63 Paragraph 186A(1)(d)

Omit "subsection 1292(2) or (3) of the *Corporations Act 2001*", substitute "the *Corporations Act 2001* (other than in response to a written request by the individual to have the registration cancelled)".

### 64 Paragraph 186A(1)(e)

Omit "ceased under section 155I for a reason specified in paragraph 155H(1)(a), (aa), (b), (e), (f), (fa) or (g)", substitute "was cancelled (other than in response to a written request by the individual to have the registration cancelled)".

### 65 Paragraph 186A(3)(a)

Omit "an externally-administered body corporate", substitute "a Chapter 5 body corporate".

### 66 Subparagraph 186LA(1)(b)(ii)

Omit "155H(1)", substitute "40-40(1) of Schedule 2".

### 67 Paragraph 186LA(1)(c)

Omit "155H(1)(fa)", substitute "40-40(1)(m) of Schedule 2".

### 68 Subparagraph 186LB(1)(b)(ii)

Omit "155H(1)", substitute "40-40(1) of Schedule 2".

### 69 Paragraph 186LB(1)(c)

Omit "155H(1)(fa)", substitute "40-40(1)(m) of Schedule 2".

### 70 Subsection 188(5)

Omit "working days", substitute "business days".

### 71 Subsection 188(5A)

Repeal the subsection.

### 72 Subsections 190(4A) and (4B)

Repeal the subsections.

### 73 Subsection 190A(1)

Omit "(1)".

### 74 Paragraph 190A(1)(b)

Repeal the paragraph.

### 75 At the end of subsection 190A(1)

Add:

; (j) the duties imposed on the controlling trustee under Schedule 2.

### 76 Sections 194 to 196

Repeal the sections.

### 77 Subsection 217(1)

Omit ", in accordance with the regulations,".

### 78 At the end of subsection 220(1)

Add "The meeting may be called by any creditor or the debtor.".

### 79 Subsection 221A(3)

Omit "would be entitled under section 64A (as that section applies in accordance with section 223A)", substitute "are entitled".

### 80 Paragraph 222(5)(f)

Omit "subsection 194A(3)", substitute "Division 75 of Schedule 2 (including rules made under that Division)".

### 81 Paragraph 222(5)(h)

Omit "subsection 194A(5)", substitute "Division 75 of Schedule 2 (including rules made under that Division)".

### 82 Subsection 222A(2)

Omit "would be entitled under section 64A (as that section applies in accordance with section 223A)", substitute "are entitled".

### 83 Sections 223 and 223A

Repeal the sections.

### 84 Subsection 224A(5)

Omit "working days", substitute "business days".

### 85 Subsection 224A(6)

Repeal the subsection.

### 86 Subsection 231(3)

Omit "70, 71, 72,".

### 87 Subsection 248(1)

Omit "Division 5 of Part IV, sections 70 to 76", substitute "sections 73 to 76".

### 88 Subsection 263C(2) (definition of *voting document*)

Repeal the definition, substitute:

***voting document*** means:

(a) a statement:

(i) relating to the amount in respect of which the creditor claims that the bankrupt is indebted to the creditor, the value of the consideration that the creditor gave for any assignment of a debt the bankrupt owes to the creditor, or whether the creditor holds a security interest in respect of the debt; and

(ii) that is given to the trustee at or before a meeting called for the purposes of Part IV, X or XI or Schedule 2; or

(b) a form:

(i) relating to the appointment of a person to represent the creditor at a meeting as the creditor's proxy; and

(ii) that is given to the trustee at or before a meeting called for the purposes of Part IV, X or XI or Schedule 2.

### 89 Subsection 277B(2) (table items 6 to 11)

Repeal the items.

### 90 Subsection 277B(2) (at the end of the table)

Add:

| | | |
|---|---|---|
| 29 | subsection 30-1(5) of Schedule 2 | 1 penalty unit |
| 30 | subsection 35-5(2) of Schedule 2 | 1 penalty unit |
| 31 | subsection 65-40(3) of Schedule 2 | 1 penalty unit |
| 32 | subsection 70-10(4) of Schedule 2 | 1 penalty unit |
| 33 | subsection 70-11(2) of Schedule 2 | 1 penalty unit |
| 34 | subsection 70-25(4) of Schedule 2 | 1 penalty unit |

## 91 Subsection 280(5) (definition of *trustee account*)

Repeal the definition, substitute:

> ***trustee account*** means an account referred to in section 65-5 of Schedule 2.

## 92 Subsection 306B(1)

Omit "155A(6), 155F(2) or 155I(4) or section 189A", substitute "section 189A or section 20-25, 20-60, 40-60 or 70-40 of Schedule 2".

## 93 Section 312

Repeal the section.

## 94 Paragraph 315(2)(i)

Repeal the paragraph.

## 95 Subparagraphs 315(2)(j)(ii) and (iii)

After "Index", insert "or the Register of Trustees".

## 96 Paragraph 315(2)(k)

Omit "10 penalty units", substitute "50 penalty units".

## 97 Paragraph 316(1)(a)

Omit "paragraphs 154A(3)(b), 155C(1)(b) and 155D(1)(b) and".

### 98 Paragraph 316(1)(a)

Omit "(4) and 246(5)", substitute "(4), 246(5), and subsection 20-5(3), paragraph 20-30(1)(c) and subsection 20-70(3) of Schedule 2".

## *Bankruptcy (Estate Charges) Act 1997*

### 99 Subsection 5(1)

Omit "169(1B) or 185LD(3) of", substitute "185LD(3) of, or subsection 65-31(1) of Schedule 2 to,".

### 100 Subsection 5(2)

Repeal the subsection.

# Part 3—Transition to the Insolvency Practice Schedule (Bankruptcy)

## Division 1—Introduction

### 101 Simplified outline of this Part

This Part deals with the way the *Bankruptcy Act 1966* will apply when the provisions of this Act begin to operate.

*Application of Part 2 of the Insolvency Practice Schedule (Bankruptcy)*

A person registered as a trustee before the commencement of this Act will continue to be registered and must comply with the requirements and duties under Part 2 of the Insolvency Practice Schedule (Bankruptcy).

*Application of Part 3 of the Insolvency Practice Schedule (Bankruptcy)*

Part 3 of the Insolvency Practice Schedule (Bankruptcy) will apply to an administration of an estate that starts on or after the commencement of this Act and to most ongoing administrations (but generally only in relation to new events).

*Proceedings before the Court or the Administrative Appeals Tribunal*

Proceedings already begun in the Court or the Administrative Appeals Tribunal before the commencement of the amendments made by this Act will continue under the old Act. Orders of the Court under the old Act continue to have effect.

*Regulations*

Regulations may be made to deal with other transitional matters.

### 102 Definitions

In this Part:

***commencement day*** means the day on which this Schedule commences.

***Insolvency Practice Schedule (Bankruptcy)*** means Schedule 2 to the *Bankruptcy Act 1966* as added by this Act, and includes rules made under section 105-1 of that Schedule.

***make***, in relation to an order that is a direction, includes give.

***new administration*** of a regulated debtor's estate means an administration of a regulated debtor's estate that starts on or after the commencement day.

***old Act*** means the *Bankruptcy Act 1966*, as in force immediately before the commencement day and includes the old regulations.

***old Act registrant*** has the meaning given by subitem 105(3).

***old Act registration day***, in relation to a person, has the meaning given by subitem 107(2).

***old regulations*** means the *Bankruptcy Regulations 1996*, as in force immediately before the commencement day.

***ongoing administration*** of a regulated debtor's estate means an administration of a regulated debtor's estate that started before the commencement day and ends after that day.

***order*** includes a direction.

***registered***: a person is registered as a trustee at a particular time in the circumstances set out in subitem 103(2).

***Register of Trustees*** means the Register of Trustees established and maintained under section 15-1 of the Insolvency Practice Schedule (Bankruptcy).

## Division 2—Application of Part 2 of the Insolvency Practice Schedule (Bankruptcy) and related consequential amendments

### Subdivision A—Registering trustees

### 103 Applications for registration under the old Act

(1) If, before the commencement day:

(a) a person has applied for registration as a trustee under section 154A of the old Act; and
(b) the person's application has not been refused; and
(c) the person is not registered as a trustee;

the application is taken never to have been made and the Inspector-General must, on behalf of the Commonwealth, refund to the person an amount equal to the fee paid in relation to the application.

(2) A person is ***registered*** as a trustee at a particular time if the person is registered as a trustee under the National Personal Insolvency Index at that time.

## 104 Applications for extension of registration under the old Act

(1) This item applies if, before the commencement day:
(a) a person has applied for his or her registration as a trustee to be extended under section 155D of the old Act; and
(b) the person's application has not been refused; and
(c) the person's registration as a trustee has not been extended.

(2) Section 155D of the old Act continues to apply in relation to the application as if that section had not been repealed by this Schedule.

(3) However, instead of extending the person's registration under the old Act, the Inspector-General must renew the registration of the person as a trustee under the Insolvency Practice Schedule (Bankruptcy).

## 105 Persons registered under the old Act continue to be registered under the Insolvency Practice Schedule (Bankruptcy)

*Person registered under the old Act immediately before the commencement day*

(1) If a person is registered as a trustee immediately before the commencement day, on the commencement day the person is taken to be registered as a trustee under Subdivision B of Division 20 of the Insolvency Practice Schedule (Bankruptcy).

(2) Despite subitem (1), a person mentioned in that subitem is not taken to be registered as a trustee under Subdivision B of Division 20 of the

Insolvency Practice Schedule (Bankruptcy) on the commencement day if, at the beginning of that day:

(a) the person is an insolvent under administration; or

(b) the person is dead.

*Meaning of old Act registrant*

(3) A person who is taken to be registered under Subdivision B of Division 20 of the Insolvency Practice Schedule (Bankruptcy) because of this item is referred to as an ***old Act registrant***.

## 106 Old Act registrant's details

(1) The Inspector-General must enter on the Register of Trustees, in relation to each old Act registrant, the details prescribed under subsection 15-1(3) of the Insolvency Practice Schedule (Bankruptcy) that relate to that old Act registrant.

(2) If the Inspector-General holds information in relation to an old Act registrant before the commencement day, the Inspector-General may use and disclose the information for the purposes of establishing and maintaining the Register of Trustees.

## 107 Period of old Act registrant's registration under the Insolvency Practice Schedule (Bankruptcy)

(1) The registration of an old Act registrant under the Insolvency Practice Schedule (Bankruptcy) is for a period ending 3 years after the old Act registration day for that person.

(2) The ***old Act registration day*** in relation to a person who was registered as a trustee immediately before the commencement day is the day on which:

(a) that registration began; or

(b) the most recent extension of that registration began;

whichever is the later.

(3) To avoid doubt, the registration of an old Act registrant under the Insolvency Practice Schedule (Bankruptcy) may be renewed in accordance with that Schedule.

## 108 Conditions for old Act registrants—conditions under the Insolvency Practice Schedule (Bankruptcy)

To avoid doubt, a condition may be imposed on an old Act registrant (or on a class that includes an old Act registrant) under the Insolvency Practice Schedule (Bankruptcy) in accordance with that Schedule.

## 109 Current conditions for old Act registrants—conditions under the old Act

*Conditions under the old Act*

(1) If:

(a) a condition applies to an old Act registrant's practice as a registered trustee under section 155E, 155F or 155I of the old Act; and

(b) that condition is still in force immediately before the commencement day;

that condition (including any modifications under section 155F or 155I of the old Act) is a ***current condition*** imposed on the old Act registrant.

*Varying etc. conditions of registration*

(2) Subdivision C of Division 20 of the Insolvency Practice Schedule (Bankruptcy) applies to a condition imposed under subitem (1) in the same way as it applies to a condition imposed by a committee under that Schedule.

## 110 Applications for change of conditions under the old Act

If:

(a) a condition applies to an old Act registrant's practice as a registered trustee under section 155A, 155F or 155I of the old Act; and

(b) the old Act registrant has applied for the condition to be changed or removed under section 155E of the old Act before the commencement day; and

(c) a decision on the application has not been made before the commencement day under section 155F of the old Act;

the application is taken never to have been made and the Inspector-General must, on behalf of the Commonwealth, refund to the person an amount equal to the fee paid in relation to the application.

Note: The trustee could then apply under section 20-40 of the Insolvency Practice Schedule (Bankruptcy) for the condition to be varied or removed.

## 111 Decisions about change of conditions under the old Act before the commencement day

(1) This item applies if:

(a) an old Act registrant has applied for a condition to be changed or removed under section 155E of the old Act before the commencement day; and

(b) before the commencement day, a committee has made a decision on the application under section 155F.

(2) The old Act continues to apply in relation to the decision.

(3) The same matter may not be dealt with under Division 20 of the Insolvency Practice Schedule (Bankruptcy).

## 112 Old Act registrant chooses not to renew

*Application of this item*

(1) This item applies if an old Act registrant does not apply for renewal of his or her registration under the Insolvency Practice Schedule (Bankruptcy) before his or her period of registration under subitem 107(1) ends (the ***expiry day***).

*Old Act registrant may not accept further appointments after registration expires*

(2) The old Act registrant is taken to be registered as a trustee under Subdivision B of Division 20 of the Insolvency Practice Schedule (Bankruptcy) after the expiry day, subject to a condition that he or she must not accept any further appointments as trustee of an estate.

(3) That condition is a ***current condition*** imposed on the old Act registrant.

*Registration cancelled once current administrations completed*

(4) On the day immediately after the end of the administration of all estates for which the old Act registrant is appointed as trustee:

(a) the old Act registrant is taken to have lodged a request in the approved form in accordance with paragraph 40-30(1)(g) of

the Insolvency Practice Schedule (Bankruptcy) to have his or her registration as a trustee cancelled; and

(b) the Inspector-General is taken to have cancelled the registration under subsection 40-30(1) of the Insolvency Practice Schedule (Bankruptcy).

## Subdivision B—Annual returns and statements

### 113 Application of obligation to lodge annual trustee returns

*Application of the Insolvency Practice Schedule (Bankruptcy)*

(1) Section 30-1 of the Insolvency Practice Schedule (Bankruptcy) applies in relation to trustee return years that begin on or after the commencement day.

*Meaning of **trustee return year***

(2) In working out the ***trustee return year*** for an old Act registrant under subsection 30-1(2) of the Insolvency Practice Schedule (Bankruptcy), "the day on which that registration first began", means "the old Act registration day for that person (as defined for the purpose of Part 3 of Schedule 1 to the *Insolvency Law Reform Act 2016*)".

## Subdivision C—Notice requirements

### 114 Notice of significant events

(1) If:

(a) within 2 years before the commencement day, an event of a kind mentioned in subsection 35-1(1) of the Insolvency Practice Schedule (Bankruptcy) occurs in relation to an old Act registrant; and

(b) the old Act registrant has not already informed the Inspector-General of the event before the commencement day;

the old Act registrant must lodge with the Inspector-General a notice, in the approved form, relating to the event.

(2) The notice must be lodged:

(a) if the old Act registrant is or could reasonably be expected to be aware of the event on or before the commencement day—within one month after the commencement day; or

(b) if paragraph (a) is not satisfied, but the old Act registrant is or could reasonably be expected to be aware of the event after the commencement day—within one month after the first day on which the old Act registrant is or could reasonably be expected to be aware of the event.

(3) A person commits an offence if:

(a) the person is subject to a requirement under subitem (1) within the period specified in subitem (2); and

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

Penalty: 100 penalty units.

## Subdivision D—Cancellation by the Inspector-General under the old Act

### 115 Request for cancellation made before the commencement day

(1) This item applies if:

(a) before the commencement day, a person gives the Inspector-General under section 155G of the old Act a written request that the person cease to be registered as a trustee; and

(b) no decision by the Inspector-General to accept the request has come into effect before the commencement day.

(2) The Inspector-General may not accept the request under section 155G of the old Act.

(3) However, for the purposes of paragraph 40-30(1)(g) of the Insolvency Practice Schedule (Bankruptcy), the person is taken to have lodged a request with the Inspector-General in the approved form to have the person's registration as a trustee under that Schedule cancelled.

(4) The repeal of section 155G of the old Act by this Schedule applies in relation to requests made to the Inspector-General under section 155G on or after the commencement day.

## Subdivision E—Disciplinary proceedings before a committee

### 116 Request for explanation made before the commencement day

(1) If, before the commencement day:

(a) the Inspector-General believes a matter mentioned in paragraphs 155H(1)(a) to (g) of the old Act in relation to an old Act registrant; and

(b) the Inspector-General asks the old Act registrant under section 155H of the old Act to give a written explanation why the old Act registrant should continue to be registered; and

(c) the Inspector-General has not received an explanation within a reasonable time or is not satisfied by the explanation; and

(d) the Inspector-General has not convened a committee under subsection 155H(2) to consider if the old Act registrant should continue to be registered;

the request mentioned in paragraph (b) is taken never to have been made.

(2) The fact that the request is taken never to have been made does not preclude the Inspector-General from giving a notice to the old Act registrant under section 40-40 of the Insolvency Practice Schedule (Bankruptcy) (show-cause notice) in relation to the same matter, or any aspect of the same matter.

Note: In relation to the application of section 40-40 of the Insolvency Practice Schedule (Bankruptcy), see item 122.

(3) This item does not apply for the purposes of sections 186LA and 186LB.

### 117 Decision to cancel registration made before the commencement day

(1) This item applies if:

(a) before the commencement day, a decision is made by a committee under section 155I of the old Act that the trustee should cease to be registered; and

(b) the Inspector-General has not given effect to the committee's decision before the commencement day.

Note: In the case of a decision by the committee under paragraph 155I(2)(b) that the trustee should continue to be registered subject to specified conditions, see item 109.

(2) On the commencement day, the committee is taken to have made a decision under section 40-55 of the Insolvency Practice Schedule (Bankruptcy) to cancel the registration of the person as a trustee.

(3) Section 40-65 of the Insolvency Practice Schedule (Bankruptcy) applies in relation to the decision as if the decision were made on the commencement day.

(4) To avoid doubt, nothing in this item affects any right or obligation that any person has before the commencement day, including any right to review, in relation to the consideration of the matter by the committee.

## 118 Matters not dealt with by a committee before the commencement day

(1) If:

(a) the Inspector-General convened a committee under section 155H of the old Act to consider whether the trustee should continue to be registered before the commencement day; and

(b) the committee has not made a decision in relation to the trustee under section 155I of the old Act before the commencement day;

the committee must cease its consideration of the matter on the commencement day without making such a decision.

(2) The fact that the committee has ceased to consider the matter does not preclude the matter, or any aspect of the matter, from being dealt with under Division 40 of the Insolvency Practice Schedule (Bankruptcy).

(3) To avoid doubt, nothing in this item affects any right or obligation that any person has before the commencement day, including any right to review, in relation to the consideration of the matter by the committee.

## Subdivision F—Suspension, cancellation and disciplinary action under the Insolvency Practice Schedule (Bankruptcy)

### 119 Direction to comply with requirement to lodge documents etc.

Subdivision B of Division 40 of the Insolvency Practice Schedule (Bankruptcy) applies whether or not a requirement mentioned in that Subdivision to lodge a document or give information or a document arises before, on or after the commencement day.

### 120 Suspension by the Inspector-General under the Insolvency Practice Schedule (Bankruptcy)

(1) Section 40-25 of the Insolvency Practice Schedule (Bankruptcy) applies whether or not an event mentioned in subsection 40-25(1) occurs before, on or after the commencement day.

(2) However, paragraph 40-25(1)(c) of the Insolvency Practice Schedule (Bankruptcy) does not apply in relation to the cancellation or suspension of the registration of a person as a liquidator under the *Corporations Act 2001*, as in force at any time before the commencement day.

### 121 Cancellation by the Inspector-General under the Insolvency Practice Schedule (Bankruptcy)

(1) Section 40-30 of the Insolvency Practice Schedule (Bankruptcy) applies whether or not an event mentioned in subsection 40-30(1) occurs before, on or after the commencement day.

(2) However, paragraph 40-30(1)(c) of the Insolvency Practice Schedule (Bankruptcy) does not apply in relation to the cancellation of the registration of a person as a liquidator under the *Corporations Act 2001,* as in force at any time before the commencement day.

### 122 Show-cause notice under the Insolvency Practice Schedule (Bankruptcy)

(1) Subdivision E of Division 40 of the Insolvency Practice Schedule (Bankruptcy) applies whether or not an event mentioned in

subsection 40-40(1) of the Schedule occurs before, on or after the commencement day.

(2) However, in relation to an event that occurs before the commencement day, paragraph 40-40(1)(p) of the Insolvency Practice Schedule (Bankruptcy) has effect as if the reference in that paragraph to "a standard prescribed for the purposes of subsection (4)" was a reference instead to "a standard prescribed by regulations made for the purpose of subsection 155H(5) of the old Act".

### 123 Action initiated by industry bodies

Section 40-100 of the Insolvency Practice Schedule (Bankruptcy) applies, whether or not the grounds to which a notice under that section relates arise because of an action, a failure to act or circumstance that occurs before, on or after the commencement day.

## Subdivision G—Powers of the Court and other bodies

### 124 Application of Court powers under section 45-1 of the Insolvency Practice Schedule (Bankruptcy)

The Court may exercise its powers to make an order under section 45-1 of the Insolvency Practice Schedule (Bankruptcy), whether or not the action or failure to act in relation to which, or because of which, the order is made occurs before, on or after the commencement day.

### 125 Powers to deal with registration under the old Act on or after the commencement day

(1) This item applies if, as a result of the continued application of the old Act on or after the commencement day, a relevant body may decide to register a person or cancel the registration of a person, as a trustee under the old Act or to impose conditions on a person's registration as a trustee under the old Act.

(2) A relevant body may instead:

(a) register the person or cancel the registration of the person, as a trustee under the Insolvency Practice Schedule (Bankruptcy) or impose conditions on a person's registration as a trustee under that Schedule; and

(b) by order, modify the application of this Part or the Insolvency Practice Schedule (Bankruptcy) in relation to the registration,

or the cancellation of the registration, of the person as a trustee under the Insolvency Practice Schedule (Bankruptcy) or in relation to the conditions imposed on a person's registration as a trustee under that Schedule.

(3) In this item:

***relevant body*** means the Inspector-General, the Administrative Appeals Tribunal, the Court or any other body.

## Division 3—Application of Part 3 of the Insolvency Practice Schedule (Bankruptcy) and related consequential amendments

### Subdivision A—Introduction

### 126 Simplified outline of this Division

This Division deals with the way the *Bankruptcy Act 1966* will apply to the administration of a regulated debtor's estate when the provisions of the Insolvency Practice Schedule (Bankruptcy) begin to operate.

*New administrations*

The Insolvency Practice Schedule (Bankruptcy) applies to an administration of a regulated debtor's estate that starts on or after the commencement of this Act (called new administrations).

*Ongoing administrations*

For an administration of a regulated debtor's estate that starts before that day but is still ongoing (called ongoing administrations), the Insolvency Practice Schedule (Bankruptcy) applies in accordance with this Division but usually only in relation to new events. Generally, the old Act continues to apply to old events and processes that are incomplete. There are some exceptions.

*Old administrations*

For old administrations that have ended but that may have ongoing obligations or processes, in most cases the old Act continues to apply.

## Subdivision B—General rules for Part 3

### 127 Application of Part 3 of the Insolvency Practice Schedule (Bankruptcy)—general rules

*New administrations*

(1) Part 3 of the Insolvency Practice Schedule (Bankruptcy) applies in relation to a new administration of a regulated debtor's estate.

*Ongoing administrations*

(2) Part 3 of the Insolvency Practice Schedule (Bankruptcy) applies in relation to an ongoing administration of a regulated debtor's estate in accordance with this Division.

## Subdivision C—Remuneration and other benefits received by trustees

### 128 Application of Division 60 of the Insolvency Practice Schedule (Bankruptcy)—general rule

Subdivision B of Division 60 of the Insolvency Practice Schedule (Bankruptcy) applies in relation to a trustee of a regulated debtor's estate under ongoing administration who is appointed, or who consents to act, on or after the commencement day.

### 129 Old Act continues to apply in relation to remuneration for trustees already appointed

Despite the repeal of sections 161B and 162 of the old Act by this Schedule, those sections (other than subsections 162(5A), (6) and (6A)) continue to apply in relation to the remuneration of a trustee of an estate of a bankrupt who is appointed, or who consents to act, before the commencement day.

Note: Remuneration of these trustees may be varied from time to time under section 162.

## 130 Duties of trustees relating to remuneration and other benefits

*Application of the Insolvency Practice Schedule (Bankruptcy)*

(1) Sections 60-20 and 60-21 of the Insolvency Practice Schedule (Bankruptcy) apply in relation to a trustee of a regulated debtor's estate under ongoing administration whether or not the trustee is appointed, or consents to act, before, on or after the commencement day.

(2) However, those sections do not apply in relation to arrangements made before the commencement day.

*Old Act continues to apply to arrangements made before commencement day*

(3) Despite the repeal of section 165 of the old Act by this Schedule, that section continues to apply in relation to arrangements made before the commencement day.

## 131 Payment for performance by third parties

*Application of the Insolvency Practice Schedule (Bankruptcy)*

(1) Section 60-26 of the Insolvency Practice Schedule (Bankruptcy) applies in relation to a trustee of a regulated debtor's estate under ongoing administration whether or not the trustee is appointed, or consents to act, before, on or after the commencement day.

(2) However, that section does not apply in relation to payments received before the commencement day.

*Old Act continues to apply to payments received before commencement day*

(3) Despite the repeal of section 162 of the old Act by this Schedule, subsection 162(6) continues to apply in relation to payments received before the commencement day.

## 132 Remuneration of former trustees

*Old Act continues to apply where both trustees appointed before commencement*

(1) If:

(a) a person ceases to be the trustee of a regulated debtor's estate and another person becomes the new trustee of the estate; and

(b) both those persons were appointed, or consented to act, as trustee of the estate before the commencement day;

then, despite the repeal of section 164 of the old Act by this Schedule, that section continues to apply in relation to the remuneration of those trustees to the extent that the section would have applied in relation to those trustees if it had not been repealed.

*Operation of the Insolvency Practice Schedule (Bankruptcy) where one trustee is appointed before commencement and one after*

(2) If:

(a) a person (the ***former trustee***) ceases to be the trustee of a regulated debtor's estate and another person (the ***new trustee***) becomes the new trustee of the estate; and

(b) the former trustee was appointed, or consented to act, as trustee of the estate before the commencement day; and

(c) the new trustee was appointed, or consented to act, as trustee of the estate on or after the commencement day;

then:

(d) the Insolvency Practice Schedule (Bankruptcy) applies; and

(e) if:

(i) the former trustee and the new trustee agree on the remuneration that the former trustee is entitled to receive for necessary work properly performed by the former trustee in relation to the administration of the regulated debtor's estate; and

(ii) the creditors, by resolution, endorse that agreement;

the creditors are taken to have made a determination under section 60-10 of the Insolvency Practice Schedule (Bankruptcy) specifying the agreed remuneration as the

remuneration that the former trustee is entitled to receive for the work.

## Subdivision D—Funds handling

### 133 Application of Division 65 of the Insolvency Practice Schedule (Bankruptcy)—general rule

Division 65 of the Insolvency Practice Schedule (Bankruptcy) applies in relation to an ongoing administration of a regulated debtor's estate.

### 134 Administration account

If, immediately before the commencement day, a person has an account that complies with the requirements (if any) specified in the old regulations in relation to the administration of:

(a) an estate of a bankrupt; or

(b) more than one estate of a bankrupt or bankrupts;

the account is taken on and after the commencement day to be an administration account for the relevant estate for the purposes of section 65-5 of the Insolvency Practice Schedule (Bankruptcy) and subsection 280(5) of the *Bankruptcy Act 1966*.

### 135 Paying money into administration account

*Application of the Insolvency Practice Schedule (Bankruptcy)*

(1) Sections 65-5 and 65-15 of the Insolvency Practice Schedule (Bankruptcy) do not apply in relation to money received before the commencement day.

*Old Act continues to apply to money received before commencement*

(2) Despite its repeal by this Schedule, subsection 169(2) of the old Act continues to apply in relation to money received before the commencement day.

### 136 Paying money out of administration account

Section 65-25 of the Insolvency Practice Schedule (Bankruptcy) does not apply in relation to money paid out of an administration account before the commencement day.

## 137 Reconciliation of administration account

Section 65-32 of the Insolvency Practice Schedule (Bankruptcy) does not apply in relation to money received, or payments made, in relation to a regulated debtor's estate before the commencement day.

## 138 Receipts

Despite its repeal by this Schedule, section 171 of the old Act continues to apply in relation to payments into, or made out of, an estate of a bankrupt before the commencement day.

## 139 Handling of securities

Section 65-40 of the Insolvency Practice Schedule (Bankruptcy) does not apply in relation to negotiable instruments and other securities received before the commencement day.

## 140 Review of payments to third parties

*Application of the Insolvency Practice Schedule (Bankruptcy)*

(1) A review of a bill of costs for services in relation to the administration of a regulated debtor's estate may be carried out in accordance with rules made for the purposes of section 65-46 of the Insolvency Practice Schedule (Bankruptcy) whether or not the service was provided before, on or after the commencement day.

*Old Act continues to apply in relation to ongoing reviews*

(2) Subitems (3) and (4) apply if a review in accordance with regulations made for the purposes of subsection 167(2) of the old Act is started before the commencement day.

(3) Nothing in this Act affects:

(a) the review; or

(b) the powers of the Inspector-General in relation to the review; or

(c) any decisions made by the Inspector-General in relation to the review; or

(d) any appeal or review in relation to the review.

(4) The old Act continues to apply on and after the commencement day in relation to the review despite the amendments and repeals made by this Act.

## Subdivision E—Information

### 141 Application of Division 70 of the Insolvency Practice Schedule (Bankruptcy)—general rule

Division 70 of the Insolvency Practice Schedule (Bankruptcy) applies in relation to an ongoing administration of a regulated debtor's estate.

### 142 Accounts and administration returns

*Administration returns for 2017-18 and later years*

(1) Section 70-5 of the Insolvency Practice Schedule (Bankruptcy) applies in relation to the financial year starting on 1 July 2017 and later financial years.

*Accounts under old Act*

(2) The repeal of section 170A by this Schedule applies in relation to the financial year starting on 1 July 2017 and later financial years.

### 143 Administration books

*Application of the Insolvency Practice Schedule (Bankruptcy)*

(1) Section 70-10 of the Insolvency Practice Schedule (Bankruptcy) does not apply in relation to events:

(a) that occur before the commencement day; and

(b) in respect of which, or because of which, entries or minutes are to be made.

*Old Act continues to apply to events etc. before commencement day*

(2) Despite the repeal of section 173 of the old Act by this Schedule, that section continues to apply in relation to events:

(a) that occur before the commencement day; and

(b) in respect of which, or because of which, accounts and records must be kept.

## 144 Books when trading

*Application of the Insolvency Practice Schedule (Bankruptcy)*

(1) Section 70-11 of the Insolvency Practice Schedule (Bankruptcy) does not apply in relation to events:

(a) that occur before the commencement day; and

(b) in respect of which, or because of which, entries in books are to be made.

*Old Act continues to apply to events etc. before commencement day*

(2) Despite the repeal of section 174 of the old Act by this Schedule, that section continues to apply in relation to events:

(a) that occur before the commencement day; and

(b) in respect of which, or because of which, accounts and records must be kept.

## 145 Audit of administration books

*Application of the Insolvency Practice Schedule (Bankruptcy)*

(1) Sections 70-15 to 70-25 of the Insolvency Practice Schedule (Bankruptcy) apply to books relating to an ongoing administration of a regulated debtor's estate whether or not the books are kept under a provision of the old Act or of the Insolvency Practice Schedule (Bankruptcy).

*Continuation of audits under old Act*

(2) Despite the repeal of section 175 of the old Act by this Schedule, audits may be continued under that section in relation to accounts under section 173 as if the old Act continued to apply.

*Priority payments*

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

## 146 Transfer of administration books

Section 70-30 of the Insolvency Practice Schedule (Bankruptcy) applies in relation to a person who ceases to be the trustee of a regulated debtor's estate on or after the commencement day.

## 147 Retention and destruction of administration books

*Application of the Insolvency Practice Schedule (Bankruptcy)*

(1) To avoid doubt, sections 70-35 and 70-36 of the Insolvency Practice Schedule (Bankruptcy) apply to books relating to an ongoing administration of a regulated debtor's estate whether or not the books are kept under a provision of the old Act or of the Insolvency Practice Schedule (Bankruptcy).

*Old Act continues to apply in relation to books for old administrations*

(2) If:

(a) an administration of an estate of a bankrupt or debtor ends before the commencement day; and

(b) immediately before that day, a person was required under the old Act to retain books relating to the estate for a period; and

(c) but for the repeal of section 312 by this Schedule, that period would have ended on or after the commencement day;

section 312 of the old Act (despite its repeal) continues to apply on and after the commencement day in relation to the person for the remainder of that period. However, subsection 312(4) of the old Act applies as if the reference to 15 years were instead a reference to 7 years.

*Destruction etc. of books under old Act*

(3) If a person is entitled under section 312 of the old Act to destroy or return books then (despite section 70-35 of the Insolvency Practice Schedule (Bankruptcy)) those books may be destroyed or returned.

## 148 Giving information to creditors etc.

Subdivision D of Division 70 of the Insolvency Practice Schedule (Bankruptcy) applies whether or not the information, report or document referred to in subsection 70-40(1), 70-45(1), or 70-50(1) of the Insolvency Practice Schedule (Bankruptcy):

(a) was obtained or generated; or
(b) was made or prepared; or
(c) is in respect of actions or events that occurred;

before, on or after the commencement day.

## 149 Commonwealth may request information

Section 70-55 of the Insolvency Practice Schedule (Bankruptcy) applies whether or not the information, report or document referred to in subsection 70-55(2):

(a) was obtained or generated; or
(b) was made or prepared; or
(c) is in respect of actions or events that occurred;

before, on or after the commencement day.

## 150 Giving information to regulated debtors

Section 70-56 of the Insolvency Practice Schedule (Bankruptcy) applies whether or not the information, report or document referred to in subsection 70-56(1):

(a) was obtained or generated; or
(b) was made or prepared; or
(c) is in respect of actions or events that occurred;

before, on or after the commencement day.

## 151 Reporting to Inspector-General

Section 70-60 of the Insolvency Practice Schedule (Bankruptcy) applies whether or not the information, report or document referred to in subsection 70-60(1):

(a) was obtained or generated; or
(b) was made or prepared; or
(c) is in respect of actions or events that occurred;

before, on or after the commencement day.

## Subdivision F—Meetings

### 152 Application of Division 75 of the Insolvency Practice Schedule (Bankruptcy)—general rules

(1) Division 75 of the Insolvency Practice Schedule (Bankruptcy) applies in relation to an ongoing administration of a regulated debtor's estate.

(2) However, Division 75 of the Insolvency Practice Schedule (Bankruptcy) does not apply in relation to meetings convened or held before the commencement day.

### 153 Trustee must convene meetings in certain circumstances

Section 75-15 of the Insolvency Practice Schedule (Bankruptcy) does not apply in relation to:

(a) directions given before the commencement day; or

(b) resolutions passed before the commencement day.

### 154 Old Act continues to apply in relation to certain meetings

If:

(a) a trustee is required to convene, or has already called, a meeting of creditors under the old Act; and

(b) as at the commencement day, the meeting has not been held;

then the old Act continues to apply on and after the commencement day (despite the repeals and amendments made by this Schedule) in relation to the meeting.

## Subdivision G—Committees of inspection

### 155 Application of Division 80 of the Insolvency Practice Schedule (Bankruptcy)—general rules

(1) Division 80 of the Insolvency Practice Schedule (Bankruptcy) applies in relation to a committee of inspection for an ongoing administration of a regulated debtor's estate:

(a) that is appointed under that Division on or after the commencement day; or

(b) that is appointed under a provision of the old Act but is taken to be a committee of inspection under subitem 156(1).

(2) However, Division 80 of the Insolvency Practice Schedule (Bankruptcy) does not apply in relation to meetings of, or related to, the committee of inspection convened or held before the commencement day.

## 156 Appointing committees of inspection

*Committees appointed under old Act taken to be committee of inspection*

(1) If there is, in relation to the administration of a regulated debtor's estate, a committee of inspection validly appointed under section 70 of the old Act, then on and after the day specified in subitem (2), the committee (the ***continued committee***) is taken for the purposes of the Insolvency Practice Schedule (Bankruptcy) to be a committee of inspection established under section 80-10 of the Insolvency Practice Schedule (Bankruptcy) in relation to the administration of the estate.

(2) For the purposes of subitem (1), the day is:

(a) in the case of a committee appointed on or before the commencement day—the commencement day; or

(b) in the case of a committee appointed on a day that is after the commencement day in accordance with a provision of this Division—that later day.

Note: In relation to paragraph (2)(b), for example, a committee may be appointed at a meeting called under the old Act before the commencement day but held after that day in accordance with item 154.

## 157 Membership of continued committees

*Members of continued committee*

(1) The members of a continued committee are the members appointed to the committee under section 70 of the old Act.

*Continued application of the old Act to members of continued committees*

(2) If a person is a member of a continued committee, then despite the repeal of subsections 70(3) and (4) and section 71 of the old Act by this Schedule, those provisions continue to apply in relation to the person.

*Application of the Insolvency Practice Schedule (Bankruptcy)*

(3) The following provisions do not apply in relation to members of a continued committee:

(a) sections 80-15 to 80-25 of the Insolvency Practice Schedule (Bankruptcy);

(b) Insolvency Practice Rules made under section 80-30 of the Insolvency Practice Schedule (Bankruptcy) that relate to membership of a committee of inspection.

Note: However, the committee could dissolve and the members could form a new committee to which these provisions would then apply.

## 158 Directions by creditors and committees of inspection

Sections 80-35 and 85-5 of the Insolvency Practice Schedule (Bankruptcy) apply whether or not the direction is given before, on or after the commencement day.

## 159 Committee of inspection may request information

Section 80-40 of the Insolvency Practice Schedule (Bankruptcy) applies whether or not the information, report or document referred to in subsection 80-40(1):

(a) was obtained or generated; or

(b) was made or prepared; or

(c) is in respect of actions or events that occurred;

before, on or after the commencement day.

## 160 Duties of members of committee of inspection and creditors relating to profits and advantages etc.

Sections 80-55 and 80-60 of the Insolvency Practice Schedule (Bankruptcy) apply to arrangements made on or after the commencement day.

## Subdivision H—Review of the administration of a regulated debtor's estate

### 161 Application of Division 90 of the Insolvency Practice Schedule (Bankruptcy)—general rule

Division 90 of the Insolvency Practice Schedule (Bankruptcy) applies in relation to an ongoing administration of a regulated debtor's estate whether or not the matter to be reviewed occurred before, on or after the commencement day.

### 162 Review of remuneration

*Application of the Insolvency Practice Schedule (Bankruptcy)*

(1) Reviews under Subdivision C of Division 90 of the Insolvency Practice Schedule (Bankruptcy) may be carried out whether or not:

(a) the remuneration is paid or payable; or

(b) the cost or expense is incurred or paid; or

(c) the funds were withdrawn or proposed to be withdrawn;

before, on or after the commencement day.

*Old Act continues to apply in relation to ongoing reviews*

(2) Subitems (3) and (4) apply if a review in accordance with regulations made for the purposes of subsection 167(1) of the old Act is started before the commencement day.

(3) Nothing in this Act affects:

(a) the review; or

(b) the powers of the Inspector-General in relation to the review; or

(c) any decisions made by the Inspector-General in relation to the review; or

(d) any requirement for a trustee to repay an amount of remuneration; or

(e) any appeal or review in relation to the review.

(4) The old Act continues to apply on and after the commencement day in relation to the review despite the amendments and repeals made by this Act.

## 163 Application of the Insolvency Practice Schedule (Bankruptcy) provisions that conflict with old Act Court orders—general rules

(1) This item applies if a court makes an order in relation to a person or the administration of an estate of a bankrupt under the old Act (the ***old Act order***).

(2) The old Act order does not cease to have effect because a provision of the old Act under which it was made has been amended or repealed by this Act.

(3) If the old Act order is inconsistent with:

(a) a provision of the *Bankruptcy Act 1966* that is amended or inserted by this Act; or

(b) a provision dealing with matters of an application, saving or transitional nature relating to amendments made by this Act;

then, subject to this Part, the provision does not apply to the extent that it is inconsistent with the old Act order.

## 164 Old Act continues to apply in relation to ongoing proceedings before a court—general rules

(1) This item applies if proceedings are brought under the old Act in a court (on application or on the initiative of the court) in relation to the administration of a regulated debtor's estate either:

(a) before the commencement day; or

(b) on or after the commencement day (in accordance with a provision of this Division).

(2) Subject to this Part, nothing in this Act affects:

(a) the proceedings; or

(b) the power of the court to make orders in relation to the proceedings; or

(c) any orders made by the court in relation to the proceedings; or

(d) any enforcement in relation to, or as a result of, the proceedings (including giving effect to any court orders); or

(e) any appeal or review in relation to the proceedings.

(3) Subject to this Part, the old Act continues to apply on and after the commencement day in relation to the proceedings despite the amendments and repeals made by this Act.

(4) In this item:

***proceedings*** include civil and criminal proceedings, inquiries by the court, enforcement processes and any other processes.

### 165 Court powers to inquire into and make orders

(1) Subitems (2) to (4) are for the avoidance of doubt.

(2) Sections 90-5 and 90-10 of the Insolvency Practice Schedule (Bankruptcy) apply whether or not the information, report or document mentioned in subsections 90-5(2) and 90-10(3) was prepared before, on or after the commencement day.

(3) Paragraph 90-15(3)(f) of the Insolvency Practice Schedule (Bankruptcy) applies whether or not the remuneration is paid or payable before, on or after the commencement day.

(4) Subsection 90-15(4) of the Insolvency Practice Schedule (Bankruptcy) applies whether or not the action or failure to act occurred before, on or after the commencement day.

### 166 Removal by creditors

For the avoidance of doubt, section 90-35 of the Insolvency Practice Schedule (Bankruptcy) applies whether or not the trustee was appointed before, on or after the commencement day.

## Division 4—Administrative review

### 167 Administrative Appeals Tribunal proceedings

(1) This item applies if an application is made to the Administrative Appeals Tribunal under a reviewable provision for review of a decision (the ***reviewable decision***) under that provision either:

(a) before the commencement day; or

(b) on or after the commencement day (in accordance with a provision of this Part).

(2) Subject to this Part, nothing in this Act affects:

(a) any proceedings before the Administrative Appeals Tribunal in relation to the reviewable decision; or
(b) the powers of the Administrative Appeals Tribunal in relation to the reviewable decision; or
(c) any enforcement in relation to, or as a result of, a decision of the Administrative Appeals Tribunal in relation to the reviewable decision; or
(d) any appeal or review in relation to a decision of the Administrative Appeals Tribunal in relation to the reviewable decision.

(3) Subject to this Part, the old Act continues to apply on and after the commencement day in relation to the proceedings despite the amendments and repeals made by this Act.

*Applications for review made after the commencement day*

(4) Despite the repeal of a reviewable provision by this Schedule, applications may be made to the Administrative Appeals Tribunal under the reviewable provision.

(5) In this item:

***reviewable provision*** means section 155A, 155F or 155I of the old Act.

## Division 5—Application of other consequential amendments

### 168 Resolutions and special resolutions

The repeal and substitution of the definitions of ***resolution*** and ***special resolution*** in subsection 5(1) of the *Bankruptcy Act 1966* by this Schedule apply in relation to:

(a) in the case of proposals put to creditors in a meeting—proposals put at a meeting where the requirement to hold the meeting arises on or after the commencement day; and
(b) in the case of proposals without meetings—proposals put to creditors on or after the commencement day.

### 169 Requirements for approved forms

Section 6D of the *Bankruptcy Act 1966* as inserted by this Schedule applies to documents made, given or lodged on or after the commencement day.

## 170 Disclosure of information

Subsection 12(4) of the *Bankruptcy Act 1966* as inserted by this Schedule applies whether or not the information was obtained, or is in relation to events that occurred, before, on or after the commencement day.

## 171 Giving information to the Official Receiver

Section 19B of the *Bankruptcy Act 1966* as inserted by this Schedule applies whether or not the books were made before, on or after the commencement day.

## 172 Penalty units for offences

The amendments of subsections 54(1), 54(2) and 56F(1) of the *Bankruptcy Act 1966* made by this Schedule apply in relation to offences committed on or after the commencement day.

## 173 Purchases of property of the bankrupt by a member of the committee of inspection

The repeal of section 72 of the *Bankruptcy Act 1966* by this Schedule applies in relation to property purchased before the commencement day.

## 174 Time for doing something—business days

(1) This item applies in relation to the amendments made by this Schedule to each of the following provisions (the ***relevant provision***):

(a) subsection 73(1A);

(b) subparagraph 139ZIE(1)(a)(i);

(c) subsection 139ZIE(5);

(d) paragraph 139ZIF(1)(a).

(2) If a person is required to do something within a period of time after a particular event, the amendment to the relevant provision applies if the event occurs on or after the commencement day.

## 175 Information about accounts and account-freezing

(1) This item applies if, before the commencement day, the Inspector-General has asked a person under subsection 155H(1) of the *Bankruptcy Act 1966* to give a written explanation why the person should continue to be registered as a trustee.

(2) Sections 186LA and 186LB of the old Act continue to apply on and after the commencement day in relation to the bank with which the person holds or held an account as if the amendments to those sections made by this Schedule had not been made.

### 176 Infringement notices

Despite the repeal of table items 6 to 11 in subsection 277B(2) of the *Bankruptcy Act 1966* by this Schedule, those items continue to apply in relation to offences committed before the commencement day.

### 177 Protection in respect of reports

Despite the amendments and repeals made by this Schedule, subsection 306B(1) of the *Bankruptcy Act 1966* continues to apply in relation to reports given under subsection 155A(6), 155F(2) or 155I(4) of that Act.

## Division 6—Regulations

### 178 Regulations

(1) The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments and repeals made by this Schedule.

(2) The regulations may provide that certain provisions of this Schedule are taken to be modified as set out in the regulations. Those provisions then have effect as if they were so modified.

(3) The provisions of this Schedule that provide for regulations to deal with matters do not limit each other.

# Schedule 2—Amendments relating to the Insolvency Practice Schedule (Corporations)

## Part 1—Insolvency Practice Schedule (Corporations)

### *Corporations Act 2001*

#### 1 At the end of Part 5.9

Add:

### Division 4—Insolvency Practice Schedule (Corporations)

#### 600K Insolvency Practice Schedule (Corporations)

Schedule 2 has effect.

#### 2 Before Schedule 3

Insert:

# Schedule 2—Insolvency Practice Schedule (Corporations)

Note: See section 600K.

## Part 1—Introduction

### Division 1—Introduction

#### 1-1 Object of this Schedule

(1) The object of this Schedule is to ensure that any person registered as a liquidator:

(a) has an appropriate level of expertise; and

(b) behaves ethically; and

(c) maintains sufficient insurance to cover his or her liabilities in practising as a registered liquidator.

(2) The object of this Schedule is also:

(a) to regulate the external administration of companies consistently, unless there is a clear reason to treat a matter that arises in relation to a particular kind of external administration differently; and

(b) to regulate the external administration of companies to give greater control to creditors.

## 1-5 Simplified outline of this Schedule

*Registering liquidators*

Under this Act, only a registered liquidator can perform certain roles, such as that of the receiver of the property of a corporation, the administrator of a company or of a deed of company arrangement, or the liquidator or provisional liquidator of a company.

Part 2 of this Schedule sets out the process for registering liquidators, and also deals with disciplining registered liquidators.

*Consistently regulating the external administration of companies*

Part 3 of this Schedule sets out provisions to regulate the external administration of companies consistently.

A company is under external administration if the company is under administration, is the subject of a deed of company arrangement or has had a liquidator or provisional liquidator appointed in relation to it. A company is not under external administration merely because a person has been appointed as a receiver, receiver and manager or other controller in relation to the property of the company.

*Other provisions*

There are other matters relevant to the external administration of a company regulated in Chapter 5.

This Schedule also gives authority for a legislative instrument, the Insolvency Practice Rules, to deal with some matters.

Many of the terms in this Schedule are defined. The Dictionary in section 5-5 contains a list of every term that is defined in this Schedule. Other terms are defined in section 9 of this Act.

# Division 5—Definitions

## Subdivision A—Introduction

### 5-1 Simplified outline of this Division

Terms used in this Schedule are defined in the Dictionary. In some cases, the definition is a signpost to another provision of the Schedule in which the meaning of the term is explained.

Some of the key terms, the meaning of which is explained in this Division, are external administration of a company and external administrator of a company.

## Subdivision B—The Dictionary

### 5-5 The Dictionary

In this Schedule:

***adequate and appropriate fidelity insurance*** has a meaning affected by subsection 25-1(2).

***adequate and appropriate professional indemnity insurance*** has a meaning affected by subsection 25-1(2).

***administration account***: see section 65-5.

***annual administration return*** means the return required to be lodged under subsection 70-5(3).

***annual liquidator return*** means the return required to be lodged under subsection 30-1(1).

***approved form***: a document is lodged in the ***approved form*** if it is lodged in accordance with section 100-6.

***committee of inspection*** for a company means:

(a) a committee appointed under sections 80-10 to 80-25 in relation to the external administration of the company; or

(b) a committee that is taken to be a committee of inspection in relation to the external administration of the company under subsection 80-26(3) (the company is a member of a pooled group).

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

***current conditions***: see section 5-10.

***end of administration return*** means the return required to be lodged under subsection 70-6(2).

***end of an external administration*** of a company means:

(a) in relation to a company under administration—the day worked out under paragraph 435C(1)(b); and

(b) in relation to a company subject to a deed of company arrangement—the day the deed is terminated; and

(c) in the case of a winding up of a company—the day on which the affairs of the company are fully wound up.

***external administration*** of a company: see section 5-15.

***external administrator*** of a company: see section 5-20.

***financial interest***: a person has a ***financial interest*** in the external administration of a company in the circumstances set out in section 5-30.

***GST*** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

***Insolvency Practice Rules*** means the rules made by the Minister under section 105-1.

***Insolvency Practice Schedule (Bankruptcy)*** means Schedule 2 to the *Bankruptcy Act 1966*, and includes rules made under section 105-1 of that Schedule.

***March quarter*** means the period of 3 months beginning on 1 January.

***maximum default amount*** for an external administrator of a company: see section 60-15.

***member of a pooled group***: see section 5-27.

***pooled group***: see section 5-27.

***prescribed*** means prescribed by the Insolvency Practice Rules.

***property*** has a meaning affected by section 5-26.

***registered liquidator*** means an individual who is registered as a liquidator under Part 2 of this Schedule.

***Register of Liquidators*** means the register established and maintained by ASIC under section 15-1.

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

***remuneration determination***, for an external administrator of a company, means a determination made in accordance with section 60-10 in relation to the external administrator.

***resolution***: a ***resolution*** is passed by creditors or contributories of a company:

(a) in a meeting—in the circumstances prescribed under paragraph 75-50(2)(k); or
(b) without a meeting—in the circumstances prescribed under paragraph 75-40(5)(b).

***reviewing liquidator*** means a registered liquidator who has been appointed under section 90-23 or 90-24 to conduct a review.

***special resolution***: a ***special resolution*** is passed by creditors or contributories of a company:

(a) in a meeting—in the circumstances prescribed under paragraph 75-50(2)(k); or
(b) without a meeting—in the circumstances prescribed under paragraph 75-40(5)(b).

***start of an external administration*** of a company means:

(a) in relation to a company under administration—the day an administrator of the company is appointed under section 436A, 436B or 436C; and

(b) in relation to a company that is subject to a deed of company arrangement—the day the deed is executed; and

(c) in the case of a winding up of a company—the day the winding up of the company is taken to have begun under section 513A or 513B; and

(d) in relation to a company for which a provisional liquidator has been appointed—the day the provisional liquidator is appointed.

***this Schedule*** includes the Insolvency Practice Rules.

## Subdivision C—Other definitions

### 5-10 Meaning of *current conditions*

(1) Each of the following is a ***current condition*** imposed on a registered liquidator:

(a) a condition that a committee decides that the registered liquidator is to be subject to under subsection 20-20(5) or (6), subject to any variation that a committee has decided should be made to the condition under section 20-55;

(b) a condition imposed on all registered liquidators, or on registered liquidators of the liquidator's class, under section 20-35;

(c) a condition imposed under subsection 40-15(2) (direction not to accept further appointments);

(d) a condition that a committee decides that the registered liquidator is to be subject to under paragraph 40-55(1)(f) or (g) (conditions as a result of disciplinary action), subject to any variation that a committee has decided should be made to the condition under section 20-55;

(e) a condition imposed on the registered liquidator by the Court under section 45-1.

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

(a) a condition that a committee has decided to remove under section 20-55; or

(b) a condition that is removed under subsection 40-15(4) (condition removed because a direction not to accept further appointments has been withdrawn); or

(c) a condition that the Court has ordered be removed under section 45-1.

### 5-15 Meaning of *external administration* of a company

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

(a) the company is under administration; or

(b) a deed of company arrangement has been entered into in relation to the company; or

(c) a liquidator has been appointed in relation to the company; or

(d) a provisional liquidator has been appointed in relation to the company.

Note: A company is not under ***external administration*** for the purposes of this Schedule merely because a receiver, receiver and manager, or other controller has been appointed in relation to property of the company.

### 5-20 Meaning of *external administrator* of a company

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

(a) the administrator of the company; or

(b) the administrator under a deed of company arrangement that has been entered into in relation to the company; or

(c) the liquidator of the company; or

(d) the provisional liquidator of the company.

Note: A person is not an ***external administrator*** of a company for the purposes of this Schedule merely because the person has been appointed as a receiver, receiver and manager, or controller in relation to property of the company.

### 5-25 References to the external administrator of a company

A reference in this Schedule to the external administrator of a company is to be read:

(a) in relation to a company in respect of which there are 2 or more joint external administrators—as a reference to all of the external administrators; and

(b) in relation to a company in respect of which there are 2 or more joint and several external administrators—as a reference to all of the external administrators or any one or more of the external administrators.

### 5-26 Property of a company

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

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

### 5-27 Meaning of *pooled group*

If:

(a) a pooling determination is in force in relation to a group of 2 or more companies; or

(b) a pooling order is in force in relation to a group of 2 or more companies;

then:

(c) the companies are together a ***pooled group***; and

(d) each of the companies is a ***member of the pooled group***.

### 5-30 Persons with a *financial interest* in the external administration of a company

A person has a ***financial interest*** in the external administration of a company:

(a) if the person is one of the following:

(i) the company;

(ii) a creditor of the company;

(iii) an external administrator of the company;

(iv) in a members' voluntary winding up—a member of the company; or

(b) in any other circumstances prescribed.

# Part 2—Registering and disciplining practitioners

## Division 10—Introduction

### 10-1 Simplified outline of this Part

*Registering liquidators*

An individual may apply to ASIC to be registered as a liquidator. ASIC will refer the application to a committee who will consider the applicant's qualifications, conduct and fitness and whether the applicant will take out appropriate insurance. Registration may be subject to conditions, is for 3 years and may be renewed.

A registered liquidator must:

(a) lodge an annual return with ASIC that includes proof that the liquidator has appropriate insurance; and

(b) give ASIC notice if the liquidator's circumstances change or if certain other events happen.

*Disciplining registered liquidators*

If a registered liquidator fails to comply with certain requirements, such as the requirement to lodge a document or give information, ASIC may give directions that may result in the liquidator being unable to accept further appointments. ASIC may also seek a Court order.

ASIC may suspend or cancel a liquidator's registration in certain circumstances. ASIC may also give the liquidator a show-cause notice. If such a notice is given and no sufficient explanation is given, ASIC may take further disciplinary action on the decision of a committee.

Industry bodies may notify ASIC where they suspect there are grounds for disciplinary action.

*Court powers*

The Court has broad powers to make orders in relation to registered liquidators (including imposing conditions on registration).

### 10-5 Working cooperatively with the Inspector-General in Bankruptcy

In performing its functions and exercising its powers under this Act in relation to persons who are, have been or may become both registered liquidators under this Act and registered trustees under the *Bankruptcy Act 1966*, ASIC must work cooperatively with the Inspector-General in Bankruptcy.

## Division 15—Register of liquidators

### 15-1 Register of Liquidators

(1) ASIC must establish and maintain a Register of Liquidators.

(2) The Register of Liquidators may be kept in any form that ASIC considers appropriate.

(3) The Insolvency Practice Rules may provide for and in relation to the Register of Liquidators.

(4) Without limiting subsection (3), the Insolvency Practice Rules may provide for and in relation to:
  (a) the details to be entered on the Register of Liquidators; and
  (b) the parts of the Register that are to be made available to the public.

(5) Without limiting paragraph (4)(a), those details may include:
  (a) details of any disciplinary action decided by a committee under section 40-55; and
  (b) details of persons who have had their registration as a liquidator under this Act suspended or cancelled.

# Division 20—Registering liquidators

## Subdivision A—Introduction

### 20-1 Simplified outline of this Division

An individual may apply to ASIC to be registered as a liquidator. The application will be referred to a committee, which will assess the application against specified criteria (the applicant's qualifications, conduct and fitness and whether the applicant will take out appropriate insurance). The committee will report its decision to ASIC and, if the committee decides that the applicant should be registered, ASIC will register the applicant as a liquidator.

A registration may be subject to conditions. Conditions may be imposed on a particular registered liquidator by the committee, or on all registered liquidators or a class of registered liquidators by the Insolvency Practice Rules. A registered liquidator may apply to ASIC to have a condition imposed by a committee removed or varied. That application will be referred to a committee.

Registration is for 3 years, but may be renewed. An application for renewal may be made to ASIC within specified time periods.

A decision of a committee about an application for registration or about a condition of registration is reviewable by the Administrative Appeals Tribunal (see Part 9.4A of this Act).

## Subdivision B—Registration

### 20-5 Application for registration

(1) An individual may apply to ASIC to be registered as a liquidator.

(2) The application must be lodged with ASIC in the approved form.

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

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

### 20-10 ASIC may convene a committee to consider

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

(2) The committee must consist of:
  (a) ASIC; and
  (b) a registered liquidator chosen by a prescribed body; and
  (c) a person appointed by the Minister.

Note 1: Section 50-5 sets out the knowledge and experience that a prescribed body must be satisfied a person has before making an appointment under paragraph (2)(b).

Note 2: Section 50-10 sets out the matters of which the Minister must be satisfied before making an appointment under paragraph (2)(c).

### 20-15 ASIC must refer applications to a committee

(1) ASIC must refer an application for registration as a liquidator that is properly made to a committee convened under section 20-10 for consideration.

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

### 20-20 Committee to consider applications

*Committee must consider referred applications*

(1) If an application for registration as a liquidator is referred to a committee, the committee must consider the application.

(2) For the purposes of considering the application, the committee:
  (a) must interview the applicant; and
  (b) may require the applicant to sit for an exam.

*Decision of committee*

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

(4) The committee must decide that the applicant should be registered as a liquidator if it is satisfied that the applicant:

(a) has the qualifications, experience, knowledge and abilities prescribed; and

(b) will take out:

(i) adequate and appropriate professional indemnity insurance; and

(ii) adequate and appropriate fidelity insurance;

against the liabilities that the applicant may incur working as a registered liquidator; and

(c) has not been convicted, within 10 years before making the application, of an offence involving fraud or dishonesty; and

(d) is not, and has not been within 10 years before making the application, an insolvent under administration; and

(e) has not had his or her registration as a liquidator under this Act cancelled within 10 years before making the application, other than in response to a written request by the applicant to have the registration cancelled; and

(f) has not had his or her registration as a trustee under the *Bankruptcy Act 1966* cancelled within 10 years before making the application, other than in response to a written request by the applicant to have the registration cancelled; and

(g) is not disqualified from managing corporations under Part 2D.6 of this Act, or under a law of an external Territory or a law of a foreign country; and

(h) is otherwise a fit and proper person; and

(i) is resident in Australia or in another prescribed country.

(5) The committee may decide that the applicant should be registered even if the committee is not satisfied of a matter mentioned in paragraph (4)(a),(e), (f) or (i), provided the committee is satisfied that the applicant would be suitable to be registered as a liquidator if the applicant complied with conditions specified by the committee.

*Registration may be subject to conditions*

(6) The committee may decide that the applicant's registration is to be subject to any other conditions specified by the committee.

*Spent convictions*

(7) Nothing in this section affects the operation of Part VIIC of the *Crimes Act 1914*.

Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them.

## 20-25 Committee to report

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

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

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

(c) if the committee decides under subsection 20-20(5) or (6) that the applicant should be registered subject to a condition:

(i) the condition; and

(ii) the committee's reasons for imposing the condition.

## 20-30 Registration

*Registration as liquidator*

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

(a) the committee has decided that the applicant should be registered; and

(b) the applicant has produced evidence in writing to ASIC that the applicant has taken out:

(i) adequate and appropriate professional indemnity insurance; and

(ii) adequate and appropriate fidelity insurance;

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

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

(2) ASIC registers an applicant by entering on the Register of Liquidators the details relating to the applicant prescribed for the purposes of subsection 15-1(3).

*Registration subject to current conditions*

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

*Certificate of registration*

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

(5) The certificate may be given electronically.

*Period of registration*

(6) The registration has effect for 3 years.

### 20-35 Conditions imposed on all registered liquidators or a class of registered liquidators

(1) The Insolvency Practice Rules may impose conditions on all registered liquidators, or registered liquidators of a specified class.

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

## Subdivision C—Varying etc. conditions of registration

### 20-40 Application to vary etc. conditions of registration

(1) If a committee has decided under this Schedule that a person's registration as a liquidator is to be subject to a condition, the person may apply to ASIC for the condition to be varied or removed.

(2) However, an application cannot be made:
  (a) if the person's registration as a liquidator is suspended; or
  (b) if the condition is of a prescribed kind; or
  (c) in prescribed circumstances.

(3) The application must be lodged with ASIC in the approved form.

(4) The application is properly made if:

(a) an application can be made; and
(b) subsection (3) is complied with.

(5) A single application by a registered liquidator may deal with more than one condition.

### 20-45 ASIC may convene a committee to consider applications

(1) ASIC may convene a committee for the purposes of considering an application, or applications, made under section 20-40.

(2) The committee must consist of:
(a) ASIC; and
(b) a registered liquidator chosen by a prescribed body; and
(c) a person appointed by the Minister.

Note 1: Section 50-5 sets out the knowledge and experience that a prescribed body must be satisfied a person has before making an appointment under paragraph (2)(b).

Note 2: Section 50-10 sets out the matters of which the Minister must be satisfied before making an appointment under paragraph (2)(c).

### 20-50 ASIC must refer applications to a committee

(1) ASIC must refer an application that is properly made under section 20-40 to a committee convened under section 20-45 for consideration.

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

### 20-55 Committee to consider applications

(1) If an application to vary or remove a condition of registration is referred to a committee, the committee must consider the application.

(2) Unless the applicant otherwise agrees, the committee must, for the purposes of considering the application, interview the applicant.

(3) The committee must, within 20 business days after interviewing the applicant or obtaining the agreement of the applicant as referred to in subsection (2):

(a) decide whether the condition to which the application relates should be varied or removed; and
(b) if a condition is to be varied—specify the way in which it is to be varied.

### 20-60 Committee to report

The committee must give the applicant and ASIC a report setting out:
(a) the committee's decision on the application; and
(b) the committee's reasons for that decision; and
(c) if the committee decides that a condition should be varied—the variation that is to be made.

### 20-65 Committee's decision given effect

If the committee decides that a condition imposed on a registered liquidator is to be varied or removed, the condition is varied or removed in accordance with that decision.

## Subdivision D—Renewal

### 20-70 Application for renewal

(1) An individual may apply to ASIC to have the individual's registration as a liquidator renewed.

(2) The application must be lodged with ASIC in the approved form:
(a) if the Court makes an order under subsection (3)—on or before the time specified in the order; or
(b) otherwise—before the applicant's registration as a liquidator ceases to have effect.

Note: Fees for lodging documents and late lodgement fees may be imposed under the *Corporations (Fees) Act 2001*.

(3) The Court may, on application, extend the time within which the individual may apply to ASIC to have the individual's registration as a liquidator renewed.

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

## 20-75 Renewal

*Renewal of registration*

(1) On application under section 20-70, ASIC must renew the registration of the applicant as a liquidator if:
  (a) the application is properly made; and
  (b) the applicant has produced evidence in writing to ASIC that the applicant maintains:
    (i) adequate and appropriate professional indemnity insurance; and
    (ii) adequate and appropriate fidelity insurance;
  against the liabilities that the applicant may incur working as a registered liquidator; and
  (c) the applicant has complied with any condition dealing with continuing professional education to which the applicant is subject during the applicant's current registration.

(2) ASIC renews the registration of the applicant by entering, or maintaining, on the Register of Liquidators the details relating to the applicant prescribed for the purposes of subsection 15-1(3).

*Registration subject to current conditions*

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

*Certificate of registration*

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

(5) The certificate may be given electronically.

*Period of registration*

(6) The renewed registration has effect for 3 years, beginning on the day after the person's immediately preceding registration as a liquidator ceased to have effect.

## Subdivision E—Offences relating to registration

### 20-80 False representation that a person is a registered liquidator

A person commits an offence if:

(a) the person makes a representation; and

(b) the representation is that the person is a registered liquidator; and

(c) the representation is false.

Penalty: 30 penalty units.

# Division 25—Insurance

### 25-1 Registered liquidators to maintain insurance

*Registered liquidator must maintain insurance*

(1) A registered liquidator must maintain:

(a) adequate and appropriate professional indemnity insurance; and

(b) adequate and appropriate fidelity insurance;

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

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

(a) specified circumstances;

(b) one or more specified classes of registered liquidators.

*Offence*

(3) A person commits an offence if:

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

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

Penalty: 1,000 penalty units.

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

Penalty: 60 penalty units.

## Division 30—Annual liquidator returns

### 30-1 Annual liquidator returns

*Registered liquidator must lodge annual return*

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

(2) Each of the following is a ***liquidator return year*** for a person who is or was registered as a liquidator under section 20-30:
  (a) the period of 12 months beginning on the day on which that registration first began;
  (b) each subsequent period of 12 months.

(3) A return under subsection (1) must:
  (a) be in the approved form; and
  (b) include evidence that the person has, during the whole of any period of the year during which the person was registered as a liquidator, maintained:
    (i) adequate and appropriate professional indemnity insurance; and
    (ii) adequate and appropriate fidelity insurance;
  against the liabilities that the person may incur working as a registered liquidator.

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

*Offence*

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

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

Penalty: 5 penalty units.

## Division 35—Notice requirements

### 35-1 Notice of significant events

*Registered liquidator must lodge notice*

(1) A registered liquidator must lodge with ASIC a notice, in the approved form, if any of the following events occur:
(a) the liquidator becomes an insolvent under administration;
(b) a bankruptcy notice is issued under the *Bankruptcy Act 1966* in relation to the liquidator as debtor, or a corresponding notice is issued in relation to the liquidator as debtor under a law of an external Territory or a law of a foreign country;
(c) the liquidator is convicted of an offence involving fraud or dishonesty;
(d) the liquidator is disqualified from managing corporations under Part 2D.6 of this Act, or under a law of an external Territory or a law of a foreign country;
(e) the liquidator ceases to have:
(i) adequate and appropriate professional indemnity insurance; or
(ii) adequate and appropriate fidelity insurance;
against the liabilities that the liquidator may incur working as a registered liquidator;
(f) the liquidator is issued with a notice under section 40-40 of Schedule 2 to the *Bankruptcy Act 1966* (a show-cause notice) in relation to the liquidator's registration as a trustee under that Act;
(g) the liquidator's registration as a trustee under the *Bankruptcy Act 1966* is suspended or cancelled;
(h) any other event prescribed.

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

*Offence*

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

Penalty: 100 penalty units.

## 35-5 Notice of other events

*Registered liquidator must lodge notice*

(1) A registered liquidator must lodge with ASIC a notice, in the approved form, if any of the following events occur:
  (a) information included in an annual liquidator return, an annual administration return or an end of administration return, prepared by or on behalf of the liquidator, is or becomes inaccurate in a material particular;
  (b) any other event prescribed.

The notice must be lodged within 10 business days after the registered liquidator could reasonably be expected to be aware that the event has occurred.

*Offence*

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

Penalty: 5 penalty units.

# Division 40—Disciplinary and other action

## Subdivision A—Introduction

### 40-1 Simplified outline of this Division

*Remedying failure to lodge documents or give information or documents*

ASIC may direct a registered liquidator to comply with a requirement to lodge a document, or give any information or document, to ASIC. If the liquidator fails to comply with the direction, ASIC can direct that the liquidator accept no further appointments or seek an order from the Court directing the liquidator to comply.

*Correcting and completing information given to ASIC*

If ASIC reasonably suspects that information that a registered liquidator is required to give ASIC is incomplete or inaccurate, ASIC can direct the liquidator to confirm, complete or correct the information. ASIC can also direct the liquidator to tell someone about the defect in the information. If the liquidator fails to comply with a direction, ASIC can direct that the liquidator accept no further appointments or seek an order from the Court directing the liquidator to comply.

*Other grounds for a direction not to accept further appointments*

There are other grounds on which ASIC can issue a direction not to accept further appointments, for example, if the registered liquidator fails to comply with a direction to convene a meeting.

*Suspending or cancelling registration*

An individual's registration as a liquidator can be suspended or cancelled.

The registration is automatically cancelled if the registered liquidator becomes an insolvent under administration or dies.

In some circumstances, ASIC can suspend or cancel the registration of a person as a liquidator. ASIC can also give a registered liquidator notice to show-cause why the liquidator should continue to be registered. If ASIC is not satisfied with the answer, ASIC can refer the matter to a committee which will make a decision on what action should be taken.

An industry body can give ASIC notice of possible grounds for disciplinary action.

If a registration is suspended, the liquidator can apply to ASIC to have the suspension lifted or shortened.

A decision about the suspension or cancellation of the registration of a liquidator is reviewable by the Administrative Appeals Tribunal (see Part 9.4A of this Act).

## Subdivision B—Direction to comply

### 40-5 Registered liquidator to remedy failure to lodge documents or give information or documents

*Application of this section*

(1) This section applies if a registered liquidator fails to comply with a requirement to lodge any document, or give any information or document, that the liquidator is required under this Act to lodge with or give to ASIC.

*ASIC may give direction to comply*

(2) ASIC may, in writing, direct the liquidator to comply with the requirement within 10 business days after the direction is given.

(3) ASIC may, on the application of a registered liquidator made before the end of the period referred to in subsection (2), extend, or further extend, that period.

*Consequences for failing to comply*

(4) If the liquidator does not comply within the period, ASIC may do either or both of the following:

(a) give a direction under subsection 40-15(1) (direction not to accept further appointments);
(b) apply to the Court for an order, under subsection 1274(11) (registers), section 45-1 of this Schedule or any other provision that is relevant, directing the liquidator to comply with the requirement within such time as is specified in the order.

*Direction is not a legislative instrument*

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

*Relationship with other laws*

(6) Nothing in this section limits the operation of any other provision of this Act, or any other law, in relation to a person who fails to comply with a requirement to lodge a document with, or give information or a document to, ASIC.

## 40-10 Registered liquidator to correct inaccuracies etc.

*Application of this section*

(1) This section applies if ASIC reasonably suspects that any information that a registered liquidator is required under this Act to give to ASIC (whether in a document lodged or given to ASIC or otherwise) is incomplete or incorrect in any particular.

*ASIC may give direction to correct information etc.*

(2) ASIC may, in writing, direct the liquidator to do one or more of the following within a period of 10 business days after the direction is given:
(a) confirm to ASIC that the information is complete and correct;
(b) complete or correct the information (as the case requires);
(c) notify any persons specified by ASIC in the direction of the addition or correction.

(3) ASIC may, on the application of a registered liquidator made before the end of the period referred to in subsection (2), extend, or further extend, that period.

*Consequences for failing to comply*

(4) If the liquidator does not comply within the period, ASIC may do either or both of the following:
  (a) give a direction under subsection 40-15(1) (direction not to accept further appointments);
  (b) apply to the Court for an order, under subsection 1274(11) (registers), section 45-1 of this Schedule or any other provision that is relevant, directing the liquidator to comply with the requirement within such time as is specified in the order.

*Direction is not a legislative instrument*

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

*Relationship with other laws*

(6) Nothing in this section limits the operation of any other provision of this Act, or any other law, in relation to a person giving incomplete or incorrect information.

## 40-15 Direction not to accept further appointments

*ASIC may give direction not to accept further appointments*

(1) ASIC may, in writing, direct a registered liquidator not to accept any further appointments under Chapter 5 (external administration), or not to accept any further appointments under Chapter 5 during a period specified in the direction, if:
  (a) the liquidator has failed to comply with a direction given to the liquidator under section 40-5 (direction to remedy failure to lodge documents, or give information or documents); or
  (b) the liquidator has failed to comply with a direction given to the liquidator under section 40-10 (direction to correct inaccuracies); or
  (c) a committee has decided under paragraph 40-55(1)(d) that ASIC should give the direction referred to in that paragraph; or
  (d) the liquidator has failed to comply with a direction given to the liquidator under section 70-70 (direction to give relevant material); or

(e) the liquidator has failed to comply with a direction given to the liquidator under subsection 75-20(1) or (2), or subsection 80-27(1) (direction to convene a meeting of creditors or comply with requirements in relation to such a meeting).

*Condition of registration to comply with direction*

(2) If ASIC gives a direction to a registered liquidator under subsection (1), it is a condition of the liquidator's registration that the liquidator must comply with the direction.

*Withdrawal of direction*

(3) ASIC may withdraw a direction given under subsection (1).

(4) The condition is removed from the liquidator's registration if ASIC withdraws the direction.

*Direction is not a legislative instrument*

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

*Relationship with other laws*

(6) Nothing in this section limits the operation of any other provision of this Act, or any other law, in relation to:
(a) a person who fails to comply with a requirement to lodge a document with, or give information or a document to, ASIC; or
(b) a person giving incomplete or incorrect information; or
(c) any matter in relation to which a committee makes a decision under subsection 40-55(1).

(7) Nothing in this section limits ASIC's power under this Act, or any other law, to apply to the Court for an order in relation to a failure to comply with a direction mentioned in subsection (1).

## Subdivision C—Automatic cancellation

### 40-20 Automatic cancellation

(1) The registration of a person as a liquidator is cancelled if:

(a) the person becomes an insolvent under administration; or
(b) the person dies.

(2) The cancellation takes effect on the day the event mentioned in subsection (1) happens.

## Subdivision D—ASIC may suspend or cancel registration

### 40-25 ASIC may suspend registration

(1) ASIC may suspend the registration of a person as a liquidator if:
(a) the person is disqualified from managing corporations under Part 2D.6 of this Act, or under a law of an external Territory or a law of a foreign country; or
(b) the person ceases to have:
(i) adequate and appropriate professional indemnity insurance; or
(ii) adequate and appropriate fidelity insurance;
against the liabilities that the person may incur working as a registered liquidator; or
(c) the person's registration as a trustee under the *Bankruptcy Act 1966* has been cancelled or suspended, other than in compliance with a written request by the person to cancel or suspend the registration; or
(d) if the Court has made an order under section 90-15 that the person repay remuneration—the person has failed to repay the remuneration; or
(e) the person has been convicted of an offence involving fraud or dishonesty; or
(f) the person lodges a request with ASIC in the approved form to have the registration suspended.

(2) Nothing in this section affects the operation of Part VIIC of the *Crimes Act 1914*.

Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them.

## 40-30 ASIC may cancel registration

(1) ASIC may cancel the registration of a person as a liquidator if:

(a) the person is disqualified from managing corporations under Part 2D.6 of this Act, or under a law of an external Territory or a law of a foreign country; or

(b) the person ceases to have:

(i) adequate and appropriate professional indemnity insurance; or

(ii) adequate and appropriate fidelity insurance;

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

(c) the person's registration as a trustee under the *Bankruptcy Act 1966* has been cancelled, other than in compliance with a written request by the person to cancel the registration; or

(d) if the Court has made an order under section 90-15 that the person repay remuneration—the person has failed to repay the remuneration; or

(e) the person has been convicted of an offence involving fraud or dishonesty; or

(f) the person lodges a request with ASIC in the approved form to have the registration cancelled.

(2) Nothing in this section affects the operation of Part VIIC of the *Crimes Act 1914*.

Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them.

## 40-35 Notice of suspension or cancellation

*Application of this section*

(1) This section applies if ASIC decides under section 40-25 or 40-30 to suspend or cancel the registration of a person as a liquidator.

*ASIC must give notice of decision*

(2) ASIC must, within 10 business days after making the decision, give the person a written notice setting out the decision, and the reasons for the decision.

*When decision comes into effect*

(3) The decision comes into effect on the day after the notice is given to the person.

*Failure to give notice does not affect validity of decision*

(4) A failure by ASIC 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

### 40-40 ASIC may give a show-cause notice

(1) ASIC may give a registered liquidator notice in writing asking the liquidator to give ASIC a written explanation why the liquidator should continue to be registered, if ASIC believes that:

(a) the liquidator no longer has the qualifications, experience, knowledge and abilities prescribed under paragraph 20-20(4)(a); or

(b) the liquidator has committed an act of bankruptcy, within the meaning of the *Bankruptcy Act 1966* or a corresponding law of an external Territory or a foreign country; or

(c) the liquidator is disqualified from managing corporations under Part 2D.6 of this Act, or under a law of an external Territory or a law of a foreign country; or

(d) the liquidator has ceased to have:

(i) adequate and appropriate professional indemnity insurance; or

(ii) adequate and appropriate fidelity insurance;

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

(e) the liquidator has breached a current condition imposed on the liquidator; or

(f) the liquidator has contravened a provision of this Act; or

(g) the liquidator has been appointed to act as a reviewing liquidator under Subdivision C of Division 90 of this Schedule, and has failed to properly exercise the powers or perform the duties of a reviewing liquidator; or

(h) the liquidator's registration as a trustee under the *Bankruptcy Act 1966* has been cancelled or suspended, other than in compliance with a written request by the liquidator to cancel or suspend the registration; or

(i) if the Court has made an order under section 90-15 that the liquidator repay remuneration—the liquidator has failed to repay the remuneration; or

(j) the liquidator has been convicted of an offence involving fraud or dishonesty; or

(k) the liquidator is permanently or temporarily unable to perform the functions and duties of a liquidator because of physical or mental incapacity; or

(l) the liquidator has failed to carry out adequately and properly (whether in Australia or in an external Territory or in a foreign country):

(i) the duties of a liquidator; or

(ii) any other duties or functions that a registered liquidator is required to carry out under a law of the Commonwealth or of a State or Territory, or the general law; or

(m) the liquidator is not a fit and proper person; or

(n) the liquidator is not resident in Australia or in another prescribed country.

(2) A notice under subsection (1) is not a legislative instrument.

(3) Nothing in this section affects the operation of Part VIIC of the *Crimes Act 1914*.

Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them.

### 40-45 ASIC may convene a committee

(1) ASIC may convene a committee to make a decision of a kind mentioned in section 40-55 in relation to a registered liquidator, or registered liquidators.

(2) The committee must consist of:
  (a) ASIC; and
  (b) a registered liquidator chosen by a prescribed body; and
  (c) a person appointed by the Minister.

Note 1: Section 50-5 sets out the knowledge and experience that a prescribed body must be satisfied a person has before making an appointment under paragraph (2)(b).

Note 2: Section 50-10 sets out the matters of which the Minister must be satisfied before making an appointment under paragraph (2)(c).

### 40-50 ASIC may refer matters to the committee

ASIC may refer a registered liquidator to a committee convened under section 40-45 if ASIC:
  (a) gives the liquidator a notice under section 40-40 (a show-cause notice); and
  (b) either:
    (i) does not receive an explanation within 20 business days after the notice is given; or
    (ii) is not satisfied by the explanation.

### 40-55 Decision of the committee

(1) If a registered liquidator is referred to a committee under section 40-50, the committee must decide one or more of the following:
  (a) that the liquidator should continue to be registered;
  (b) that the liquidator's registration should be suspended for a period, or until the occurrence of an event, specified in the decision;
  (c) that the liquidator's registration should be cancelled;
  (d) that ASIC should direct the liquidator not to accept any further appointments as liquidator, or not to accept any

further appointments as liquidator during the period specified in the decision;

(e) that the liquidator should be publicly admonished or reprimanded;

(f) that a condition specified in the decision should be imposed on the liquidator;

(g) that a condition should be imposed on all other registered liquidators that they must not allow the liquidator to carry out any of the functions or duties, or exercise any of the powers, of a registered liquidator on their behalf (whether as employee, agent, consultant or otherwise) for a period specified in the decision of no more than 10 years;

(h) that ASIC should publish specified information in relation to the committee's decision and the reasons for that decision.

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

(a) a condition that the liquidator engage in, or refrain from engaging in, specified conduct;

(b) a condition that the liquidator engage in, or refrain from engaging in, specified conduct except in specified circumstances;

(c) a condition that the liquidator publish specified information;

(d) a condition that the liquidator notify a specified person or class of persons of specified information;

(e) a condition that the liquidator publish a specified statement;

(f) a condition that the liquidator make a specified statement to a specified person or class of persons.

(3) In making its decision, the committee may have regard to:

(a) any information provided to the committee by ASIC; and

(b) any explanation given by the liquidator; and

(c) any other information given by the liquidator to the committee; and

(d) if the liquidator is or was also a registered trustee under the *Bankruptcy Act 1966*—any information in relation to the liquidator given to the committee by the Inspector-General in Bankruptcy or a committee convened under the Insolvency Practice Schedule (Bankruptcy); and

(e) any other matter that the committee considers relevant.

### 40-60 Committee to report

The committee must give the registered liquidator and ASIC a report setting out:

(a) the committee's decision in relation to the liquidator; and

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

(c) if the committee decides under paragraph 40-55(1)(f) that the liquidator should be registered subject to a condition:

(i) the condition; and

(ii) the committee's reasons for imposing the condition; and

(d) if the committee decides under paragraph 40-55(1)(g) that a condition should be imposed on all other registered liquidators in relation to the liquidator:

(i) the condition; and

(ii) the committee's reasons for imposing the condition.

### 40-65 ASIC must give effect to the committee's decision

ASIC must give effect to the committee's decision.

## Subdivision F—Lifting or shortening suspension

### 40-70 Application to lift or shorten suspension

*Application of this section*

(1) This section applies if a person's registration as a liquidator has been suspended.

*Suspended liquidator may apply to ASIC*

(2) The person may apply to ASIC:

(a) for the suspension to be lifted; or

(b) for the period of the suspension to be shortened.

(3) The application must be lodged with ASIC in the approved form.

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

### 40-75 ASIC may convene a committee to consider applications

(1) ASIC may convene a committee for the purposes of considering an application, or applications, made under section 40-70.

(2) The committee must consist of:
  (a) ASIC; and
  (b) a registered liquidator chosen by a prescribed body; and
  (c) a person appointed by the Minister.

Note 1: Section 50-5 sets out the knowledge and experience that a prescribed body must be satisfied a person has before making an appointment under paragraph (2)(b).

Note 2: Section 50-10 sets out the matters of which the Minister must be satisfied before making an appointment under paragraph (2)(c).

### 40-80 ASIC must refer applications to a committee

(1) ASIC must refer an application that is properly made under section 40-70 to a committee convened under section 40-75 for consideration.

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

### 40-85 Committee to consider applications

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

(2) Unless the applicant otherwise agrees, the committee must interview the applicant for the purposes of considering the application.

(3) Within 10 business days after interviewing the applicant or obtaining the agreement of the applicant as referred to in subsection (2), the committee must:
  (a) decide whether the suspension should be lifted, or the period of the suspension shortened; and
  (b) if the period of the suspension is to be shortened—specify when the suspension is to end.

### 40-90 Committee to report

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

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

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

(c) if the committee decides that the period of the suspension should be shortened—when the suspension is to end.

### 40-95 Committee's decision given effect

If the committee decides that a suspension is to be lifted or shortened, the suspension is lifted or shortened in accordance with the decision.

## Subdivision G—Action initiated by industry body

### 40-100 Notice by industry bodies of possible grounds for disciplinary action

*Industry body may lodge notice*

(1) An industry body may lodge with ASIC a notice in the approved form (an ***industry notice***):

(a) stating that the body reasonably suspects that there are grounds for ASIC:

(i) to suspend the registration of a registered liquidator under section 40-25; or

(ii) to cancel the registration of a registered liquidator under section 40-30; or

(iii) to give a registered liquidator a notice under section 40-40 (a show-cause notice); or

(iv) to impose a condition on a registered liquidator under another provision of this Schedule; and

(b) identifying the registered liquidator; and

(c) including the information and copies of any documents upon which the suspicion is founded.

*ASIC must consider information and documents*

(2) ASIC must consider the information and the copies of any documents included with the industry notice.

*ASIC must give notice if no action to be taken*

(3) If, after such consideration, ASIC decides to take no action in relation to the matters raised by the industry notice, ASIC must give the industry body written notice of that fact.

*45 business days to consider and decide*

(4) The consideration of the information and the copies of any documents included with the industry notice must be completed and, if ASIC decides to take no action, a notice under subsection (3) given, within 45 business days after the industry notice is lodged.

*ASIC not precluded from taking action*

(5) ASIC is not precluded from:

(a) suspending the registration of a registered liquidator under section 40-25; or

(b) cancelling the registration of a registered liquidator under section 40-30; or

(c) giving a registered liquidator a notice under section 40-40 (a show-cause notice); or

(d) imposing a condition on a registered liquidator under another provision of this Schedule;

wholly or partly on the basis of information or a copy of a document included with the industry notice, merely because ASIC has given a notice under subsection (3) in relation to the matters raised by the industry notice.

*Notice to industry body if ASIC takes action*

(6) If ASIC does take action of the kind mentioned in subsection (5) wholly or partly on the basis of information or a copy of a document included with the industry notice, ASIC must give the industry body notice of that fact.

*Notices are not legislative instruments*

(7) A notice under subsection (3) or (6) is not a legislative instrument.

### 40-105 No liability for notice given in good faith etc.

(1) An industry body is not liable civilly, criminally or under any administrative process for giving a notice under subsection 40-100(1) if:

(a) the body acted in good faith in giving the notice; and

(b) the suspicion that is the subject of the notice is a reasonable suspicion.

(2) A person who, in good faith, makes a decision as a result of which the industry body gives a notice under subsection 40-100(1) is not liable civilly, criminally or under any administrative process for making the decision.

(3) A person who, in good faith, gives information or a document to an industry body that is included, or a copy of which is included, in a notice under subsection 40-100(1) is not liable civilly, criminally or under any administrative process for giving the information or document.

### 40-110 Meaning of *industry bodies*

The Insolvency Practice Rules may prescribe ***industry bodies*** for the purposes of this section.

## Subdivision H—Consequences of certain disciplinary and other action

### 40-111 Appointment of another liquidator if liquidator's registration is suspended or cancelled

(1) If:

(a) the registration of a liquidator is suspended or cancelled under this Division; and

(b) the liquidator is conducting the external administration of a company at the time the registration is suspended or cancelled;

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

(2) If:

(a) a liquidator fails to renew his or her registration as a liquidator before that registration ceases to have effect; and

(b) no order has been made by the Court under subsection 20-70(3) extending the period during which the liquidator may apply for renewal; and

(c) the liquidator is conducting the external administration of a company at the time his or her registration as a liquidator ceases to have effect;

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

(3) Subsections (1) and (2) do not apply to:

(a) a liquidator appointed by the Court; or

(b) a winding up ordered by ASIC under section 489EA; or

(c) a members' voluntary winding up.

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

(4) An appointment of a registered liquidator by ASIC under subsection (1) must not be made without the written consent of the liquidator.

## Division 45—Court oversight of registered liquidators

### 45-1 Court may make orders in relation to registered liquidators

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

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

(a) on its own initiative, during proceedings before the Court; or

(b) on application under subsection (3).

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

(a) the registered liquidator;

(b) ASIC.

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

(a) whether the registered liquidator has faithfully performed, or is faithfully performing, the registered liquidator's duties; and

(b) whether an action or failure to act by the registered liquidator is in compliance with this Act and the Insolvency Practice Rules; and

(c) whether an action or failure to act by the registered liquidator is in compliance with an order of the Court; and

(d) whether any person has suffered, or is likely to suffer, loss or damage because of an action or failure to act by the registered liquidator; and

(e) the seriousness of the consequences of any action or failure to act by the registered liquidator, including the effect of that action or failure to act on public confidence in registered liquidators as a group.

(5) This section does not limit the Court's powers under any other provision of this Act, or under any other law.

### 45-5 Court may make orders about costs

(1) Without limiting section 45-1, the Court may make orders in relation to a registered liquidator that deal with the costs of a matter considered by the Court.

(2) Those orders may include an order that:

(a) the registered liquidator is personally liable for some or all of those costs; and

(b) the registered liquidator is not entitled to be reimbursed by a company or its creditors in relation to some or all of those costs.

(3) This section does not limit the Court's powers under any other provision of this Act, or under any other law.

## Division 50—Committees under this Part

### 50-1 Simplified outline of this Division

This Division sets out common rules for committees established under this Part.

If a prescribed body appoints a person to a committee, that person must have the prescribed knowledge or experience or, if no knowledge or experience is prescribed, the knowledge and experience necessary to carry out the functions to be performed. If the Minister appoints a person to a committee, that person must have knowledge or experience in a field such as business, law (including the law of corporate insolvency) or public policy relating to corporate insolvency.

A single committee may consider more than one matter. The consideration of a matter is not affected by a change in the membership of the committee. A matter may be adjourned or transferred to another committee. The Insolvency Practice Rules may prescribe procedures and make other rules for committees.

The use and disclosure of information given to a committee is restricted to listed purposes.

### 50-5 Prescribed body appointing a person to a committee

*Application of this section*

(1) This section applies if a prescribed body is to appoint a person to a committee under this Part.

*Prescribed body must only appoint a person with appropriate knowledge and experience*

(2) The prescribed body is to appoint a person as a member of the committee only if the prescribed body is satisfied that the person has:

(a) if any knowledge or experience is prescribed in relation to appointments of the kind to be made—that knowledge or experience; or

(b) if no knowledge or experience is prescribed in relation to appointments of the kind to be made—the knowledge and experience necessary to carry out the person's functions as a member of the committee if appointed.

### 50-10 Minister appointing a person to a committee

*Application of this section*

(1) This section applies if the Minister is to appoint a person to a committee under any of the following paragraphs:
(a) paragraph 20-10(2)(c);
(b) paragraph 20-45(2)(c);
(c) paragraph 40-45(2)(c);
(d) paragraph 40-75(2)(c).

*Matters of which the Minister must be satisfied before appointing*

(2) The Minister is to appoint a person as a member of the committee only if the Minister is satisfied that the person is qualified for appointment by virtue of his or her knowledge of, or experience in, one or more of the following fields:
(a) business;
(b) law, including the law relating to corporate insolvency;
(c) economics;
(d) accounting;
(e) public policy relating to corporate insolvency;
(f) administration of companies, including insolvent companies.

*Minister must not appoint member or staff member of ASIC*

(3) The Minister must not appoint:
(a) a member of ASIC (within the meaning of section 9 of the *Australian Securities and Investments Commission Act 2001*); or
(b) a staff member of ASIC;
to be a member of the committee.

*Delegation of power to appoint*

(4) The Minister may, in writing, delegate the Minister's powers to appoint a person to a committee to:
  (a) ASIC; or
  (b) a member of ASIC (within the meaning of section 9 of the *Australian Securities and Investments Commission Act 2001*); or
  (c) a staff member of ASIC who:
    (i) is an SES employee or acting SES employee; or
    (ii) is an APS employee who holds, or is acting in, an Executive Level 2 position; or
    (iii) holds, or is acting in, an office or position that is equivalent to an SES employee, or an Executive Level 2.

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

### 50-15 Single committee may consider more than one matter

A single committee may be convened under this Part to consider one or more of the following:
  (a) a matter or matters relating to one applicant for registration as a liquidator;
  (b) a matter or matters relating to more than one applicant for registration as a liquidator;
  (c) a matter or matters relating to one registered liquidator;
  (d) a matter or matters relating to more than one registered liquidator.

### 50-20 Ongoing consideration of matters by committee

If a committee is convened under this Part to consider a matter:
  (a) the committee's powers, functions and duties in relation to the matter are not affected by a change in the membership of the committee; and
  (b) the committee may adjourn its consideration of the matter, and may do so more than once; and

(c) the matter may be transferred to another committee with powers, functions and duties under this Part in relation to matters of that kind.

### 50-25 Procedure and other rules relating to committees

The Insolvency Practice Rules may provide for and in relation to:

(a) the manner in which the committees convened under this Part are to perform their functions, including:
  (i) meetings of committees; and
  (ii) the number of committee members required to constitute a quorum; and
  (iii) disclosure of interests in a matter before a committee; and
  (iv) the manner in which questions are to be decided by the committee; and
(b) the reconstitution of a committee; and
(c) the termination of the consideration of a matter by a committee, and the transfer of matters to another committee.

### 50-30 Remuneration of committee members

(1) A member of a committee convened under this Part is entitled to receive the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is entitled to receive such remuneration as the Minister determines in writing.

(2) A member is entitled to receive such allowances as the Minister determines in writing.

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

### 50-35 Committee must only use information etc. for purposes for which disclosed

*Offence*

(1) A person commits an offence if:

(a) the person is or was a member of a committee convened under this Part; and
(b) information or a document is or was disclosed to the person for the purposes of exercising powers or performing functions as a member of the committee; and
(c) the person uses or discloses the information or document.

Penalty: 50 penalty units.

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

(2) Subsection (1) does not apply if the information or document:
(a) is used or disclosed by the person for the purposes of exercising powers or performing functions as a member of the committee mentioned in subsection (1); or
(b) is disclosed:
(i) to the Inspector-General in Bankruptcy to assist the Inspector-General to exercise his or her powers or perform his or her functions under the *Bankruptcy Act 1966*; or
(ii) to a committee convened under Part 2 of the Insolvency Practice Schedule (Bankruptcy) to assist the committee to exercise its powers or perform its functions under that Part; or
(iii) to another committee convened under this Part to assist the committee to exercise its powers or perform its functions under this Part; or
(iv) to enable or assist a body prescribed for the purposes of this paragraph to perform its disciplinary function in relation to its members; or
(v) in order to enable or assist an authority or person in a State or Territory, or a foreign country, to perform or exercise a function or power that corresponds, or is analogous, to any of the committee's or ASIC's functions and powers; or
(vi) to a court or tribunal in relation to proceedings before the court or tribunal.

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

# Part 3—General rules relating to external administrations

## Division 55—Introduction

### 55-1 Simplified outline of this Part

This Part sets out requirements for conducting the external administration of a company.

The main provisions deal with:

(a) the remuneration of the external administrator; and
(b) the duties of the external administrator in handling the money and other property of the company; and
(c) conflicts of interest; and
(d) the duties of the external administrator to keep appropriate records, to report to ASIC and to give information, documents and reports to creditors, members of the company and others; and
(e) creditor and company meetings; and
(f) the creation and conduct of a committee to monitor the external administration (called a committee of inspection); and
(g) the rights of creditors to review the external administration; and
(h) the rights of creditors to remove the external administrator and appoint another; and
(i) the review of the external administration by the Court.

There are additional rules that apply to companies under external administration in Chapter 5 (for example, about appointment of external administrators) of this Act.

Companies in receivership are not covered in this Part (see generally Part 5.2 of this Act).

# Division 60—Remuneration and other benefits received by external administrators

## Subdivision A—Introduction

### 60-1 Simplified outline of this Division

*Remuneration*

The external administrator of a company is entitled to receive remuneration for necessary work properly performed by the external administrator in relation to the external administration.

The amount of remuneration will usually be set under a remuneration determination. Remuneration determinations are made by:

(a) in a members voluntary winding up—the members; and
(b) in most other cases—the creditors or the committee of inspection (if there is one).

However, if there is no remuneration determination, the external administrator will be entitled to receive a reasonable amount for the work. The maximum amount that the external administrator may receive in this way is $5,000 (exclusive of GST and indexed).

The remuneration of provisional liquidators is, in most cases, determined by the Court.

The Court may review the remuneration of the external administrator of a company and may also make orders under Division 90 about remuneration (including ordering repayment of remuneration).

*Other benefits*

The external administrator of a company must not:

(a) employ a related entity, unless certain requirements are met;
(b) purchase any assets of the company; or

(c) get any other benefits or profits from the administration.

## Subdivision B—Remuneration of external administrators—general rules

### 60-2 Application of this Subdivision

This Subdivision applies in relation to an external administrator of a company other than:

(a) a provisional liquidator; or

(b) a liquidator appointed by ASIC under section 489EC (winding up by ASIC).

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

### 60-5 External administrator's remuneration

*Remuneration in accordance with remuneration determinations*

(1) An external administrator of a company is entitled to receive remuneration for necessary work properly performed by the external administrator in relation to the external administration, in accordance with the remuneration determinations (if any) for the external administrator (see section 60-10).

*Remuneration for external administrators if no remuneration determination made*

(2) If no remuneration determination is made in relation to necessary work properly performed by the external administrator of a company in relation to the external administration, the administrator is entitled to receive reasonable remuneration for the work. However, that remuneration must not exceed the maximum default amount.

## 60-10 Remuneration determinations

*Remuneration determinations*

(1) A determination, specifying remuneration that an external administrator of a company (other than an external administrator in a members' voluntary winding up) is entitled to receive for necessary work properly performed by the external administrator in relation to the external administration, may be made:

(a) by resolution of the creditors; or

(b) if there is a committee of inspection and a determination is not made under paragraph (a)—by the committee of inspection; or

(c) if a determination is not made under paragraph (a) or (b)—by the Court.

Note: For determinations made by the Court, see also section 60-12 (matters to which the Court must have regard).

(2) A determination, specifying remuneration that an external administrator of a company in a members' voluntary winding up is entitled to receive for necessary work properly performed by the external administrator in relation to the external administration, may be made:

(a) by resolution of the company at a general meeting; or

(b) if a determination is not made under paragraph (a)—by the Court.

Note: For determinations made by the Court, see also section 60-12 (matters to which the Court must have regard).

(3) A determination under this section may specify remuneration that the external administrator is entitled to receive in either or both of the following ways:

(a) by specifying an amount of remuneration;

(b) by specifying a method for working out an amount of remuneration.

*Remuneration on a time-cost basis*

(4) If a determination under this section specifies that the external administrator is entitled to receive remuneration worked out wholly or partly on a time-cost basis, the determination must include a cap

on the amount of remuneration worked out on a time-cost basis that the external administrator is entitled to receive.

*More than one remuneration determination may be made*

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

## 60-11 Review of remuneration determinations

*Review on application*

(1) Any of the following may apply to the Court for a review of a remuneration determination for an external administrator of a company:
  (a) ASIC;
  (b) a person with a financial interest in the external administration of the company;
  (c) an officer of the company.

(2) Paragraph (1)(c) has effect despite section 198G.

Note: Section 198G deals with powers of officers etc. while a company is under external administration.

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

Note: See also section 60-12 (matters to which the Court must have regard).

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

(4) After reviewing the remuneration determination, the Court must:
  (a) affirm the remuneration determination; or
  (b) vary the remuneration determination; or
  (c) set aside the remuneration determination and substitute another remuneration determination.

*Exception*

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

### 60-12 Matters to which the Court must have regard

In making a remuneration determination under paragraph 60-10(1)(c) or (2)(b), or reviewing a remuneration determination under section 60-11, the Court must have regard to whether the remuneration is reasonable, taking into account any or all of the following matters:

(a) the extent to which the work by the external administrator was necessary and properly performed;

(b) the extent to which the work likely to be performed by the external administrator is likely to be necessary and properly performed;

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

(d) the quality of the work performed, or likely to be performed, by the external administrator;

(e) the complexity (or otherwise) of the work performed, or likely to be performed, by the external administrator;

(f) the extent (if any) to which the external administrator was, or is likely to be, required to deal with extraordinary issues;

(g) the extent (if any) to which the external administrator was, or is likely to be, required to accept a higher level of risk or responsibility than is usually the case;

(h) the value and nature of any property dealt with, or likely to be dealt with, by the external administrator;

(i) the number, attributes and conduct, or the likely number, attributes and conduct, of the creditors;

(j) if the remuneration is worked out wholly or partly on a time-cost basis—the time properly taken, or likely to be properly taken, by the external administrator in performing the work;

(k) whether the external administrator was, or is likely to be, required to deal with one or more controllers, or one or more managing controllers;

(l) if:

(i) a review has been carried out under Subdivision C of Division 90 (review by another registered liquidator) into a matter that relates to the external administration; and

(ii) the matter is, or includes, remuneration of the external administrator;

the contents of the report on the review that relate to that matter;

(m) any other relevant matters.

## 60-15 Maximum default amount

*Maximum default amount*

(1) The ***maximum default amount*** for an external administrator of a company is an amount (exclusive of GST) worked out as follows:

(a) if the external administrator is appointed in relation to the external administration of the company during the financial year beginning on 1 July 2016—$5,000;

(b) if the external administrator is appointed in relation to the external administration of the company during a financial year beginning on or after 1 July 2017—the greater of:

(i) the amount worked out by multiplying the indexation factor for the financial year (worked out under subsections (3) and (4)) by the maximum default amount for an external administrator appointed during the previous financial year; and

(ii) the amount (if any) prescribed for the purposes of this subparagraph.

*Rounding*

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

*Indexation factor*

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

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

*Changes to CPI index reference period and publication of substituted index numbers*

(5) In working out the indexation factor:

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

(b) disregard index numbers published in substitution for previously published index numbers (except where the substituted numbers are published to take account of changes in the index reference period).

*Definition—index number*

(6) In this section:

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

## Subdivision C—Remuneration of provisional liquidators

### 60-16 Remuneration of provisional liquidators

(1) A provisional liquidator is entitled to receive such remuneration, by way of percentage or otherwise, as is:

(a) determined by the Court; or

(b) if:

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

(ii) there is a committee of inspection;

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

(c) if:

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

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

determined by resolution of the creditors.

(2) Sections 60-11 and 60-12 (Court review) apply in relation to a determination mentioned in this section in the same way as they apply to a remuneration determination made under section 60-10.

## Subdivision D—Remuneration of liquidators in winding up by ASIC

### 60-17 Remuneration of liquidators in winding up by ASIC

If ASIC orders under section 489EA that a company be wound up, ASIC may determine the remuneration that the liquidator is entitled to receive.

## Subdivision E—Duties of external administrators relating to remuneration and benefits etc.

### 60-20 External administrator must not derive profit or advantage from the administration of the company

*Deriving profit or advantage from the company*

(1) An external administrator of a company must not directly or indirectly derive any profit or advantage from the external administration of the company.

*Circumstances in which profit or advantage is taken to be derived*

(2) To avoid doubt, an external administrator of a company is taken to derive a profit or advantage from the external administration of the company if:

(a) the external administrator directly or indirectly derives a profit or advantage from a transaction (including a sale or purchase) entered into for or on account of the company; or

(b) the external administrator directly or indirectly derives a profit or advantage from a creditor or member of the company; or

(c) a related entity of the external administrator directly or indirectly derives a profit or advantage from the external administration of the company.

*Exceptions*

(3) Subsection (1) does not apply to the extent that:

(a) another provision of this Act, or of another law, requires or permits the external administrator to derive the profit or advantage; or

(b) the Court gives leave to the external administrator to derive the profit or advantage.

Note: Subsection (1) would not, for example, prevent the external administrator from recovering remuneration for necessary work properly performed by the external administrator in relation to the external administration of the company, as the external administrator is permitted to do so under other provisions of this Act.

(4) Despite paragraph (2)(c), subsection (1) does not apply to the extent that:

(a) the profit or advantage arises because the external administrator employs or engages a person to provide services in connection with the external administration of the company; and

(b) the person is a related entity of the external administrator; and

(c) one of the following is satisfied:

(i) the external administrator does not know, and could not reasonably be expected to know, that the person employed or engaged is a related entity of the external administrator;

(ii) the creditors, by resolution, agree to the related entity being employed or engaged;

(iii) it is not reasonably practicable in all the circumstances to obtain the agreement, by resolution, of the creditors to the related entity being employed or engaged and the cost of employing the related entity is reasonable in all the circumstances.

(5) Subsection (1) does not apply to the extent that the profit or advantage is a payment that:

(a) is made to the external administrator by or on behalf of the Commonwealth or an agency or authority of the Commonwealth; and

(b) is of a kind prescribed.

*Offence*

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

Penalty: 50 penalty units.

Note: A defendant bears an evidential burden in relation to the matters in subsections (3), (4) and (5) (see subsection 13.3(3) of the *Criminal Code*).

*Effect of contravention of this section*

(7) A transaction or any other arrangement entered into in contravention of this section may be set aside by the Court.

## Division 65—Funds handling

### 65-1 Simplified outline of this Division

The external administrator of a company has duties to:
- (a) promptly pay all company money into an account (called an administration account); and
- (b) promptly deposit instruments such as securities with a bank; and
- (c) keep the account separate and not pay any money that is not company money into the account; and
- (d) only pay money out of the account if it is for a legitimate purpose.

The external administrator of a company may keep a single account for a group of related companies (called a pooled group).

People with a financial interest in the external administration of a company (such as creditors) may ask the Court to give directions to the external administrator about the way money and other property of the company is to be handled.

If the external administrator of a company does not comply with this Division, the external administrator may have to pay penalties, be paid less remuneration or be removed as external administrator.

## 65-5 External administrator must pay all money into an administration account

*External administrator must pay money into the administration account*

(1) The external administrator of a company must pay all money received by the external administrator on behalf of, or in relation to, the company into an administration account for the company within 5 business days after receipt.

*Exception*

(2) If the Court gives a direction that is inconsistent with subsection (1), that subsection does not apply to the extent of the inconsistency.

*Offence*

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

Penalty: 50 penalty units.

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

## 65-10 Administration accounts

(1) A bank account is an ***administration account*** for a company if:
  (a) the account is maintained in relation to the external administration of the company; and
  (b) if any requirements are prescribed in relation to the administration accounts of companies under external administration, the account complies with those requirements.

(2) A bank account is an ***administration account*** for a member of a pooled group of companies if:

(a) the account is maintained in relation to the external administration of the pooled group of companies; and

(b) if any requirements are prescribed in relation to the administration accounts of companies under external administration, the account complies with those requirements.

## 65-15 External administrator must not pay other money into the administration account

*External administrator must not pay other money into the administration account*

(1) The external administrator of a company must not pay any money into an administration account for the company if it is not received by the external administrator on behalf of, or in relation to:

(a) the company; or

(b) if the company is a member of a pooled group—another member of the pooled group.

*Exception*

(2) If the Court gives a direction that is inconsistent with subsection (1), that subsection does not apply to the extent of the inconsistency.

*Offence*

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

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

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

Penalty: 50 penalty units.

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

### 65-20 Consequences for failure to pay money into administration account

*Application of this section*

(1) This section applies if:

(a) an external administrator of a company:

(i) is subject to a requirement under subsection 65-5(1) (paying money into administration account); and

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

(b) the amount exceeds:

(i) $50; or

(ii) if another amount is prescribed—that other amount.

*Exception*

(2) Subsection (1) does not apply if, on the application of the external administrator of the company, the Court is satisfied that the external administrator had sufficient reason for failing to comply with the requirement in relation to the amount.

*External administrator must pay penalty on excess*

(3) The external administrator must, as a penalty, pay interest to the Commonwealth on the excess, worked out:

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

(b) if another rate is prescribed—at that other rate;

for the period during which the external administrator fails to comply with the requirement.

(4) The external administrator is personally liable for, and is not entitled to be reimbursed out of the property of the company in relation to, the payment of that interest.

## 65-25 Paying money out of administration account

*Money only to be paid out of administration account in accordance with this Act etc.*

(1) An external administrator of a company must not pay any money out of the administration account for the company otherwise than:
  (a) for purposes related to the external administration of the company; or
  (b) in accordance with this Act; or
  (c) in accordance with a direction of the Court.

*Offence*

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

Penalty: 50 penalty units.

## 65-40 Handling securities

*Securities must be deposited with administration account bank*

(1) An external administrator of a company must deposit in a bank:
  (a) the negotiable instruments; and
  (b) any other securities;
payable to the company or the external administrator as soon as practicable after they are received by the external administrator.

*Exception*

(2) If the Court gives a direction that is inconsistent with subsection (1), that subsection does not apply to the extent of the inconsistency.

*Offence*

(3) A person commits an offence of strict liability if:
  (a) the person is subject to a requirement under subsection (1); and

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

Penalty: 5 penalty units.

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

*Delivery of securities*

(4) The negotiable instruments or other security must be delivered out on the signed request of the external administrator.

## 65-45 Handling of money and securities—Court directions

(1) The Court may, on application, give directions regarding the payment, deposit or custody of:
(a) money; and
(b) negotiable instruments and other securities;
that are payable to, or held by, an external administrator of a company.

(2) The Court may, on application, give directions authorising the external administrator of a company to make payments into and out of a special bank account.

(3) Without limiting subsection (2), the Court may:
(a) authorise the payments for the time and on the terms it thinks fit; and
(b) if the Court thinks the account is no longer required—at any time order it to be closed.

(4) A copy of an order under paragraph (3)(b) must be served by the external administrator on the bank with which the special bank account was opened.

(5) An application under this section may be made by:
(a) any person with a financial interest in the external administration of the company; or
(b) an officer of the company.

(6) Paragraph (5)(b) has effect despite section 198G.

Note: Section 198G deals with powers of officers etc. while a company is under external administration.

### 65-50 Rules in relation to consequences for failure to comply with this Division

The Insolvency Practice Rules may provide for and in relation to:

(a) the payment by an external administrator of a company of interest at such rate, on such amount and in respect of such period as is prescribed; and

(b) disallowance of all or of such part as is prescribed of the remuneration of an external administrator of a company; and

(c) the removal from office of an external administrator of a company by the Court; and

(d) the payment by an external administrator of a company of any expenses occasioned by reason of his or her default;

in cases where an external administrator contravenes or fails to comply with this Division (including Insolvency Practice Rules made under this Division).

## Division 70—Information

## Subdivision A—Introduction

### 70-1 Simplified outline of this Division

The external administrator of a company must:

(a) give annual reports of the administration (called annual administrative returns) to ASIC; and

(b) give a report of the administration to ASIC when the administration ends; and

(c) keep books of meetings and other company affairs; and

(d) allow those books to be audited if required to do so; and

(e) allow access to those books by creditors; and

(f) give creditors, members and others requested information, documents and reports relating to the administration.

The committee of inspection (if there is one) may also request information, documents and reports from the external administrator under Division 80.

If the external administrator does not comply with a request, ASIC may direct the external administrator to do so. If the external administrator does not comply with the direction, ASIC may ask the Court to order compliance. Alternatively, the person who requested the information may ask the Court to order compliance with the request.

## Subdivision B—Administration returns

### 70-5 Annual administration return

*Application of this section*

(1) This section applies if a person is the external administrator of a company during all or part of an administration return year for the external administrator for the company.

(2) However, this section does not apply if:
  (a) the external administration of the company ends during the administration return year; and
  (b) the person is the external administrator of the company when the external administration of the company ends.

Note: If a person is the external administrator of a company when the external administration of the company ends, the person must instead lodge a return under section 70-6.

*Annual administration return to be lodged*

(3) The person must lodge a return in relation to the external administration of the company by the person during the year or part of the year (as the case requires).

(4) The return must:
  (a) be in the approved form; and
  (b) be lodged with ASIC within 3 months after the end of the year.

Note: Fees for lodging documents and late lodgement fees may be imposed under the *Corporations (Fees) Act 2001*.

*Meaning of **administration return year***

(5) Each of the following is an ***administration return year*** for an external administrator for a company:

(a) the period of 12 months beginning on the day on which the person first began to be an external administrator of the company;

(b) each subsequent period of 12 months.

*Notice of lodgement to be given*

(6) The person must give notice that the return has been lodged:

(a) in a members' voluntary winding up—to the members of the company; and

(b) in a creditors' voluntary winding up—to the creditors; and

(c) in a court-ordered winding up—to the creditors; and

(d) if the external administrator is appointed as a provisional liquidator—to the Court; and

(e) if the company is under administration or has executed a deed of company arrangement—to the company;

when next forwarding any report, notice of meeting, notice of call or dividend.

Note: For notification, see section 600G.

*Returns for pooled groups*

(7) If 2 or more companies are members of a pooled group, then the returns under subsection (3) for those companies may be set out in the same document.

## 70-6 End of administration return

*Application of this section*

(1) This section applies if the external administration of a company ends.

*End of administration return to be lodged*

(2) The person who is the external administrator of the company when the external administration of the company ends (the ***last external***

***administrator***) must lodge a return in relation to the external administration of the company.

(3) The return must:
  (a) be in the approved form; and
  (b) be lodged with ASIC within 1 month after the end of the external administration of the company.

Note 1: Fees for lodging documents and late lodgement fees may be imposed under the *Corporations (Fees) Act 2001*.

Note 2: ASIC must deregister the company 3 months after the end of administration return is lodged (see section 509).

*Notice of lodgement to be given*

(4) The last external administrator must give notice that the return has been lodged to a person mentioned in subsection (6), if that person requests in writing that the last external administrator give the person such a notice.

Note: For notification, see section 600G.

(5) The persons who may request such a notice are:
  (a) in a members' voluntary winding up—the members of the company; and
  (b) in a creditors' voluntary winding up—the creditors; and
  (c) in a court-ordered winding up—the creditors; and
  (d) if the external administrator is appointed as a provisional liquidator—the Court; and
  (e) if the company is under administration or has executed a deed of company arrangement—the company.

Note: For notification, see section 600G.

*Returns for pooled groups*

(6) If 2 or more companies are members of a pooled group, then the returns under subsection (2) for those companies may be set out in the same document.

## Subdivision C—Record-keeping

### 70-10 Administration books

*External administrator must keep proper books*

(1) An external administrator of a company must keep proper books in which the external administrator must cause to be made:
  (a) entries or minutes of proceedings at meetings relating to the external administration of the company; and
  (b) such other entries as are necessary to give a complete and correct record of the external administrator's administration of the company's affairs.

(2) The external administrator must:
  (a) ensure that the books are available at the external administrator's office for inspection; and
  (b) permit a creditor or contributory, or another person acting on the creditor's or contributory's behalf, to inspect the books at all reasonable times.

*Exception*

(3) Subsections (1) and (2) do not apply if the external administrator has a reasonable excuse.

*Offence*

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

Penalty: 5 penalty units.

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

## 70-15 Audit of administration books—ASIC

*ASIC may cause books to be audited*

(1) ASIC may cause the books referred to in section 70-5 (annual administration return), 70-6 (end of administration return) or 70-10 (administration books) to be audited by a registered company auditor.

*Audit on the ASIC's initiative or on request*

(2) The audit may be conducted:
  (a) on ASIC's own initiative; or
  (b) at the request of the company; or
  (c) at the request of a creditor; or
  (d) at the request of any other person prescribed.

*Auditor must prepare a report*

(3) The auditor must prepare a report on the audit.

*ASIC must give a copy of the report*

(4) If ASIC causes books to be audited under subsection (1):
  (a) ASIC must give a copy of the report prepared by the auditor to:
    (i) the external administrator of the company; and
    (ii) the person who requested the report (if any); and
  (b) subsection 1289(5) applies in relation to the report prepared by the auditor as if it were a document required to be lodged.

*Costs of an audit*

(5) The costs of an audit under this section must be determined by ASIC and form part of the expenses of the external administration of the company.

## 70-20 Audit of administration books—on order of the Court

(1) The Court may order that an audit of the books referred to in section 70-5 (annual administration return), 70-6 (end of

administration return) or 70-10 (administration books) be conducted by a registered company auditor.

(2) The order may be made on application of:
  (a) any person with a financial interest in the external administration of the company; or
  (b) an officer of the company.

(3) Paragraph (2)(b) has effect despite section 198G.

Note: Section 198G deals with powers of officers etc. while a company under external administration.

(4) The Court may make such orders in relation to the audit as it thinks fit, including:
  (a) the preparation and provision of a report on the audit; and
  (b) orders as to the costs of the audit.

## 70-25 External administrator to comply with auditor requirements

*Application of this section*

(1) This section applies if books are audited under section 70-15 or 70-20.

*External administrator must give assistance etc.*

(2) The external administrator must give the auditor such books, information and assistance as the auditor reasonably requires.

*Exception*

(3) Subsection (2) does not apply if the external administrator has a reasonable excuse.

*Offence*

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

Penalty: 5 penalty units.

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

## 70-30 Transfer of books to new administrator

*Application of this section*

(1) This section applies if:
  (a) a person (the ***former administrator***) ceases to be the external administrator of a company; and
  (b) ASIC has not issued a notice to the former administrator under section 70-31; and
  (c) a registered liquidator (the ***new administrator***) is appointed as external administrator of the company instead.

*Transfer of books to new administrator*

(2) The former administrator must transfer to the new administrator, within the handover period, possession or control of any books relating to the external administration of the company that are in the former administrator's possession or control.

(3) The ***handover period*** is:
  (a) the period of 10 business days beginning on the day after the new administrator is appointed; or
  (b) if another period is agreed between the former administrator and the new administrator—that other period.

(4) The former administrator may take a copy of any part of the books before transferring possession or control of them to the new administrator.

*New administrator must accept the books*

(5) The new administrator must take possession or accept control of any books relating to the external administration of the company.

*New administrator must allow inspection etc.*

(6) After possession or control of the books is transferred, the new administrator must allow the former administrator to inspect them at any reasonable time and take a copy of any part of the books.

*Offence*

(7) A person commits an offence if:
  (a) the person is subject to a requirement under subsection (2), (5) or (6); and
  (b) the person intentionally or recklessly fails to comply with the requirement.

Penalty: 50 penalty units.

*Lien against books not prejudiced*

(8) If the new administrator is entitled to take possession or control of the books under this section:
  (a) a person is not entitled, as against the new administrator, to claim a lien on the books; and
  (b) such a lien is not otherwise prejudiced.

## 70-31 Transfer of books to ASIC etc.

*Transfer of books to ASIC*

(1) If a person ceases to be the external administrator of a company, ASIC may, by written notice given to the person, require the person to:
  (a) if the person has books relating to the external administration of the company in his or her possession or control—transfer possession or control of those books to ASIC within the period specified in the notice; or
  (b) otherwise—notify ASIC, within the period and in the manner specified in the notice, that the person does not have books relating to the external administration of the company in the person's possession or control.

*Offence*

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

Penalty: 50 penalty units.

*ASIC must transfer books to new external administrator*

(3) If:

(a) possession or control of books relating to an external administration of a company is transferred to ASIC under this section; and

(b) the books are in ASIC's possession or control; and

(c) a person (the ***new administrator***) is or becomes the external administrator of the company;

ASIC must, as soon as practicable, transfer possession or control of those books to the new administrator.

*ASIC must transfer books to company*

(4) If:

(a) possession or control of books relating to a company is transferred to ASIC under this section; and

(b) the books are in ASIC's possession or control; and

(c) the company ceases to be a company under external administration;

ASIC must, as soon as practicable, transfer possession or control of those books to the company.

*Lien against books not prejudiced*

(5) If ASIC is entitled to take possession or control of the books under this section:

(a) a person is not entitled, as against ASIC, to claim a lien on the books; and

(b) such a lien is not otherwise prejudiced.

(6) If ASIC is required to give possession or control of the books to the new administrator under this section:

(a) a person is not entitled, as against the new administrator, to claim a lien on the books; and

(b) such a lien is not otherwise prejudiced.

*Notice is not a legislative instrument*

(7) A notice under subsection (1) is not a legislative instrument.

*Retention period for books*

(8) ASIC must retain all books of the company, and of the external administration of the company:
  (a) that are relevant to affairs of the company; and
  (b) possession or control of which is transferred to ASIC under this section; and
  (c) possession or control of which is not transferred to another entity under this section, or under any other law;

for a period (the ***retention period***) of 2 years after the end of the external administration of the company.

*Destruction of books at end of retention period*

(9) ASIC may destroy the books at the end of the retention period.

*Relationship with other laws*

(10) Subsections (8) and (9) do not apply to the extent that ASIC is under an obligation to retain the books, or a part of the books, under another provision of this Act or under any other law.

## 70-35 Retention and destruction of books

*Retention period for books*

(1) The last external administrator of a company must retain all books of the company, and of the external administration of the company, that:
  (a) are relevant to affairs of the company; and
  (b) are in the external administrator's possession or control at the end of the external administration;

for a period (the ***retention period***) of 5 years from the end of the external administration.

*Exception—reasonable excuse*

(2) Subsection (1) does not apply if the external administrator has a reasonable excuse.

*Exception—consent of ASIC etc.*

(3) Despite subsection (1), the books may be destroyed within the retention period:

(a) in the case of a members' voluntary winding up—as the company by resolution directs; and

(b) in the case of a creditor's voluntary winding up or a court-ordered winding up:

(i) if there is a committee of inspection—as the committee directs; and

(ii) otherwise—as the creditors by resolution direct; and

(c) if the external administrator is appointed as a provisional liquidator—as the Court directs;

if ASIC consents to the destruction.

*Destruction of books at end of retention period*

(4) The external administrator may destroy the books at the end of the retention period.

*Offence*

(5) A person commits an offence if:

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

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

Penalty: 50 penalty units.

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*).

*Relationship with other laws*

(6) Subsections (3) and (4) do not apply to the extent that the external administrator is under an obligation to retain the books, or a part of

the books, under another provision of this Act or under any other law.

### 70-36 Books of company in external administration—evidence

If a company is in external administration, all books of the company, and of the external administrator of the company, that are relevant to affairs of the company at or after the start of the external administration are, as between the contributories of the company, prima facie evidence of the truth of all matters purporting to be recorded in those books.

## Subdivision D—Giving information etc. to creditors and others

### 70-40 Right of creditors to request information etc. from external administrator

(1) The creditors may by resolution request the external administrator of a company to:
  (a) give information; or
  (b) provide a report; or
  (c) produce a document;
to the creditors.

(2) The external administrator must comply with the request unless:
  (a) the information, report or document is not relevant to the external administration of the company; or
  (b) the external administrator would breach his or her duties in relation to the external administration of the company if the external administrator complied with the request; or
  (c) it is otherwise not reasonable for the external administrator to comply with the request.

(3) The Insolvency Practice Rules may prescribe circumstances in which it is, or is not, reasonable for an external administrator of a company to comply with a request of a kind mentioned in subsection (1).

### 70-45 Right of individual creditor to request information etc. from external administrator

(1) A creditor may request the external administrator of a company to:
  (a) give information; or
  (b) provide a report; or
  (c) produce a document;
to the creditor.

(2) The external administrator must comply with the request unless:
  (a) the information, report or document is not relevant to the external administration of the company; or
  (b) the external administrator would breach his or her duties in relation to the external administration of the company if the external administrator complied with the request; or
  (c) it is otherwise not reasonable for the external administrator to comply with the request.

(3) The Insolvency Practice Rules may prescribe circumstances in which it is, or is not, reasonable for an external administrator of a company to comply with a request of a kind mentioned in subsection (1).

### 70-46 Right of members to request information etc. from external administrator in a members' voluntary winding up

(1) This section applies in relation to a members' voluntary winding up.

(2) The members of the company may by resolution request the external administrator of the company to:
  (a) give information; or
  (b) provide a report; or
  (c) produce a document;
to the members.

(3) The external administrator must comply with the request unless:
  (a) the information, report or document is not relevant to the external administration of the company; or

(b) the external administrator would breach his or her duties in relation to the external administration of the company if the external administrator complied with the request; or

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

(4) The Insolvency Practice Rules may prescribe circumstances in which it is, or is not, reasonable for an external administrator of a company to comply with a request of a kind mentioned in subsection (2).

### 70-47 Right of individual member to request information etc. from external administrator in a members' voluntary winding up

(1) This section applies in relation to a members' voluntary winding up.

(2) A member of the company may request the external administrator of a company to:

(a) give information; or

(b) provide a report; or

(c) produce a document;

to the member.

(3) The external administrator must comply with the request unless:

(a) the information, report or document is not relevant to the external administration of the company; or

(b) the external administrator would breach his or her duties in relation to the external administration of the company if the external administrator complied with the request; or

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

(4) The Insolvency Practice Rules may prescribe circumstances in which it is, or is not, reasonable for an external administrator of a company to comply with a request of a kind mentioned in subsection (2).

### 70-50 Reporting to creditors and members

(1) The Insolvency Practice Rules may provide for and in relation to the obligations of external administrators of companies:
  (a) to give information; and
  (b) to provide reports; and
  (c) to produce documents;
to creditors or members.

(2) Without limiting subsection (1), the Insolvency Practice Rules may provide for and in relation to:
  (a) other circumstances in which the external administrator of a company must give information, provide a report or produce a document to a creditor or member; and
  (b) the manner and form in which information is to be given, a report provided or a document produced; and
  (c) the timeframes in which information is to be given, a report provided or a document produced; and
  (d) who is to bear the cost of giving information, providing a report or producing a document.

(3) The Insolvency Practice Rules may:
  (a) make different provision in relation to different kinds of external administration; and
  (b) provide that specified requirements imposed under the Insolvency Practice Rules may be replaced or modified, by resolution, by:
    (i) the creditors; or
    (ii) the members; or
    (iii) if there is a committee of inspection—the committee.

## Subdivision E—Other requests for information etc.

### 70-55 Commonwealth may request information etc.

*Application of this section*

(1) This section applies if either:
  (a) a former employee of a company under external administration has made a claim for financial assistance from

the Commonwealth in relation to unpaid employment entitlements; or

(b) the Commonwealth considers that such a claim is likely to be made.

*Commonwealth may request information etc.*

(2) The Commonwealth may request the external administrator of the company to provide specified information, reports or documents in relation to the external administration.

(3) The external administrator must comply with the request.

(4) The Insolvency Practice Rules may provide for and in relation to who is to bear the cost of providing the information, reports or documents.

## Subdivision F—Reporting to ASIC

### 70-60 Insolvency Practice Rules may provide for reporting to ASIC

(1) The Insolvency Practice Rules may provide for and in relation to the obligations of an external administrator of a company:

(a) to give information; and

(b) to provide reports; and

(c) to produce documents;

to ASIC.

(2) Without limiting subsection (1), the Insolvency Practice Rules may provide for and in relation to:

(a) the manner and form in which information is to be given, a report provided or a document produced; and

(b) the timeframes in which information is to be given, a report provided or a document produced; and

(c) who is to bear the cost of giving information, providing a report or producing a document.

(3) The Insolvency Practice Rules may make different provision in relation to different kinds of external administration.

Note: A failure to give information, provide a report or produce a document to ASIC in accordance with the Insolvency Practice Rules may lead to

disciplinary action under Subdivision B of Division 40 of Part 2 of this Schedule.

## Subdivision G—External administrator may be compelled to comply with requests for information etc.

### 70-65 Application of this Subdivision

(1) This Subdivision applies if the external administrator of a company refuses a request made by a person under:

(a) Subdivision D; or

(b) a rule made under section 70-50;

(c) Subdivision E; or

(d) section 80-40;

to give information, provide a report or produce a document.

(2) In this Subdivision:

(a) the information, report or document is referred to as the ***relevant material***; and

(b) the request is referred to as the ***request for relevant material***; and

(c) giving the information, providing the report or producing the document is referred to as ***giving*** the relevant material.

### 70-70 ASIC may direct external administrator to comply with the request for relevant material

(1) ASIC may, in writing, direct the external administrator to give all or part of the relevant material to the person or persons who made the request for the relevant material within 5 business days after the direction is given.

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

### 70-75 ASIC must notify external administrator before giving a direction under section 70-70

(1) Before giving the external administrator a direction under section 70-70, ASIC must give the external administrator notice in writing:

(a) stating that ASIC proposes to give the external administrator a direction under that section; and

(b) identifying:

(i) the relevant material, or the part of the relevant material, that ASIC proposes to direct be given; and

(ii) the person or persons to whom ASIC proposes to direct that the relevant material, or that part of the relevant material, be given; and

(c) inviting the external administrator to make a written submission to ASIC within 10 business days after the notice is given, stating:

(i) whether the external administrator has any objection to giving the relevant material, or that part of the relevant material, to a person or persons as proposed; and

(ii) if the external administrator has such an objection—the reasons for that objection.

(2) If the external administrator objects to giving the relevant material, or part of the relevant material, to a person, ASIC must take into account the reasons for that objection when deciding whether to direct that the relevant material, or that part of the relevant material, be given to the person.

(3) A notice under subsection (1) is not a legislative instrument.

### 70-80 ASIC must not direct external administrator to give the relevant material if external administrator entitled not to comply with the request

ASIC must not give a direction under section 70-70 to give the relevant material, or part of the relevant material, to a person if ASIC is satisfied that the external administrator was entitled, under a provision of this Act or any other law, not to comply with the request for the relevant material, or that part of the relevant material, to the person.

## 70-85 ASIC may impose conditions on use of the relevant material

*ASIC may, by notice, impose conditions*

(1) ASIC may, by notice in writing to the person or persons to whom the relevant material is to be given, impose conditions on the use and disclosure of the relevant material, or part of the relevant material, by the person or persons.

*Offence*

(2) A person commits an offence if:
  (a) ASIC directs that the relevant material, or part of the relevant material, be given to the person; and
  (b) ASIC has given the person notice under subsection (1) imposing a condition in relation to the use or disclosure of that material by the person; and
  (c) the person does not comply with the condition.

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

*Notice is not a legislative instrument*

(3) A notice under subsection (1) is not a legislative instrument.

## 70-90 Court may order relevant material to be given

(1) The person or persons who made the request for the relevant material may apply to the Court for an order that the external administrator give the person or persons all or part of the relevant material.

(2) If:
  (a) ASIC gives the external administrator a direction under section 70-70 in relation to all or part of the relevant material; and
  (b) the external administrator does not comply with the direction;

ASIC may apply to the Court for an order that the external administrator comply with the direction.

(3) On application under subsection (1) or (2), the Court may:

(a) order the external administrator to give the person, or any or all of the persons, who made the request for the relevant material all or part of that material; and
(b) make such other orders, including orders as to costs, as it thinks fit.

## Division 75—Meetings

### 75-1 Simplified outline of this Division

The external administrator of a company may convene creditor or company meetings at any time and must convene them in particular circumstances, for example when directed to do so by certain creditors or by ASIC.

Under Chapter 5 of this Act, there are other instances in which an external administrator must hold a meeting.

Requirements for convening and holding meetings (including notice, agenda, quorum, voting on proposals and costs) are set out in the Insolvency Practice Rules.

There is a mechanism for resolving a matter without holding a meeting.

### 75-5 Other obligations to convene meetings not affected

Nothing in this Division limits the operation of any other provision of this Act, or any other law, imposing an obligation to convene a meeting in relation to a company, or the external administration of a company.

### 75-10 External administrator may convene meetings

The external administrator of a company may convene:
(a) a meeting of the creditors; or
(b) in the case of a members' voluntary winding up—a general meeting of the company;
at any time.

### 75-15 External administrator must convene meeting in certain circumstances

(1) The external administrator of a company must convene a meeting of the creditors if:

(a) where there is a committee of inspection—the committee of inspection directs the external administrator to do so; or

(b) the creditors direct the external administrator to do so by resolution; or

(c) at least 25% in value of the creditors direct the external administrator to do so in writing; or

(d) both of the following are satisfied:

(i) less than 25%, but more than 10%, in value of the creditors direct the external administrator to do so in writing;

(ii) security for the cost of holding the meeting is given to the external administrator before the meeting is convened; or

(e) all of the following are satisfied:

(i) the company is being wound up under a creditors' voluntary winding up;

(ii) less than 25%, but more than 5%, in value of the creditors direct the external administrator to do so in writing;

(iii) none of the creditors who give the direction is a related entity in relation to the company;

(iv) the direction is given no more than 20 business days after the resolution for the voluntary winding up of the company is passed.

(2) However, the external administrator need not comply with the direction if the direction is not reasonable.

(3) The Insolvency Practice Rules may prescribe circumstances in which a direction is, or is not, reasonable.

(4) For the purposes of paragraphs (1)(c), (d) and (e), the value of the creditors is to be worked out by reference to the value of the creditors' claims against the company that are known at the time the direction is given.

(5) This section does not apply if:
  (a) the external administrator is a provisional liquidator of the company; or
  (b) the external administrator is the administrator of the company and the company is under administration.

### 75-20 External administrator must convene meeting if required by ASIC

(1) ASIC may, in writing, direct an external administrator of a company to convene a meeting of the creditors.

(2) ASIC may include in the direction requirements to be complied with by the external administrator in notifying the creditors of the meeting and in conducting the meeting.

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

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

### 75-25 External administrator's representative at meetings

(1) The external administrator of a company may, in writing, appoint a person to represent the external administrator at a meeting.

(2) Subsection (1) does not apply to a meeting of a kind prescribed.

(3) If the external administrator is not personally present at a meeting, then a reference in a provision of this Act to the external administrator of a company, in respect of matters occurring at or in connection with the meeting, is a reference to a person appointed to represent the external administrator at the meeting.

### 75-30 ASIC may attend meetings

(1) ASIC is entitled to attend any meeting of creditors or contributories held under this Act.

(2) Subject to any provision of this Act (including any provision in relation to voting), ASIC is entitled to participate in any meeting of creditors held under this Act.

### 75-35 Commonwealth may attend certain meetings etc.

*Application of this section*

(1) This section applies if:
  (a) a company is under external administration; and
  (b) either:
    (i) a former employee of the company has made a claim for financial assistance from the Commonwealth in relation to unpaid employment entitlements; or
    (ii) the Commonwealth considers that such a claim is likely to be made.

*Commonwealth may nominate representative for meetings*

(2) The Commonwealth is entitled to nominate a representative to attend any meeting of creditors or contributories held in relation to the external administration.

### 75-40 Proposals to creditors or contributories without meeting

*Proposal by notice to creditors*

(1) The external administrator of a company may at any time put a proposal to the creditors or contributories by giving notice, in writing, under this section.

*Content and service of notice*

(2) The notice must:
  (a) contain a single proposal; and
  (b) include a statement of the reasons for the proposal and the likely impact it will have on creditors or contributories, as the case may be (if it is passed); and
  (c) be given to each creditor or contributory, as the case may be, who would be entitled to receive notice of a meeting of creditors or contributories, as the case may be; and

(d) invite the creditor or contributory, as the case may be, to either:
  (i) vote Yes or No on the proposal; or
  (ii) object to the proposal being resolved without a meeting of creditors or contributories, as the case may be; and
(e) specify a reasonable time by which replies must be received by the external administrator (in order to be taken into account).

*Evidentiary certificate relating to proposals*

(3) A certificate signed by the external administrator of the company stating any matter relating to a proposal under this section is prima facie evidence of the matter.

*Insolvency Practice Rules relating to proposals*

(4) The Insolvency Practice Rules may provide for and in relation to proposals without meeting under this section.

(5) Without limiting subsection (4), the Insolvency Practice Rules may provide for and in relation to:
(a) the circumstances in which a proposal is taken to be passed; and
(b) whether a proposal, if passed, is to be taken to have been passed as a resolution or a special resolution; and
(c) costs and security for those costs in relation to a proposal.

## 75-41 Outcome of voting at creditors' meeting determined by related entity—Court powers

*Application of this section*

(1) This section applies if, on the application of a creditor of a company under external administration, the external administrator of the company or ASIC, the Court is satisfied of the following matters:
(a) a proposal has been voted on by creditors (either at a meeting of the creditors or under section 75-40 without a meeting);
(b) if the vote or votes that a particular related creditor, or particular related creditors, of the company cast on the

proposal had been disregarded for the purposes of determining whether or not the proposal was passed, the proposal:

(i) if it was in fact passed—would not have been passed; or

(ii) if in fact it was not passed—would have been passed;

or the question would have had to be decided on a casting vote;

(c) the passing of the proposal, or the failure to pass it, as the case requires:

(i) is contrary to the interests of the creditors as a group or of that class of creditors as a group, as the case may be; or

(ii) has prejudiced, or is reasonably likely to prejudice, the interests of the creditors who voted against the proposal, or for it, as the case may be, to an extent that is unreasonable having regard to the matters in subsection (2).

*Unreasonable prejudice to interests of creditors—matters to be taken into account*

(2) For the purposes of subparagraph (1)(c)(ii), the matters are:

(a) the benefits resulting to the related creditor, or to some or all of the related creditors, from the proposal if passed, or from the failure to pass the proposal, as the case may be; and

(b) the nature of the relationship between the related creditor and the company, or of the respective relationships between the related creditors and the company; and

(c) any other relevant matter.

*Court may make orders*

(3) The Court may make one or more of the following:

(a) an order that the proposal be considered and voted on at a meeting of the creditors convened and held as specified in the order;

(b) an order directing that the related creditor is not, or such of the related creditors as the order specifies are not, entitled to vote on:

(i) the proposal; or

(ii) a resolution to amend or vary the proposal;

(c) if the proposal was passed—an order setting aside the resolution passing the proposal;

(d) such other orders as the Court thinks fit.

*Definition—related creditor*

(4) In this section:

***related creditor***, for the purposes of a vote, in relation to a company, means a person who, when the vote was cast, was a related entity, and a creditor, of the company.

## 75-42 Creditors' resolution passed because of casting vote—Court review

*Application of this section*

(1) This section applies if:

(a) a resolution is passed at a meeting of creditors of a company under external administration; and

(b) the resolution is passed because the person presiding at the meeting exercises a casting vote.

*Application to the Court*

(2) ASIC may apply to the Court for an order setting aside or varying the resolution.

(3) A person (other than ASIC) may apply to the Court for an order setting aside or varying the resolution, but only if:

(a) the person voted against the resolution in some capacity (even if the person voted for the resolution in another capacity); or

(b) a person voted against the resolution on the first-mentioned person's behalf.

*Court may make orders*

(4) On application under subsection (2) or (3), the Court may:

(a) by order set aside or vary the resolution; and

(b) if it does so—make such further orders, and give such directions, as it thinks fit.

(5) On and after the making of an order varying the resolution, the resolution has effect as varied by the order.

### 75-43 Proposed creditors' resolution not passed because of casting vote—Court's powers

*Application of this section*

(1) This section applies if:
(a) a resolution is not passed at a meeting of creditors of a company under external administration; and
(b) the resolution is not passed because the person presiding at the meeting exercises a casting vote, or refuses or fails to exercise such a vote.

*Application to the Court*

(2) ASIC may apply to the Court for an order under subsection (4).

(3) A person (other than ASIC) may apply to the Court for an order under subsection (4), but only if:
(a) the person voted for the proposed resolution in some capacity (even if the person voted against the proposed resolution in another capacity); or
(b) a person voted for the proposed resolution on the first-mentioned person's behalf.

*Court may make orders*

(4) On application under subsection (2) or (3), the Court may:
(a) order that the proposed resolution is taken to have been passed at the meeting; and
(b) if it does so—make such further orders, and give such directions, as it thinks fit.

(5) If an order is made under paragraph (4)(a), the proposed resolution:
(a) is taken for all purposes (other than those of subsection (1)) to have been passed at the meeting; and
(b) is taken to have taken effect:

(i) if the order specifies a time when the proposed resolution is taken to have taken effect—at that time, even if it is earlier than the making of the order; or

(ii) otherwise—on the making of the order.

### 75-44 Interim order on application under section 75-41, 75-42 or 75-43

(1) If:

(a) an application under section 75-41, 75-42 or 75-43 has not yet been determined; and

(b) the Court is of the opinion that it is desirable to do so;

the Court may make such interim orders as it thinks fit

(2) An interim order must be expressed to apply until the application is determined, but may be varied or discharged.

### 75-45 Order under section 75-41 or 75-42 does not affect act already done pursuant to resolution

An act done pursuant to a resolution as in force before the making, under section 75-41 or 75-42, of an order setting aside or varying the resolution is as valid and binding on and after the making of the order as if the order had not been made.

### 75-50 Rules relating to meetings

(1) The Insolvency Practice Rules may provide for and in relation to meetings concerning companies under external administration.

(2) Without limiting subsection (1), the Insolvency Practice Rules may provide for and in relation to:

(a) the circumstances in which meetings must or may be convened; and

(b) notice for convening meetings; and

(c) agenda; and

(d) information to be given in connection with meetings; and

(e) who is to preside at meetings; and

(f) the number of creditors or contributories required to constitute a quorum; and

(g) proxies and attorneys; and
(h) motions; and
(i) voting (including casting votes); and
(j) the circumstances in which a resolution must or may be put to creditors or contributories in a meeting; and
(k) the circumstances in which a resolution or a special resolution put to creditors or contributories in a meeting is passed; and
(l) facilities, including electronic communication facilities, to be available at meetings; and
(m) minutes; and
(n) costs in relation to meetings and security for those costs.

## Division 80—Committees of inspection

### 80-1 Simplified outline of this Division

Creditors of a company under external administration may decide that there is to be a committee of inspection to monitor the administration and to give assistance to the external administrator.

*Appointing the committee*

Each of the following have rights to appoint members to the committee (and to remove those members and fill the vacancy):

(a) the creditors by resolution;
(b) a single creditor who is owed, or a group of creditors who together are owed, a large amount;
(c) a single employee who is owed, or a group of employees who together are owed, a large amount.

Once a person exercises a right in one capacity to appoint a member, the person cannot exercise a right in another capacity to do so. A person can exercise the right in a particular capacity to appoint only one person (unless the person is filling a vacancy in that appointment).

If a company is in a related group of companies (called a pooled group), creditors of all the companies may decide together that

there is to be a committee of inspection for the group and appoint members of the committee.

*Procedures and powers*

This Division also deals with the procedures and powers of committees of inspection (including requesting information, documents and reports from the external administrator and obtaining specialist advice).

An external administrator of a company must have regard to directions of the committee but is not obliged to comply.

*Review*

The Court may inquire into and make orders about the conduct of committees of inspection.

## 80-5 Application of sections 80-10 to 80-25

(1) The rules in sections 80-10 to 80-25 apply if the external administrator of a company convenes a meeting of creditors for the purpose of determining either or both of the following:
  (a) whether there is to be a committee of inspection for the company;
  (b) if there is, or is to be, a committee of inspection—who are to be appointed members of the committee.

(2) However, those rules do not apply if the company is a member of a pooled group.

Note: Committees of inspection for pooled groups are dealt with in sections 80-26 and 80-27.

## 80-10 Committee of inspection—company not a member of a pooled group

The creditors of a company may, by resolution, determine that there is to be a committee of inspection in relation to the external administration of the company.

### 80-15 Appointment and removal of members of committee of inspection by creditors generally

(1) The creditors of a company may, by resolution, appoint members of a committee of inspection in relation to the external administration of the company.

(2) The creditors of a company may by resolution:
  (a) remove a person appointed as a member of the committee under this section; and
  (b) appoint another person to fill a vacancy in the office of a member of the committee of inspection appointed under this section.

(3) A person is not entitled to vote on a resolution to appoint or remove a member of a committee of inspection under this section if:
  (a) the person, acting either alone or with others, appoints a person as a member of the committee under section 80-20; or
  (b) the person, acting either alone or with others, appoints a person as a member of the committee under section 80-25.

### 80-20 Appointment of committee member by large creditor

(1) A creditor representing at least 10% in value of the creditors, or a group of creditors who together represent at least 10% in value of the creditors, of a company may appoint a person as a member of a committee of inspection in relation to the external administration of the company.

(2) If a creditor or a group of creditors appoints a person as a member of a committee of inspection under this section, the creditor or group of creditors may:
  (a) remove the person as a member of the committee; and
  (b) appoint another person to fill a vacancy in the office of that member of the committee.

(3) A creditor, acting either alone or with others, is not entitled to appoint a person as a member of a committee of inspection under subsection (1) if:
  (a) the creditor votes on a resolution to appoint or remove a member of the committee under section 80-15; or

(b) the creditor, acting either alone or with others, appoints a member of the committee under subsection 80-25(1); or

(c) the creditor, acting either alone or with others, has already appointed a member of the committee under subsection (1) of this section.

## 80-25 Appointment of committee member by employees

(1) Either:

(a) an employee of the company; or

(b) employees of the company;

representing at least 50% in value of entitlements owed to or in respect of employees by the company may appoint a person as a member of the committee of inspection to represent the employees.

(2) If an employee or a group of employees appoints a person as a member of a committee of inspection under this section, the employee or group of employees may:

(a) remove the person as a member of the committee; and

(b) appoint another person to fill a vacancy in the office of that member of the committee.

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

(a) the employee votes on a resolution to appoint or remove a member of the committee under section 80-15; or

(b) the employee, acting either alone or with others, appoints a member of the committee under subsection 80-20(1); or

(c) the employee, acting either alone or with others, has already appointed a member of the committee under subsection (1) of this section.

(4) In this section:

***employee*** of a company has the same meaning as in Part 5.8A.

***entitlements*** of an employee of a company has the same meaning as in Part 5.8A.

## 80-26 Committee of inspection—pooled groups

*Application of this section*

(1) This section applies if each company that is a member of a pooled group is being wound up.

*Meeting to form a committee of inspection for a pooled group*

(2) The external administrator or external administrators must, if directed to do so under section 80-27, convene a meeting, on a consolidated basis, of the creditors of all of the companies for the purposes of determining either or both of the following:
   (a) whether there is to be a committee of inspection for the pooled group;
   (b) if there is, or is to be, a committee of inspection for the pooled group—who are to be appointed members of the committee.

*Committee of inspection for a pooled group becomes the committee of inspection for each member of the pooled group*

(3) A committee of inspection for a pooled group is taken to be a committee of inspection for each company that is a member of the pooled group.

*Existing committee of inspection for a member of a pooled group ceases to exist*

(4) If:
   (a) at the meeting, it is resolved that there is to be a committee of inspection for the pooled group; and
   (b) immediately before the meeting, a committee of inspection was in existence for a company that is a member of the pooled group;

the committee mentioned in paragraph (b) ceases to exist when the resolution mentioned in paragraph (a) is passed.

*Rules relating to companies under external administration who are members of a pooled group*

(5) The Insolvency Practice Rules may provide for and in relation to meetings in relation to the external administration of companies that are members of a pooled group (***pooled group meetings***).

(6) Without limiting subsection (5), the Insolvency Practice Rules may provide for and in relation to:
  (a) other circumstances in which pooled group meetings must or may be convened; and
  (b) voting (including casting votes) at pooled group meetings; and
  (c) the circumstances in which a resolution or a special resolution put to creditors or contributories in a pooled group meeting is passed; and
  (d) costs in relation to pooled group meetings and security for those costs.

## 80-27 External administrator must convene meeting in certain circumstances

(1) The external administrator, or the external administrators, of the members of a pooled group must convene a meeting under section 80-26 if:
  (a) where there is a committee of inspection for a member of the pooled group—the committee of inspection directs the external administrator, or external administrators, to do so; or
  (b) the creditors of one of the members of the pooled group direct the external administrator, or external administrators, to do so, by resolution; or
  (c) at least 25% in value of the creditors of one of the members of the pooled group, direct the external administrator, or external administrators, to do so in writing; or
  (d) both of the following are satisfied:
    (i) less than 25%, but more than 10%, in value of the creditors of one of the members of the pooled group direct the external administrator, or external administrators, to do so in writing;

(ii) security for the cost of holding the meeting is given to the external administrator, or external administrators, before the meeting is convened; or

(e) all of the following are satisfied:

(i) the members of the pooled group are each being wound up under a creditors' voluntary winding up;

(ii) less than 25%, but more than 5%, in value of the creditors of one of the members of the pooled group direct the external administrator, or external administrators, to do so in writing;

(iii) none of the creditors who give the direction is a related entity in relation to that member of the pooled group;

(iv) the direction is given no more than 20 business days after the last resolution for the voluntary winding up of the members of the pooled group is passed.

(2) However, the external administrator, or external administrators, need not comply with the direction if the direction is not reasonable.

(3) The Insolvency Practice Rules may prescribe circumstances in which a direction is, or is not, reasonable.

(4) For the purposes of paragraphs (1)(c), (d) and (e), the value of the creditors is to be worked out by reference to the value of the creditors' claims (that are known at the time the direction is given) against the member of the pooled group.

(5) This section does not apply if:

(a) one of the external administrators is a provisional liquidator of a member of the pooled group; or

(b) one of the external administrators is the administrator of a member of the pooled group and the member is under administration.

### 80-30 Committees of inspection—procedures etc.

(1) Subject to subsection (2), a committee of inspection is to determine its own procedures.

(2) The Insolvency Practice Rules may provide for and in relation to committees of inspection.

(3) Without limiting subsection (2), the Insolvency Practice Rules may provide for and in relation to:
  (a) eligibility to be appointed as a member of a committee of inspection; and
  (b) the convening of, conduct of, and procedure and voting at, meetings; and
  (c) resignation and removal of members; and
  (d) vacancies in membership.

### 80-35 Functions of committee of inspection

(1) A committee of inspection has the following functions:
  (a) to advise and assist the external administrator of the company;
  (b) to give directions to the external administrator of the company;
  (c) to monitor the conduct of the external administration of the company;
  (d) such other functions as are conferred on the committee by this Act;
  (e) to do anything incidental or conducive to the performance of any of the above functions.

(2) An external administrator of a company must have regard to any directions given to the external administrator by the committee of inspection, but the external administrator is not required to comply with such directions.

(3) If an external administrator of a company does not comply with a direction, the external administrator must make a written record of that fact, along with the external administrator's reasons for not complying with the direction.

### 80-40 Committee of inspection may request information etc.

(1) A committee of inspection may request the external administrator of a company to:
  (a) give information; or
  (b) provide a report; or
  (c) produce a document;

to the committee.

(2) The external administrator must comply with the request unless:
  (a) the information, report or document is not relevant to the external administration of the company; or
  (b) the external administrator would breach his or her duties in relation to the external administration of the company if the external administrator complied with the request; or
  (c) it is otherwise not reasonable for the external administrator to comply with the request.

(3) The Insolvency Practice Rules may prescribe circumstances in which it is, or is not, reasonable for an external administrator of a company to comply with a request of a kind mentioned in subsection (1).

### 80-45 Reporting to committee of inspection

(1) The Insolvency Practice Rules may provide for and in relation to the obligations of external administrators of companies:
  (a) to give information; and
  (b) to provide reports; and
  (c) to produce documents;
to committees of inspection.

(2) Without limiting subsection (1), the Insolvency Practice Rules may provide for and in relation to:
  (a) other circumstances in which the external administrator of a company must give information, provide a report or produce a document to a committee of inspection; and
  (b) the manner and form in which information is to be given, a report provided or a document produced; and
  (c) the timeframes in which information is to be given, a report provided or a document produced; and
  (d) who is to bear the cost of giving information, providing a report or producing a document.

(3) The Insolvency Practice Rules may:
  (a) make different provision in relation to different classes of company or external administration of a company; and

(b) provide that specified requirements imposed under the Insolvency Practice Rules may be replaced or modified, by resolution, by:

(i) the creditors; or

(ii) the committee of inspection.

## 80-50 Committee of inspection may obtain specialist advice or assistance

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

(2) The committee of inspection must obtain the approval of the external administrator of the company or the Court before expenses are incurred in obtaining the advice or assistance.

(3) To avoid doubt, an expense incurred under subsection (2) is to be taken to be an expense incurred by a person as a member of the committee, unless the Court orders otherwise.

## 80-55 Obligations of members of committee of inspection

*Deriving profit or advantage from the company*

(1) A member of a committee of inspection must not directly or indirectly derive any profit or advantage from the external administration of the company.

*Circumstances in which profit or advantage is taken to be derived*

(2) To avoid doubt, a member of a committee of inspection is taken to derive a profit or advantage from the external administration of the company if:

(a) the member directly or indirectly derives a profit or advantage from a transaction (including a sale or purchase) entered into for or on account of the company; or

(b) the member directly or indirectly derives a profit or advantage from a creditor of the company; or

(c) a related entity of the member directly or indirectly derives a profit or advantage from the external administration of the company.

*Exceptions*

(3) Subsection (1) does not apply if the creditors resolve otherwise.

(4) The member of the committee is not entitled to vote on the resolution referred to in subsection (3).

(5) Subsection (1) does not apply to the extent that:

(a) another provision of this Act, or of another law, requires or permits the member of the committee of inspection to derive the profit or advantage; or

(b) the Court gives leave to the member of the committee to derive the profit or advantage.

Note: Subsection (1) would not, for example, prevent a creditor from recovering debts proved in a winding up, as this is permitted under Part 5.6 of Chapter 5.

(6) Despite paragraph (2)(c), subsection (1) does not apply to the extent that:

(a) the profit or advantage arises because the external administrator employs or engages a person to provide services in connection with the external administration of the company; and

(b) the person is a related entity of a member of the committee of inspection; and

(c) one of the following applies:

(i) the member does not know, and could not reasonably be expected to know, that the external administrator has employed or engaged a related entity of the member;

(ii) the creditors, by resolution, agree to the related entity being employed or engaged.

*Offence*

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

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

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

Penalty: 50 penalty units.

Note: A defendant bears an evidential burden in relation to the matters in subsections (3), (5) and (6) (see subsection 13.3(3) of the *Criminal Code*).

*Effect of contravention of this section*

(8) A transaction or any other arrangement entered into in contravention of this section may be set aside by the Court.

## 80-60 Obligations of creditor appointing a member of committee of inspection

*Application of this section*

(1) This section applies if a creditor representing at least 10% in value of the creditors of a company appoints a person under section 80-20 as a member of a committee of inspection in relation to the external administration of the company.

(2) The creditor must not directly or indirectly become the purchaser of any part of the property of the company.

*Exceptions*

(3) Subsection (2) does not apply if the creditors resolve otherwise.

(4) The creditor is not entitled to vote on the resolution referred to in subsection (3).

(5) Subsection (2) does not apply to the extent that:
  (a) another provision of this Act, or of another law, requires or permits the creditor to purchase the property; or
  (b) the Court gives leave to the creditor to purchase the property.

*Offence*

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

Penalty: 50 penalty units.

Note: A defendant bears an evidential burden in relation to the matters in subsections (3) and (5) (see subsection 13.3(3) of the *Criminal Code*).

*Effect of contravention of this section*

(7) A transaction or any other arrangement entered into in contravention of this section may be set aside by the Court.

### 80-65 ASIC may attend committee meetings

ASIC is entitled to attend any meeting of a committee of inspection.

### 80-70 The Court may inquire into conduct of the committee

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.

## Division 85—Directions by creditors

### 85-1 Simplified outline of this Division

The external administrator of a company must have regard to directions given to the administrator by the creditors of the company but is not obliged to comply with those directions.

### 85-5 External administrator to have regard to directions given by creditors

(1) The creditors of a company under external administration (other than a members' voluntary winding up) may, by resolution, give directions to the external administrator of the company in relation to the external administration.

(2) An external administrator of a company must have regard to any directions mentioned in subsection (1), but the external administrator is not required to comply with such directions.

(3) If the external administrator does not comply with a direction, the external administrator must make a written record of that fact,

along with the external administrator's reasons for not complying with the direction.

(4) If there is a conflict between directions given by the creditors under subsection (1) and by the committee of inspection under section 80-35, directions given by the creditors override any directions given by the committee.

# Division 90—Review of the external administration of a company

## Subdivision A—Introduction

### 90-1 Simplified outline of this Division

*Review by the Court*

The Court may inquire into the external administration of a company either on its own initiative or on the application of the company, the external administrator, ASIC or a person with a financial interest in the external administration of the company (such as a creditor of the company).

The Court has wide powers to make orders, including orders replacing the external administrator or dealing with losses resulting from a breach of duty by the external administrator.

*Review by another registered liquidator*

ASIC, the Court, creditors or members of a company may appoint a registered liquidator to review the external administration of the company. Such a review may look at a range of matters, including whether the remuneration of the external administrator is reasonable and whether costs and expenses have been properly incurred.

The Insolvency Practice Rules may set the powers and duties of a registered liquidator conducting such a review and may deal with issues relating to the review process.

If a provisional liquidator has been appointed for the company, review by another registered liquidator is not available.

*Removal of external administrator by creditors*

The creditors of a company under external administration (other than a company for which a provisional liquidator has been appointed) may remove the external administrator of the company and appoint another. However, the external administrator may apply to the Court to be reappointed.

## Subdivision B—Court powers to inquire and make orders

### 90-5 Court may inquire on own initiative

(1) The Court may, on its own initiative during proceedings before the Court, inquire into the external administration of a company.

(2) The Court may, for the purposes of such an inquiry, require a person who is or has at any time been the external administrator of the company to:
  (a) give information; or
  (b) provide a report; or
  (c) produce a document;
to the Court in relation to the external administration of the company.

(3) This section does not limit the Court's powers under any other provision of this Act, or under any other law.

### 90-10 Court may inquire on application of creditors etc.

(1) The Court may, on the application of a person mentioned in subsection (2), inquire into the external administration of a company.

(2) Each of the following persons may make an application for an inquiry:
  (a) a person with a financial interest in the external administration of the company;
  (b) an officer of the company;

(c) if the committee of inspection (if any) so resolves—a creditor, on behalf of the committee;
(d) ASIC.

(3) Paragraph (2)(b) has effect despite section 198G.

Note: Section 198G deals with powers of officers etc. while a company is under external administration.

(4) The Court may, for the purposes of such an inquiry, require a person who is or has at any time been the external administrator of the company to:
(a) give information; or
(b) provide a report; or
(c) produce a document;
to the Court in relation to the external administration of the company.

(5) If an application is made by a person referred to in paragraph (2)(c), the reasonable expenses associated with the application are to be taken to be expenses incurred by a person as a member of the committee unless otherwise ordered by the Court.

(6) This section does not limit the Court's powers under any other provision of this Act, or under any other law.

## 90-15 Court may make orders in relation to external administration

*Court may make orders*

(1) The Court may make such orders as it thinks fit in relation to the external administration of a company.

*Orders on own initiative or on application*

(2) The Court may exercise the power under subsection (1):
(a) on its own initiative, during proceedings before the Court; or
(b) on application under section 90-20.

*Examples of orders that may be made*

(3) Without limiting subsection (1), those orders may include any one or more of the following:

(a) an order determining any question arising in the external administration of the company;
(b) an order that a person cease to be the external administrator of the company;
(c) an order that another registered liquidator be appointed as the external administrator of the company;
(d) an order in relation to the costs of an action (including court action) taken by the external administrator of the company or another person in relation to the external administration of the company;
(e) an order in relation to any loss that the company has sustained because of a breach of duty by the external administrator;
(f) an order in relation to remuneration, including an order requiring a person to repay to a company, or the creditors of a company, remuneration paid to the person as external administrator of the company.

*Matters that may be taken into account*

(4) Without limiting the matters which the Court may take into account when making orders, the Court may take into account:
(a) whether the liquidator has faithfully performed, or is faithfully performing, the liquidator's duties; and
(b) whether an action or failure to act by the liquidator is in compliance with this Act and the Insolvency Practice Rules; and
(c) whether an action or failure to act by the liquidator is in compliance with an order of the Court; and
(d) whether the company or any other person has suffered, or is likely to suffer, loss or damage because of an action or failure to act by the liquidator; and
(e) the seriousness of the consequences of any action or failure to act by the liquidator, including the effect of that action or failure to act on public confidence in registered liquidators as a group.

*Costs orders*

(5) Without limiting subsection (1), an order mentioned in paragraph (3)(d) in relation to the costs of an action may include an order that:

(a) the external administrator or another person is personally liable for some or all of those costs; and

(b) the external administrator or another person is not entitled to be reimbursed by the company or its creditors in relation to some or all of those costs.

*Orders to make good loss sustained because of a breach of duty*

(6) Without limiting subsection (1), an order mentioned in paragraph (3)(e) in relation to a loss may include an order that:

(a) the external administrator is personally liable to make good some or all of the loss; and

(b) the external administrator is not entitled to be reimbursed by the company or creditors in relation to the amount made good.

*Section does not limit Court's powers*

(7) This section does not limit the Court's powers under any other provision of this Act, or under any other law.

## 90-20 Application for Court order

(1) Each of the following persons may apply for an order under section 90-15:

(a) a person with a financial interest in the external administration of the company;

(b) if the committee of inspection (if any) so resolves—a creditor, on behalf of the committee;

(c) ASIC;

(d) an officer of the company;

(e) if the application is in relation to a company that is a friendly society within the meaning of the *Life Insurance Act 1995* and which may be wound up voluntarily under subsection 180(2) of that Act—APRA.

(2) Paragraph (1)(d) has effect despite section 198G.

Note: Section 198G deals with powers of officers etc. while a company is under external administration.

(3) If an application is made by a person referred to in paragraph (1)(b), the reasonable expenses associated with the application are to be taken to be expenses incurred by a person as a member of the committee.

### 90-21 Meetings to ascertain wishes of creditors or contributories

(1) The Court may, as to all matters relating to the external administration of a company, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

(2) The Court may, if it thinks fit for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be convened, held and conducted in such manner as the Court directs, and may appoint a person to act as chair of any such meeting and to report the result of the meeting to the Court.

(3) In the case of creditors, regard is to be had to the value of each creditor's debt.

(4) In the case of contributories, regard is to be had to the number of votes conferred on each contributory by this Act or the company's constitution.

## Subdivision C—Review by another registered liquidator

### 90-22 Application of this Subdivision

This Subdivision applies in relation to a company that is under external administration, other than a company in relation to which a provisional liquidator has been appointed.

## 90-23 Appointment of reviewing liquidator by ASIC or the Court

*Appointment by ASIC*

(1) A registered liquidator may be appointed by ASIC to carry out a review into a matter that relates to the external administration of the company, if ASIC considers it appropriate to do so.

(2) ASIC may exercise the power under subsection (1):
  (a) on its own initiative; or
  (b) on application by a person with a financial interest in the external administration of the company; or
  (c) on the application of an officer of the company.

(3) An application under paragraph (2)(b) or (c) must be lodged with ASIC in the approved form.

(4) Paragraph (2)(c) has effect despite section 198G.

Note: Section 198G deals with powers of officers etc. while a company under external administration.

(5) If ASIC appoints a registered liquidator to carry out a review, ASIC must specify:
  (a) the matters in relation to the external administration of the company which the liquidator is appointed to review; and
  (b) the way in which the cost of carrying out the review is to be determined.

*Appointment by the Court*

(6) A registered liquidator may be appointed by the Court to carry out a review into a matter that relates to the external administration of the company.

(7) The Court may exercise the power under subsection (6):
  (a) on application under subsection (8); and
  (b) if the Court considers it appropriate to do so.

(8) Either of the following may make an application under this subsection:
  (a) ASIC;

(b) a person with a financial interest in the external administration of the company.

(9) If the Court appoints a registered liquidator to carry out a review, the Court must specify:
(a) the matters in relation to the external administration of the company which the liquidator is appointed to review; and
(b) the way in which the cost of carrying out the review is to be determined.

*Appointments by ASIC or by the Court—limit*

(10) A matter referred to in paragraph (5)(a) or (9)(a) must not relate to remuneration which an external administrator of the company is entitled to receive under subsection 60-5(2) (remuneration if no remuneration determinations made).

## 90-24 Appointment of reviewing liquidator by creditors etc.

*Appointment to carry out review*

(1) A registered liquidator may be appointed to carry out a review into either or both of the following matters:
(a) remuneration of the external administrator of the company;
(b) a cost or expense incurred by the external administrator of the company.

*Appointment by resolution*

(2) The appointment may be made by resolution of:
(a) the creditors; or
(b) if the company is being wound up under a members' voluntary winding up—the company;

(3) If the appointment is made by resolution, the resolution must specify:
(a) the remuneration, costs or expenses which the liquidator is appointed to review; and
(b) the way in which the cost of carrying out the review is to be determined.

*Appointment by one or more creditors or members*

(4) The appointment may be made by:
  (a) one or more of the creditors; or
  (b) if the company is being wound up under a members' voluntary winding up—one or more of the members.

(5) However, an appointment may only be made under subsection (4) if the external administrator of the company agrees to the appointment.

(6) The agreement must:
  (a) be in accordance with the Insolvency Practice Rules; and
  (b) specify:
    (i) the remuneration, costs or expenses which the liquidator is appointed to review; and
    (ii) the way in which the cost of carrying out the review is to be determined.

*Appointments by creditors etc.—limit*

(7) Despite subsection (1), a registered liquidator appointed under this section has no power to review the remuneration to which the external administrator of a company is entitled under subsection 60-5(2) (remuneration if no remuneration determinations made).

## 90-25 Reviewing liquidator must consent to appointment

A registered liquidator cannot be appointed under this Subdivision as a reviewing liquidator in relation to a matter unless:
  (a) the liquidator has consented in writing to the appointment; and
  (b) as at the time of the appointment, the liquidator has not withdrawn the consent.

## 90-26 Review

*Review—general*

(1) If a reviewing liquidator is appointed under this Subdivision in relation to a matter, the reviewing liquidator must carry out a review into that matter.

*Reviews relating to remuneration, costs or expenses*

(2) If the matter is, or includes, remuneration of the external administrator of the company, the review may (but need not) include an assessment of whether the remuneration is reasonable.

(3) If the matter is, or includes, a cost or expense incurred by the external administrator of the company, the review must include an assessment of whether the cost or expense was properly incurred by the external administrator.

Note: Insolvency Practice Rules made under section 90-29 may provide for the meaning of ***properly incurred***.

(4) A reviewing liquidator must not review:

(a) remuneration of an external administrator of the company that relates to a period; or

(b) a cost or expense incurred by the external administrator of the company incurred during a period;

unless the period is:

(c) for a reviewing liquidator appointed by the Court under paragraph 90-28(2)(c) or (3)(b)—the period determined by the Court; or

(d) otherwise—the prescribed period.

*Report of review*

(5) A reviewing liquidator must prepare a report on the review.

## 90-27 Who pays for a review?

(1) The cost of carrying out a review under this Subdivision:

(a) in the case of a reviewing liquidator appointed with the agreement of the external administrator of the company

under subsection 90-24(5)—is to be borne by the creditors or members referred to in that subsection; or

(b) in any other case—forms part of the expenses of the external administration of the company.

(2) Subsection (1) has effect subject to an order of the Court under section 90-28.

## 90-28 Court orders in relation to review

*Application of this section*

(1) This section applies if:

(a) a reviewing liquidator has been appointed under this Subdivision in relation to one or more matters; and

(b) the review has not been completed.

*Court orders on application by the reviewing liquidator*

(2) On application by the reviewing liquidator, the Court may make any or all of the following orders in relation to the review:

(a) requiring the external administrator of the company or any other person to provide books, information or assistance to the reviewing liquidator;

(b) requiring the reviewing liquidator to carry out a review of one or more matters that relate to the external administration of the company and that are specified in the order instead of, or in addition to, the matters referred to in paragraph (1)(a);

(c) accepting the resignation of the reviewing liquidator, and appointing another registered liquidator as reviewing liquidator for the matter or matters;

(d) any other order that the Court thinks fit.

*Court orders on application by a person with a financial interest*

(3) On application by a person mentioned in subsection (4), the Court may make any or all of the following orders in relation to the review:

(a) requiring the reviewing liquidator to carry out a review of one or more matters that relate to the external administration

and that are specified in the order instead of, or in addition to, the matters referred to in paragraph (1)(a) of this section;

(b) removing from office the reviewing liquidator, and appointing another registered liquidator as reviewing liquidator for the matter or matters;

(c) any other order that the Court thinks fit.

(4) The persons who may make an application under subsection (3) are:

(a) a person with a financial interest in the external administration of the company; or

(b) an officer of the company.

(5) Paragraph (4)(b) has effect despite section 198G.

Note: Section 198G deals with powers of officers etc. while a company is under external administration.

## 90-29 Rules about reviews

(1) The Insolvency Practice Rules may provide for and in relation to reviews under this Subdivision.

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

(a) the giving of notice to the external administrator of a company before appointing, or making an application for the appointment of, a reviewing liquidator under this Subdivision;

(b) the meaning, for the purposes of section 90-26, of ***properly incurred*** in relation to costs or expenses incurred by an external administrator of a company;

(c) the appointment of reviewing liquidators, including requirements as to who may be appointed and the provision of declarations of relevant relationships;

(d) the powers and duties of reviewing liquidators in carrying out a review;

(e) the form and content of reports by reviewing liquidators;

(f) the preparation and provision of reports by reviewing liquidators.

## Subdivision D—Removal by creditors

### 90-30 Application of this Subdivision

This Subdivision applies in relation to a company that is under external administration, other than a company in relation to which a provisional liquidator has been appointed.

### 90-35 Removal by creditors

*Creditors may remove external administrator and appoint another*

(1) The creditors may:
  (a) by resolution at a meeting, remove the external administrator of a company; and
  (b) by resolution at the same or a subsequent meeting, appoint another person as the external administrator of the company.

Note: For the general rules relating to meetings, see Division 75.

(2) However, the creditors may not do so unless at least 5 business days' notice of the meeting is given to all persons who are entitled to receive notice of creditors' meetings.

(3) The removal of an external administrator does not take effect until another person is appointed as external administrator of the company.

*Former administrator may apply to Court to be reappointed*

(4) A person (the ***former administrator***) who has been removed as external administrator of the company by resolution of the creditors may apply to the Court to be reappointed as external administrator of the company.

(5) However, if the former administrator makes such an application, the former administrator must:
  (a) record all costs incurred by the former administrator and the company in relation to the application; and
  (b) do so in a way that separates those costs from the costs incurred by the former administrator and the company in relation to other matters.

(6) The Court may order that the former administrator be reappointed as external administrator of the company if the Court is satisfied that the removal of the former administrator was an improper use of the powers of one or more creditors.

(7) The Court may make such other orders in relation to the application as it thinks fit including orders in relation to:
  (a) the costs of the application; and
  (b) the remuneration of the former administrator.

# Part 4—Other matters

## Division 95—Introduction

### 95-1 Simplified outline of this Part

This Part deals with a variety of matters:
- (a) an external administrator of a company may assign a right to sue; and
- (b) forms are approved by ASIC (provision is made for what may be required in the form or to accompany the form); and
- (c) the Minister has power to make rules to be called the Insolvency Practice Rules.

## Division 100—Other matters

### 100-5 External administrator may assign right to sue under this Act

(1) Subject to subsections (2) and (3), an external administrator of a company may assign any right to sue that is conferred on the external administrator by this Act.

(2) If the external administrator's action has already begun, the external administrator cannot assign the right to sue unless the external administrator has the approval of the Court.

(3) Before assigning any right under subsection (1), the external administrator must give written notice to the creditors of the proposed assignment.

(4) If a right is assigned under this section, a reference in this Act to the external administrator in relation to the action is taken to be a reference to the person to whom the right has been assigned.

## 100-6 Approved forms

(1) A document that this Schedule requires to be lodged with ASIC in an approved form must:
  (a) be in the form approved by ASIC for the document; and
  (b) include the information, statements, explanations or other matters required by the form; and
  (c) be accompanied by any other material required by the form.

(2) A reference in this Schedule to a document that has been lodged (being a document to which subsection (1) applies), includes a reference to any other material lodged with the document as required by the relevant form.

(3) If:
  (a) this Schedule requires a document to be lodged with ASIC in an approved form; and
  (b) a provision of this Schedule specifies information, statements, explanations or other matters that must be included in the document, or other material that must accompany the document;

that other provision is not taken to exclude or limit the operation of subsection (1) in relation to the approved form (and so the approved form may also require information etc. to be included in the form or material to accompany the form).

(4) The Insolvency Practice Rules may provide for and in relation to:
  (a) methods of verifying any information required by or in approved forms; and
  (b) the manner in which, the persons by whom, and the directions or requirements in accordance with which, approved forms are required or permitted to be signed, prepared, or completed.

# Division 105—The Insolvency Practice Rules

## 105-1 The Insolvency Practice Rules

(1) The Minister may, by legislative instrument, make rules providing for matters:
  (a) required or permitted by this Schedule to be provided by the rules; or
  (b) necessary or convenient to be provided in order to carry out or give effect to this Schedule.

(2) Rules made under subsection (1) may include offences.

(3) The penalties for offences described in subsection (2) must not be more than 50 penalty units for an individual or 250 penalty units for a body corporate.

(4) To avoid doubt, the rules may not do the following:
  (a) create a civil penalty;
  (b) provide powers of:
    (i) arrest or detention; or
    (ii) entry, search or seizure;
  (c) impose a tax;
  (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
  (e) directly amend the text of this Act.

(5) Rules that are inconsistent with the regulations have no effect to the extent of the inconsistency, but rules are taken to be consistent with the regulations to the extent that the rules are capable of operating concurrently with the regulations.

(6) Despite subsection 1345A(1), the Minister's power to make rules under this section may not be delegated to any other person.

# Part 2—Amendments consequential on the introduction of the Insolvency Practice Schedule (Corporations)

## *Aged Care (Accommodation Payment Security) Act 2006*

### 3 Subparagraph 7(1)(a)(i)

Omit "an externally-administered body corporate", substitute "a Chapter 5 body corporate".

### 4 Subsection 7(1) (note)

Omit "an externally-administered body corporate", substitute "a Chapter 5 body corporate".

## *Australian Securities and Investments Commission Act 2001*

### 5 Paragraph 1(1)(d)

Omit "and Liquidators".

### 6 Subsection 5(1) (definition of *Corporations Act*)

After "regulations", insert "and rules".

### 7 Subsection 5(1) (definition of *Disciplinary Board*)

Omit "and Liquidators".

### 8 Subsection 5(1)

Insert:

> ***Schedule 2 to the Corporations Act*** means Schedule 2 to the *Corporations Act 2001* and rules made under that Schedule.

### 9 Subsection 13(3)

Omit "liquidator registered under Division 2 of Part 9.2 of the Corporations Act", substitute "registered liquidator".

## 10 Section 15

Omit "a report has been lodged under section 422 or 533 of the Corporations Act, ASIC may investigate a matter to which the report relates", substitute "a report or return has been lodged under section 422, 422A, 422B or 533 of the Corporations Act, ASIC may investigate a matter to which the report or return relates".

## 11 Section 28

After "30A,", insert "30B,".

## 12 After section 30A

Insert:

### 30B Notice to registered liquidators concerning information and books

(1) Subject to subsection (2), ASIC may give a registered liquidator a written notice requiring the liquidator:

(a) to give specified information; and

(b) to produce specified books;

to a specified member or staff member at a specified place and time.

Note: Failure to comply with a requirement made under this subsection is an offence (see section 63).

(2) The power in subsection (1) may only be exercised:

(a) for the purposes of the performance or exercise of any of ASIC's functions and powers in relation to the liquidator requirements; or

(b) for the purposes of ascertaining compliance with the liquidator requirements; or

(c) in relation to:

(i) an alleged or suspected contravention of the liquidator requirements; or

(ii) an alleged or suspected contravention of a law of the Commonwealth, or of a State or Territory in this jurisdiction, being a contravention that relates to the performance or exercise of a registered liquidator's functions, duties or powers and that either concerns the

management of the affairs of a body corporate or involves fraud or dishonesty and relates to a body corporate; or

(d) for the purposes of an investigation under Division 1 relating to a contravention referred to in paragraph (c).

(3) The ***liquidator requirements*** are the requirements in relation to registered liquidators, the external administration of companies or the control of the property of corporations under:

(a) Chapter 5 of the Corporations Act; and

(b) Schedule 2 to the Corporations Act; and

(c) other provisions of the Corporations Act that relate to that Chapter or Schedule.

(4) Without limiting subsection (1), a notice under that subsection may specify information or books that relate to any or all of the following:

(a) the policies relating to the external administration of companies and the control of the property of corporations that the registered liquidator has adopted or proposes to adopt;

(b) the procedures relating to the external administration of companies and the control of the property of corporations that the registered liquidator has put in place or proposes to put in place;

(c) the external administration of a company, or companies, that the registered liquidator has conducted, is conducting or is proposing to conduct;

(d) the control of the property of a corporation, or corporations, that the registered liquidator has conducted, is conducting or is proposing to conduct;

(e) any other matter relating to the external administration of companies or the control of the property of corporations that is prescribed for the purposes of this paragraph.

(5) Without limiting subsection (1), a notice under that subsection may require the registered liquidator to give information or produce books even if doing so would involve a breach of an obligation of confidentiality that the registered liquidator owes to:

(a) a company that is, has been or is likely to be under external administration; or

(b) a corporation the property of which is, has been or is likely to be under control.

(6) ASIC may, by written notice to a registered liquidator who has received a notice under subsection (1), extend the period within which the registered liquidator must give the information or produce the books to which the notice under that subsection relates.

(7) In this section:

***control*** of the property of a corporation means:

(a) the receivership of that property; and

(b) the possession, or control, of that property for the purpose of enforcing a security interest;

and includes any functions or powers in connection with managing the corporation that may be performed or exercised by a receiver or other controller of that property.

***external administration*** of a company has the same meaning as in Schedule 2 to the Corporations Act.

***registered liquidator*** means a person who is registered as a liquidator under Schedule 2 to the Corporations Act.

## 13 At the end of section 33

Add:

(3) ASIC may give to a person a written notice requiring the production to a specified member or staff member, at a specified place and time, of specified books that:

(a) are in the person's possession or control; and

(b) relate to the question whether a registered liquidator has complied with liquidator requirements, within the meaning of subsection 30B(3).

## 14 Subsection 34(3)

After "30A,", insert "30B,".

## 15 Paragraph 37(5)(b)

Omit "or 30A(2)(a), (b) and (d)", substitute ", 30A(2)(a), (b) and (d) or 30B(2)(a), (b) and (d)".

## 16 At the end of Division 3 of Part 3

Add:

### 39C ASIC may give information and books in relation to Chapter 5 bodies corporate

*Application of this section*

(1) This section applies if ASIC obtains or generates information or books in the exercise of its powers or the performance of its functions in relation to:
  (a) a person in that person's capacity as a registered liquidator; or
  (b) the external administration of a company; or
  (c) the control of property of a corporation.

*ASIC may give administration information to certain persons*

(2) ASIC may give the information, all or part of the books or copies of all or part of the books (***administration information***) to one or more of the following:
  (a) if the administration information relates to a corporation—the corporation;
  (b) if the administration information relates to a company that is or has been under external administration—a person who is or has at any time been:
    (i) the external administrator of the company; or
    (ii) a related entity of the company; or
    (iii) an officer of the company; or
    (iv) a creditor of the company; or
    (v) a member of a committee of inspection in the external administration of the company;
  (c) if the administration information relates to property of a corporation that is or has been under control—a person who is or has at any time been:

(i) the controller of the property; or
(ii) a related entity of the corporation; or
(iii) an officer of the corporation; or
(iv) a creditor of the corporation;

(d) if the administration information relates to a company that is or has been under external administration—a person who is carrying out, or has at any time carried out, a review of the external administration of the company under Subdivision C of Division 90 of Schedule 2 to the Corporations Act.

*ASIC may only give administration information in certain circumstances*

(3) ASIC must not give administration information to a person under this section unless ASIC is satisfied that:
(a) the administration information is relevant to the person; or
(b) the administration information is relevant to the exercise of a power or performance of a function under the Corporations Act by the person in relation to:
(i) a registered liquidator; or
(ii) the external administration of a company; or
(iii) the control of property of a corporation; or
(c) it is otherwise reasonable to give the administration information to the person.

*Process to be observed before administration information given*

(4) Before giving administration information to a person under this section, ASIC must give the external administrator of the company or the controller of the property of the corporation (as the case requires) notice in writing:
(a) identifying:
(i) the administration information that ASIC proposes to give; and
(ii) the person to whom ASIC proposes to give the information; and
(b) inviting the external administrator or controller (as the case requires) to make a written submission to ASIC within 10 business days after the notice is given, stating:

(i) whether he or she has any objection to the administration information being given to the person; and

(ii) if he or she has such an objection, the reasons for that objection.

(5) If the external administrator or controller (as the case requires) objects to the administration information being given to a person, ASIC must take into account the reasons for that objection when deciding whether to give the information to the person.

(6) If the external administrator or controller (as the case requires) has made a submission objecting to the administration information being given to a person and ASIC decides to give the information to the person, ASIC must give the external administrator or controller (as the case requires) 5 business days' notice of its decision before giving the information to the person.

*Conditions*

(7) ASIC may, by notice in writing to the person to whom ASIC gives the administration information, impose conditions on the use and disclosure of the administration information by the person.

*Offence*

(8) A person commits an offence if:

(a) ASIC gives administration information to the person subject to a condition in relation to the use or disclosure of that information by the person; and

(b) ASIC has given the person notice of the condition under subsection (7); and

(c) the person does not comply with the condition.

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

*Notices are not legislative instruments*

(9) Notices under subsections (4) and (7) are not legislative instruments.

*Definitions*

(10) In this section:

***control*** of the property of a corporation means:

(a) the receivership of that property; and

(b) the possession, or control, of that property for the purpose of enforcing a security interest;

and includes any functions or powers in connection with managing the corporation that may be performed or exercised by a receiver or other controller of that property.

***external administration*** of a company has the same meaning as in Schedule 2 to the Corporations Act.

***external administrator*** of a company has the same meaning as in Schedule 2 to the Corporations Act.

***registered liquidator*** means a person who is registered as a liquidator under Schedule 2 to the Corporations Act.

## 17 Paragraph 63(1)(c)

After "30A,", insert "30B,".

## 18 After paragraph 80(1)(aa)

Insert:

(ab) a matter referred to in paragraph 30B(2)(a); or

## 19 Paragraph 127(4)(d)

Repeal the paragraph, substitute:

(d) will enable or assist:

(i) a prescribed professional disciplinary body to perform one of its functions; or

(ii) another prescribed body to perform a prescribed function in relation to registered liquidators; or

(e) will enable or assist a committee convened under Part 2 of Schedule 2 to the Corporations Act to perform its functions under the corporations legislation;

### 20 Subsection 127(4)

Omit "or body", substitute ", body or committee".

### 21 Subsection 127(4EA)

Omit "paragraph (4)(d)", substitute "subparagraph (4)(d)(i)".

### 22 After subsection 127(4EA)

Insert:

(4EB) If ASIC discloses information to a prescribed body under subparagraph (4)(d)(ii), the body or a member of the body:

(a) must not disclose the information to any other person; and

(b) must not use the information for any purpose other than the performance of the prescribed functions in relation to registered liquidators.

Penalty: Imprisonment for 2 years.

### 23 After paragraph 136(1)(c)

Insert:

(ca) information about the activities that ASIC has undertaken during the period in exercise of its powers, and performance of its functions, under Chapter 5 of, or Schedule 2 to, the Corporations Act and any provisions of that Act that relate to that Chapter or Schedule;

### 24 Part 11 (heading)

Repeal the heading, substitute:

## Part 11—Companies Auditors Disciplinary Board

### 25 Subparagraph 203(2A)(b)(ii)

Repeal the subparagraph.

### 26 Paragraphs 210A(1)(b) and (c)

Omit "or liquidator".

### 27 Paragraph 223(1)(b)

Omit ", as a liquidator or as a liquidator of a specified body corporate,".

### 28 Paragraph 223(2)(b)

Omit ", as a liquidator or as a liquidator of a specified body corporate, as the case requires,".

### 29 After paragraph 237(2)(d)

Insert:

(da) is made to a member of a committee convened under Part 2 of Schedule 2 to the Corporations Act for the purposes of the performance of the committee's functions under the corporations legislation; or

### 30 Paragraph 246(1)(k)

After "the FRC", insert ", a committee convened under Part 2 of Schedule 2 to the Corporations Act".

### 31 Paragraph 246(1)(l)

After "the FRC", insert "or a committee convened under Part 2 of Schedule 2 to the Corporations Act".

### 32 After paragraph 246(1)(l)

Insert:

(m) a member of a committee convened under Part 2 of Schedule 2 to the Corporations Act;

## *Banking Act 1959*

### 33 Subsections 13(6) and 13A(7)

Omit "an externally-administered body corporate", substitute "a Chapter 5 body corporate".

### 34 Paragraph 18(1)(c)

Omit "and Liquidators".

### 35 Subsections 61(7) and 62(3)

Omit "an externally-administered body corporate", substitute "a Chapter 5 body corporate".

## *Bankruptcy Act 1966*

### 36 Paragraph 186A(1)(a)

Repeal the paragraph, substitute:

(a) at any time during the 10-year period ending at the test time, the individual was an insolvent under administration; or

## *Carbon Credits (Carbon Farming Initiative) Act 2011*

### 37 Section 5

Insert:

***Chapter 5 body corporate*** has the same meaning as in the *Corporations Act 2001*.

### 38 Section 5 (definition of *externally-administered body corporate*)

Repeal the definition.

### 39 Section 59

Omit "an externally-administered body corporate", substitute "a Chapter 5 body corporate".

### 40 Paragraph 60(2)(b)

Omit "an externally-administered body corporate", substitute "a Chapter 5 body corporate".

### 41 Subparagraph 84(1)(c)(ii)

Omit "an externally-administered body corporate", substitute "a Chapter 5 body corporate".

## *Cheques Act 1986*

### 42 Paragraph 70A(2)(a)

Omit "an externally administered body corporate", substitute "a Chapter 5 body corporate".

## *Commonwealth Serum Laboratories Act 1961*

### 43 Subsection 19D(3) (definition of *resolution*)

After "as in", insert "section 9 of".

### 44 Subsection 19D(3) (definition of *special resolution*)

After "as in", insert "section 9 of".

## *Corporations (Aboriginal and Torres Strait Islander) Act 2006*

### 45 Paragraphs 22-5(1)(e) and 23-5(1)(d)

Omit "an externally-administered body corporate", substitute "a Chapter 5 body corporate".

### 46 Subsection 45-1(4) (paragraph (b) of the definition of *Corporations Act arrangements and reconstructions provisions*)

Omit "and sections 428, 432, 434 and 536 of", substitute ", sections 428, 432 and 434 of, and Subdivision B of Division 90 of Schedule 2 to,".

### 47 Subsection 45-1(4) (paragraph (d) of the definition of *Corporations Act arrangements and reconstructions provisions*)

After "regulations", insert "and rules".

### 48 Subsection 421-1(4) (paragraph (b) of the definition of *exempt document*)

After "report", insert "or return".

### 49 Subsection 421-1(4) (subparagraph (b)(i) of the definition of *exempt document*)

After "422", insert ", 422A or 422B".

### 50 Subsection 521-1(4) (paragraphs (a) and (b) of the definition of *Corporations Act administration provisions*)

After "Part 5.3A of", insert ", and Schedule 2 to,".

### 51 Subsection 521-1(4) (paragraph (c) of the definition of *Corporations Act administration provisions*)

After "regulations", insert "and rules".

### 52 Subsection 521-1(4) (paragraph (c) of the definition of *Corporations Act administration provisions*)

After "Part 5.3A of", insert ", and Schedule 2 to,".

### 53 Subsection 526-35(3) (paragraph (a) of the definition of *Corporations Act winding up provisions*)

After "and 5.9 of", insert ", and Schedule 2 to,".

### 54 Subsection 526-35(3) (paragraph (b) of the definition of *Corporations Act winding up provisions*)

Omit "of the Parts", substitute "of the provisions".

### 55 Subsection 526-35(3) (paragraph (c) of the definition of *Corporations Act winding up provisions*)

Repeal the paragraph, substitute:

(c) the regulations and rules made under that Act for the purposes of the provisions of that Act referred to in paragraphs (a) and (b);

### 56 Paragraph 546-10(1)(c)

Omit "509(6)", substitute "509(2)".

### 57 Paragraph 546-10(2)(a)

Omit "a return under section 509 of the Corporations Act", substitute "the end of administration return for the company under section 70-6 of Schedule 2 to the Corporations Act".

### 58 Paragraph 546-10(2)(b)

Omit "509(6)", substitute "509(2)".

### 59 Subsection 546-20(6)

Omit "subsection 542(2) of", substitute "section 70-35 of Schedule 2 to".

### 60 Section 700-1

Insert:

***Chapter 5 body corporate*** has the same meaning as in the *Corporations Act 2001*.

### 61 Section 700-1 (definition of *externally-administered body corporate*)

Repeal the definition.

### 62 Section 700-1

Insert:

***Schedule 2 to the Corporations Act*** means Schedule 2 to the *Corporations Act 2001* and rules made under that Schedule.

## *Corporations Act 2001*

### 63 Section 9 (definition of *Board*)

Omit "and Liquidators".

### 64 Section 9

Insert:

***Chapter 5 body corporate*** means a body corporate:

(a) that is being wound up; or

(b) in respect of property of which a receiver, or a receiver and manager, has been appointed (whether or not by a court) and is acting; or

(c) that is under administration; or

(d) that has executed a deed of company arrangement that has not yet terminated; or

(e) that has entered into a compromise or arrangement with another person the administration of which has not been concluded.

### 65 Section 9 (definition of *committee of creditors*)

Repeal the definition.

### 66 Section 9 (subparagraph (a)(iii) of the definition of *declaration of indemnities*)

Omit "his or her remuneration as determined under section 449E", substitute "the remuneration to which he or she is entitled under section 60-5 of Schedule 2 (external administrator's remuneration)".

### 67 Section 9 (definition of *externally-administered body corporate*)

Repeal the definition.

### 68 Section 9 (definition of *financial year*)

After "***year***", insert ", when used in a provision outside Schedule 2,".

### 69 Section 9 (paragraphs (a) and (b) of the definition of *firm*)

Omit "externally-administered bodies corporate", substitute "Chapter 5 bodies corporate".

### 70 Section 9

Insert:

> ***Insolvency Practice Rules*** means the rules made by the Minister under section 105-1 of Schedule 2.

### 71 Section 9 (definition of *insolvent under administration*)

Omit "a person who" (first occurring).

### 72 Section 9 (paragraphs (a) and (b) of the definition of *insolvent under administration*)

Before "under", insert "a person who,".

### 73 Section 9 (at the end of paragraph (b) of the definition of *insolvent under administration*)

Add "or".

### 74 Section 9 (definition of *insolvent under administration*)

Omit "and includes:".

### 75 Section 9 (at the end of the definition of *insolvent under administration*)

Add:

; or (e) a person who is a party (as a debtor) to a debt agreement under:

(i) Part IX of the *Bankruptcy Act 1966*; or

(ii) the corresponding provisions of the law of an external Territory or the law of a foreign country.

### 76 Section 9 (definition of *official liquidator*)

Repeal the definition.

### 77 Section 9 (at the end of the definition of *property*)

Add:

; and (i) in Schedule 2 (the Insolvency Practice Schedule)—has a meaning affected by section 5-26 of that Schedule.

### 78 Section 9 (definition of *registered liquidator*)

Repeal the definition, substitute:

***registered liquidator*** has the same meaning as in section 5-5 of Schedule 2.

### 79 Section 9 (definition of *resolution*)

After "***resolution***,", insert "when used in a provision outside Schedule 2".

### 80 Section 9 (definition of *special resolution*)

After "***resolution***", insert ", when used in a provision outside Schedule 2".

### 81 Section 9 (at the end of the definition of *this Act*)

Add "and the Insolvency Practice Rules".

### 82 Subsection 57A(3) (note)

Omit "1309(6), 1318(5), 1321(2)", substitute "599(2), 1309(6), 1318(5)".

### 83 Subsection 162(4)

Omit "an externally-administered body corporate", substitute "a Chapter 5 body corporate".

### 84 At the end of Part 2D.1 of Chapter 2D

Add:

## Division 5—Exercise of powers while company under external administration

### 198G Exercise of powers while company under external administration

*Powers of officers while company under external administration*

(1) While a company is under external administration, an officer of the company must not perform or exercise a function or power of that office.

*Offence*

(2) A person commits an offence if:
  (a) the person is an officer of a company; and
  (b) the company is under external administration; and
  (c) the person purports to perform or exercise a function or power of that office.

Penalty: 25 penalty units.

*Exceptions*

(3) Subsections (1) and (2) do not apply to the extent that the officer of the company is acting:
  (a) as the external administrator of the company; or
  (b) with the written approval of the external administrator of the company or the Court; or

(c) in circumstances in which, despite the fact that the company is under external administration, the officer is permitted by this Act to act.

Note: In proceedings to determine whether a person has committed an offence under subsection (2), a defendant bears an evidential burden in relation to the matters in subsection (3), see subsection 13.3(3) of the *Criminal Code*.

(4) Subsections (1) and (2) do not apply if the company has executed a deed of company arrangement and the deed has not yet terminated.

Note 1: Section 444G deals with the effect of a deed of company arrangement on various persons.

Note 2: In proceedings to determine whether a person has committed an offence under subsection (2), a defendant bears an evidential burden in relation to the matters in subsection (4), see subsection 13.3(3) of the *Criminal Code*.

*Functions and powers of liquidator or provisional liquidator prevail in case of conflict*

(5) If subsection (3) applies and there is a conflict between a function or power of the external administrator of the company and a function or power of the officer in relation to the company, the external administrator's function or power prevails.

*Effect of section*

(6) This section does not remove an officer of a company from office.

(7) For the purposes of this section, a person is not an officer of a company merely because he or she is a managing controller, appointed under a power contained in an instrument, of property of the company.

(8) Nothing in this section affects a secured creditor's right to realise or otherwise deal with the security interest.

*Definitions*

(9) In this section:

***external administration*** of a company has the same meaning as in Schedule 2.

***external administrator*** of a company has the same meaning as in Schedule 2.

## 85 Section 206B (heading)

Repeal the heading, substitute:

### 206B Automatic disqualification—convictions, bankruptcy and foreign court orders etc.

## 86 Section 206BA (heading)

Repeal the heading, substitute:

### 206BA Extension of period of automatic disqualification under section 206B

## 87 Subsection 254N(1)

Omit "an externally-administered body corporate", substitute "a Chapter 5 body corporate".

## 88 Subparagraph 283AC(1)(e)(ii)

Omit "an externally-administered body corporate", substitute "a Chapter 5 body corporate".

## 89 Paragraph 411(9)(b)

Repeal the paragraph, substitute:

(b) Subdivision B (court powers to inquire and make orders) of Division 90 of Schedule 2 applies in relation to that person or those persons as if:

(i) the appointment of the person or persons to administer the compromise or arrangement were an appointment of the person or persons as an external administrator of the body; and

(ii) a reference in that Subdivision to an external administration were a reference to the administration of the compromise or arrangement; and

(iii) a reference in that Subdivision to an external administrator were a reference to that person or to those persons.

## 90 At the end of Part 5.1 of Chapter 5

Add:

### 415A Outcome of voting at creditors' meeting determined by related entity—Court powers

(1) Subsection (3) applies if, on the application of a creditor of a Part 5.1 body, the Court is satisfied of the following matters:

(a) a proposed resolution has been voted on at a meeting of creditors, or of a class of creditors, of the body held under this Part;

(b) that, if the vote or votes that a particular related creditor, or particular related creditors, of the body cast on the proposed resolution had been disregarded for the purposes of determining whether or not the proposed resolution was passed, the proposed resolution:

(i) if it was in fact passed—would not have been passed; or

(ii) if in fact it was not passed—would have been passed;

or the question would have had to be decided on a casting vote;

(c) that the passing of the proposed resolution, or the failure to pass it, as the case requires:

(i) is contrary to the interests of the creditors as a whole or of that class of creditors as a whole, as the case may be; or

(ii) has prejudiced, or is reasonably likely to prejudice, the interests of the creditors who voted against the proposed resolution, or for it, as the case may be, to an extent that is unreasonable having regard to the matters in subsection (2).

(2) The matters are:

(a) the benefits resulting to the related creditor, or to some or all of the related creditors, from the resolution, or from the failure to pass the proposed resolution, as the case may be; and

(b) the nature of the relationship between the related creditor and the body, or of the respective relationships between the related creditors and the body; and

(c) any other relevant matter.

(3) The Court may make one or more of the following:

(a) if the proposed resolution was passed—an order setting aside the resolution;

(b) an order that the proposed resolution be considered and voted on at a meeting of the creditors of the body, or of that class of creditors, as the case may be, convened and held as specified in the order;

(c) an order directing that the related creditor is not, or such of the related creditors as the order specifies are not, entitled to vote on:

(i) the proposed resolution; or

(ii) a resolution to amend or vary the proposed resolution;

(d) such other orders as the Court thinks necessary.

(4) In this section:

***related creditor***, in relation to a Part 5.1 body, in relation to a vote, means a person who, when the vote was cast, was a related entity, and a creditor, of the body.

### 415B Interim order on application under section 415A

(1) If:

(a) an application under subsection 415A(1) has not yet been determined; and

(b) the Court is of the opinion that it is desirable to do so;

the Court may make such interim orders as it thinks appropriate.

(2) An interim order must be expressed to apply until the application is determined, but may be varied or discharged.

### 415C Order under section 415A does not affect act already done pursuant to resolution

An act done pursuant to a resolution as in force before the making, under section 415A, of an order setting aside or varying the resolution, is as valid and binding on and after the making of the order as if the order had not been made.

## 91 After section 422

Insert:

### 422A Annual return by controller

(1) This section applies if a person is the controller of property of a corporation during all or part of a control return year for the controller for the corporation.

(2) However, this section does not apply if:
  (a) the control of the property ends during the control return year; and
  (b) the person is the controller of the property when the control of the property ends.

Note: If a person is the controller of property of the corporation when the control of the property ends, the person must instead lodge a return under section 422B.

(3) The person must lodge a return in relation to the control of the property of the corporation.

(4) The return must:
  (a) be in the approved form; and
  (b) be lodged with ASIC within 3 months after the end of the control return year.

Note: Fees for lodging documents and late lodgement fees may be imposed under the *Corporations (Fees) Act 2001*.

(5) Each of the following is a ***control return year*** for a controller for a corporation:
  (a) the period of 12 months beginning on the day on which the person first began to be a controller of the property of the corporation;
  (b) each subsequent period of 12 months.

### 422B End of control return

*Application of this section*

(1) This section applies if the control of the property of a corporation ends.

*End of receivership return to be lodged*

(2) The person who is the controller of the property of the corporation when the control of the property of the corporation ends (the ***last controller***) must lodge a return in relation to the control of the property of the corporation.

(3) The return must:
  (a) be in the approved form; and
  (b) be lodged with ASIC within 1 month after the control of the property of the corporation ends.

Note: Fees for lodging documents and late lodgement fees may be imposed under the *Corporations (Fees) Act 2001.*

*Notice of lodgement to be given*

(4) The last controller must give notice that the return has been lodged to a person mentioned in subsection (5), if that person requests in writing that the last controller give the person such a notice.

Note: For notification, see section 600G.

(5) The persons who may request such a notice are:
  (a) the members of the corporation; and
  (b) the creditors; and
  (c) the corporation; and
  (d) if the corporation is a company under external administration—the external administrator of the company.

## 422C Transfer of books to new controller

*Application of this section*

(1) This section applies if:
  (a) a person (the ***former controller***) ceases to act as a controller of property of a corporation; and
  (b) ASIC has not issued a notice to the former controller under section 422D; and
  (c) a registered liquidator (the ***new controller***) is appointed instead as:
    (i) the controller of that property of the corporation; or

(ii) if the corporation is a company under external administration—the external administrator of the company.

*Transfer of books to new controller*

(2) The former controller must transfer to the new controller, within 5 business days after the new controller is appointed, possession or control of any books relating to the control of the property that are in the former controller's possession or control.

(3) The former controller may take a copy of any part of the books before transferring possession or control of them to the new controller.

*New controller must allow inspection etc.*

(4) After possession or control of the books is transferred, the new controller must allow the former controller to inspect them at any reasonable time and take a copy of any part of the books.

*Offence*

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

Penalty: 50 penalty units.

*Lien against books not prejudiced*

(6) If the new controller is entitled to take possession or control of the books under this section:
(a) a person is not entitled, as against the new controller, to claim a lien on the books; and
(b) such a lien is not otherwise prejudiced.

## 422D Transfer of books to ASIC etc.

*Transfer of books to ASIC*

(1) If a person ceases to act as a controller of property of a corporation, ASIC may, by written notice given to the person, require the person to:

(a) if the person has possession or control of books relating to the control of that property of the corporation in his or her possession or control—transfer possession or control of those books to ASIC within the period specified in the notice; or

(b) otherwise—notify ASIC, within the period and in the manner specified in the notice, that the person does not have books relating to the control of that property of the corporation in the person's possession or control.

*Offence*

(2) A person commits an offence if:

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

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

Penalty: 50 penalty units.

*ASIC must transfer books to new controller*

(3) If:

(a) possession or control of books relating to the control of property of a corporation is transferred to ASIC under this section; and

(b) the books are in ASIC's possession or control; and

(c) a person (the ***new controller***) is or becomes:

(i) the controller of that property of the corporation; or

(ii) if the corporation is a company under external administration—the external administrator of the company;

ASIC must, as soon as practicable, transfer possession or control of those books to the new controller.

*ASIC must transfer books to company*

(4) If:

(a) possession or control of books relating to the control of property of a corporation is transferred to ASIC under this section; and

(b) the books are in ASIC's possession or control; and

(c) it is unlikely that another person will be appointed as:

(i) the controller of that property of the corporation; or

(ii) if the corporation is a company under external administration—the external administrator of the company;

ASIC must, as soon as practicable, transfer possession or control of those books to the relevant corporation.

*Lien against books not prejudiced*

(5) If ASIC is entitled to take possession or control of the books under this section:

(a) a person is not entitled, as against ASIC, to claim a lien on the books; and

(b) such a lien is not otherwise prejudiced.

(6) If ASIC is required to give possession or control of the books to the new controller under this section:

(a) a person is not entitled, as against the new controller, to claim a lien on the books; and

(b) such a lien is not otherwise prejudiced.

*Notice is not a legislative instrument*

(7) A notice under subsection (1) is not a legislative instrument.

*Retention period for books*

(8) ASIC must retain all books:

(a) that are relevant to the control of property of the corporation; and

(b) possession or control of which is transferred to ASIC under this section; and

(c) possession or control of which is not transferred to another entity under this section, or under any other law;

for a period (the ***retention period***) of 2 years after the day on which ASIC takes possession or control of the books.

*Destruction of books at end of retention period*

(9) ASIC may destroy the books at the end of the retention period.

*Relationship with other laws*

(10) Subsections (8) and (9) do not apply to the extent that ASIC is under an obligation to retain the books, or a part of the books, under another provision of this Act or under any other law.

## 92 Paragraph 426(a)

Omit "report that the controller lodges under section 421A or 422", substitute "report or return that the controller lodges under section 421A, 422, 422A or 422B".

## 93 Paragraph 429(2)(b)

Omit "14 days", substitute "10 business days".

## 94 Paragraph 429A(3)(f)

Omit "14 days", substitute "10 business days".

## 95 Section 432 (heading)

Repeal the heading, substitute:

### 432 Auditing returns by controllers

## 96 Subsections 432(1) and (1A)

Repeal the subsections.

## 97 Subsection 432(2)

Omit "the accounts lodged in accordance with subsection (1)", substitute "the returns lodged in accordance with sections 422A and 422B".

## 98 Subsection 432(3)

Omit "the accounts", substitute "the returns".

## 99 At the end of Part 5.2

Add:

### 434H Regulations may provide for reporting to ASIC

(1) The regulations may provide for and in relation to the obligations of a controller, or a managing controller, of the property of a corporation:

(a) to give information; and

(b) to provide reports; and

(c) to produce documents;

to ASIC.

(2) Without limiting subsection (1), the regulations may provide for and in relation to:

(a) the manner and form in which information is to be given, a report provided or a document produced; and

(b) the timeframes in which information is to be given, a report provided or a document produced; and

(c) who is to bear the cost of giving information, providing a report or producing a document.

## 100 Section 435A

After "this Part", insert ", and Schedule 2 to the extent that it relates to this Part,".

## 101 At the end of section 435A

Add:

Note: Schedule 2 contains additional rules about companies under external administration.

## 102 Paragraph 436DA(6)(a)

Repeal the paragraph, substitute:

(a) if:

(i) there is a committee of inspection; and

(ii) the next meeting of the committee of inspection occurs before the next meeting of the company's creditors;

at the next meeting of the committee of inspection; or

### 103 Paragraph 436E(1)(a)

Repeal the paragraph, substitute:

(a) whether to appoint a committee of inspection; and

### 104 Sections 436F, 436G and 437C

Repeal the sections.

### 105 Subsection 438B(2)

Omit "statement", substitute "report in the prescribed form".

### 106 After subsection 438B(2)

Insert:

(2A) The administrator must, within 5 business days after receiving a report under subsection (2), lodge a copy of the report.

### 107 Subsection 438B(4)

After "(2)", insert ", (2A)".

### 108 Section 438E

Repeal the section.

### 109 Subsections 439A(3) and (4)

Repeal the subsections.

### 110 Section 439B

Repeal the section.

### 111 Paragraph 439C(a)

Omit "the notice", substitute "any notice".

### 112 Subsections 441A(3), 441B(2) and 441C(2)

Omit "437C", substitute "198G".

### 113 Section 441E

Omit "437C", substitute "198G".

### 114 Subsections 441F(2) and 441G(1)

Omit "437C", substitute "198G".

### 115 Section 441J

Omit "437C", substitute "198G".

### 116 Paragraph 443D(b)

Repeal the paragraph, substitute:

(b) the remuneration to which he or she is entitled under Division 60 of Schedule 2 (external administrator's remuneration).

### 117 Subsection 444B(4)

Omit "437C", substitute "198G".

### 118 Section 445A

Omit "convened under section 445F".

### 119 Paragraph 445C(b)

Omit "that was convened under section 445F by a notice setting out the proposed resolution".

### 120 Paragraph 445D(1)(b)

Omit "report or statement under subsection 439A(4)", substitute "document".

### 121 Paragraph 445D(1)(c)

Omit "report or statement", substitute "document".

### 122 Paragraph 445E(a)

Repeal the paragraph, substitute:

(a) the company's creditors pass a resolution at a meeting terminating the deed; and

### 123 Section 445F

Repeal the section.

### 124 Division 11A of Part 5.3A of Chapter 5

Repeal the Division.

### 125 Paragraph 446A(1)(c)

Omit "at a meeting convened under section 445F, a", substitute "the".

### 126 Paragraph 446A(7)(a)

Omit "subsection 499(4)", substitute "section 198G (exercise of powers while company under external administration)".

### 127 Subsection 446B(2)

After "Part 5.5", insert "or Schedule 2".

### 128 Sections 447D, 447E and 448D

Repeal the sections.

### 129 Division 15 of Part 5.3A of Chapter 5 (heading)

Repeal the heading, substitute:

## Division 15—Removal and replacement of administrator

### 130 Section 449B

Repeal the section.

### 131 Subsection 449C(2) (paragraph (a) of the definition of *appointer*)

Omit "section 449B", substitute "Division 90 of Schedule 2 (review of the external administration of a company)".

### 132 Subsection 449C(5)

Repeal the subsection.

### 133 Subsection 449C(7)

Omit "437C", substitute "198G".

### 134 Paragraph 449CA(6)(a)

Omit "committee of creditors" (wherever occurring), substitute "committee of inspection".

### 135 Sections 449D and 449E

Repeal the sections.

### 136 Paragraph 450B(c)

Repeal the paragraph, substitute:

(b) lodge notice in the prescribed form with ASIC of the execution of the deed.

### 137 Section 465A

Before "A person", insert "(1)".

### 138 At the end of section 465A

Add:

(2) If the Court orders the winding up of a company as a result of an application under section 459P, 462 or 464, the liquidator (or provisional liquidator) must cause notice setting out prescribed information about the order to be published in the prescribed manner.

### 139 Section 471A

Repeal the section.

### 140 Section 471C

Omit "471A or".

### 141 Section 472 (heading)

Repeal the heading, substitute:

**472 Court to appoint registered liquidator**

### 142 Subsections 472(1) and (2)

Omit "an official liquidator", substitute "a registered liquidator".

## 143 Subsection 472(6)

Repeal the subsection, substitute:

(6) If more than one liquidator is appointed by the Court, the Court must declare whether anything that is required or authorised by this Act to be done by the liquidator is to be done by all or any one or more of the persons appointed.

## 144 Section 473

Repeal the section, substitute:

### 473 Resignation of liquidators

A liquidator appointed by the Court may resign.

### 473A Vacancies in office of court-appointed liquidator

(1) A vacancy in the office of a liquidator appointed by the Court may be filled by:
  (a) the Court; or
  (b) ASIC.

(2) If ASIC fills a vacancy in the office of a liquidator under subsection (1), ASIC must:
  (a) publish notice of the filling of the vacancy; and
  (b) publish the notice in the prescribed manner.

(3) If ASIC fills a vacancy in the office of a liquidator under subsection (1), the liquidator is taken, for the purposes of this Act, to be appointed by the Court.

(4) If more than one liquidator is appointed under this section, the Court or ASIC (as the case may be) must declare whether anything that is required or authorised by this Act to be done by the liquidator is to be done by all or any one or more of the persons appointed.

(5) If a declaration made by ASIC under subsection (4) is inconsistent with a declaration of the Court made under that subsection, the declaration of the Court prevails to the extent of any inconsistency.

### 145 Subsections 475(4) and (5)

Omit "14 days", substitute "10 business days".

### 146 Subsection 475(7)

Omit "7 days", substitute "5 business days".

### 147 Section 476

Repeal the section.

### 148 After subsection 477(2B)

Insert:

(2C) Subsection (2B) does not apply to an agreement if the costs and expenses of the company under the agreement are to be paid out of money paid to the liquidator:

(a) by ASIC on behalf of the Commonwealth; and

(b) for the purpose of paying the costs and expenses.

### 149 Subsection 477(4)

Repeal the subsection.

### 150 Subsection 477(6)

Repeal the subsection, substitute:

(6) Subject to this Part, the liquidator must use his or her own discretion in the management of affairs and property of the company and the distribution of its property.

### 151 Section 479

Repeal the section.

### 152 Paragraph 481(1)(a)

Omit "section 539", substitute "section 70-15 of Schedule 2 (audit of administration books)".

### 153 Paragraph 482(2A)(d)

Repeal the paragraph, substitute:

(d) any document that accompanied a notice of the meeting under section 439A when the company was under administration;

### 154 Subsection 488(1)

After "this Part", insert "or Schedule 2".

### 155 Section 489D (heading)

Repeal the heading, substitute:

**489D Court's power to make orders under other provisions**

### 156 Subsections 489D(1) and (2)

After "598 or 1323", insert ", or section 45-1 or 90-15 of Schedule 2".

### 157 Subsection 489EC(1)

Repeal the subsection, substitute:

(1) If ASIC orders under section 489EA that a company be wound up, ASIC may appoint a liquidator for the purpose of winding up the affairs and distributing the property of the company.

Note: For the remuneration of liquidators appointed under this section, see Subdivision D of Division 60 of Schedule 2.

### 158 Section 495

Repeal the section, substitute:

**495 Appointment of liquidator etc.**

(1) The company in general meeting must appoint a liquidator or liquidators for the purpose of winding up the affairs and distributing the property of the company.

Note: For rules about the liquidator's remuneration, see Division 60 of Part 3 of Schedule 2. For rules about convening meetings, see Division 75 of Part 3 of Schedule 2.

(2) If a vacancy occurs in the office of a liquidator (whether by death, resignation or otherwise), the company in general meeting may fill the vacancy by the appointment of a liquidator.

(3) A general meeting may be convened for the purposes of subsection (2) by any contributory or, if there were 2 or more liquidators, by the continuing liquidators.

(4) The meeting must be held in the manner provided by this Act or by the company's constitution or in such manner as is, on application by any contributory or by the continuing liquidators, determined by the Court.

## 159 Subsections 496(2) and (3)

Repeal the subsections.

## 160 Subsection 496(8)

Repeal the subsection, substitute:

(8) After the meeting the winding up must proceed as if it were a creditors' voluntary winding up.

## 161 Subsection 496(9)

Omit "(2), (3),".

## 162 Section 497

Repeal the section, substitute:

### 497 Information about the company's affairs

(1) The liquidator of the company must, within 10 business days after the day of the meeting of the company at which the resolution for voluntary winding up is passed:

(a) send to each creditor:

(i) a summary of the affairs of the company in the prescribed form; and

(ii) a list setting out the names of all creditors, the addresses of those creditors and the estimated amounts of their claims, as shown in the records of the company; and

(b) lodge a copy of the documents sent in accordance with paragraph (a).

Note: For electronic notification under paragraph (a), see section 600G.

(2) The list referred to in subparagraph (1)(a)(ii) must identify any creditors that are related entities of the company.

(3) Unless the Court orders otherwise, nothing in subsection (1) requires the liquidator to send the list referred to in subparagraph (1)(a)(ii) to a creditor whose debt does not exceed $1,000.

(4) Within 5 business days after the day of the meeting of the company at which the resolution for voluntary winding up is passed or such longer period as the liquidator allows, the directors of the company must give the liquidator a report, in the prescribed form, about the company's business, property, affairs and financial circumstances.

(5) An offence based on subsection (4) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(6) The liquidator must, within 10 business days after receiving a report under subsection (4), lodge a copy of the report.

(7) A person must not contravene subsection (6).

(8) An offence based on subsection (7) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(9) Subsection (7) does not apply to the extent that the person has a reasonable excuse.

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

## 163 Section 498

Repeal the section.

## 164 Subsections 499(3) to (7)

Repeal the subsections, substitute:

(3) If a liquidator, other than a liquidator appointed by, or by the direction of, the Court resigns:

(a) the Court; or

(b) ASIC; or

(c) the creditors;

may fill the vacancy by the appointment of a liquidator.

Note: If the registration of a liquidator is suspended or cancelled, ASIC must fill the vacancy: see section 40-111 of Schedule 2.

(4) If ASIC fills a vacancy in the office of a liquidator under subsection (3), ASIC must:
  (a) publish notice of the filling of the vacancy; and
  (b) publish the notice in the prescribed manner.

(5) If ASIC or the Court fills a vacancy in the office of a liquidator under subsection (3), the liquidator is taken, for the purposes of this Act, to be appointed by the creditors.

## 165 Sections 502 to 505

Repeal the sections.

## 166 Paragraphs 506(1)(e) and (f)

Repeal the paragraphs, substitute:

(e) exercise the power of the Court of fixing a time within which debts and claims must be proved.

## 167 Section 506A

Repeal the section, substitute:

### 506A Declarations by liquidator—relevant relationships and indemnities

*Scope*

(1) This section applies to a liquidator appointed in relation to a creditors' voluntary winding up.

*Declaration and notification of relevant relationships and indemnities*

(2) Within 10 business days after the day of the meeting of the company at which the resolution for voluntary winding up is passed, the liquidator must:
  (a) make:
    (i) a declaration of relevant relationships; and
    (ii) a declaration of indemnities; and

(b) give a copy of each declaration to as many of the company's creditors as reasonably practicable.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

*Replacement declarations*

(4) If:

(a) at a particular time, the liquidator makes:

(i) a declaration of relevant relationships; or

(ii) a declaration of indemnities;

under subsection (2) of this section; and

(b) at a later time:

(i) the declaration has become out-of-date; or

(ii) the liquidator becomes aware of an error in the declaration;

the liquidator must, as soon as practicable, make:

(c) if subparagraph (a)(i) applies—a replacement declaration of relevant relationships; or

(d) if subparagraph (a)(ii) applies—a replacement declaration of indemnities.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

(5) The liquidator must table a copy of a replacement declaration under subsection (4):

(a) if:

(i) there is a committee of inspection; and

(ii) the next meeting of the committee of inspection occurs before the next meeting of the company's creditors;

at the next meeting of the committee of inspection; or

(b) in any other case—at the next meeting of the company's creditors.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

(7) In a prosecution for an offence constituted by a failure to include a matter in a declaration under this section, it is a defence if the defendant proves that:

(a) the defendant made reasonable enquiries; and
(b) after making these enquiries, the defendant had no reasonable grounds for believing that the matter should have been included in the declaration.

## 168 Section 508

Repeal the section.

## 169 Section 509

Repeal the section, substitute:

### 509 Deregistration

*ASIC must deregister at the end of 3 month period*

(1) If an end of administration return for a company is lodged with ASIC on the basis that the affairs of the company are fully wound up, ASIC must deregister the company at the end of the period of 3 months beginning on the day after the return is lodged (the ***deregistration period***).

*ASIC must deregister on a day specified by the Court*

(2) On application by the liquidator or any other interested party, the Court may make an order that ASIC deregister the company on a specified day. The Court must make the order before the end of the deregistration period.

(3) The person on whose application an order under subsection (2) is made must, within 10 business days after the making of the order, lodge a copy of the order.

## 170 Section 511

Repeal the section.

## 171 Paragraph 513B(d)

Omit ", at a meeting convened under section 445F,".

## 172 Section 531

Repeal the section.

### 173 Subsection 532(1)

Omit all the words after "she", substitute "is a registered liquidator".

### 174 Subsection 532(7)

Repeal the subsection.

### 175 Subsection 532(8)

Repeal the subsection, substitute:

(8) A person must not consent to be appointed, and must not act, as liquidator of a company that is being wound up by order of the Court if the person is not entitled to act as such a liquidator in accordance with the current conditions (if any) imposed on the person.

### 176 Subsection 532(10)

Omit "(7),".

### 177 Sections 536, 538, 539, 540, 542, 546 and 547

Repeal the sections.

### 178 Division 5 of Part 5.6 of Chapter 5

Repeal the Division.

### 179 Paragraph 556(1)(db)

After "subsection 539(6)", insert ", or subsection 70-15(5) (audit of administration books by ASIC) or section 90-27 (review by another registered liquidator) of Schedule 2".

### 180 Sections 574 to 576

Repeal the sections.

### 181 Before subsection 577(1)

Insert:

(1A) Within 5 business days after the liquidator or liquidators of a group of 2 or more companies:

(a) make a pooling determination in relation to the group; or

(b) vary a pooling determination in force in relation to the group;

the liquidator or liquidators must convene separate meetings of the eligible unsecured creditors of each of the companies in the group.

Note: For ***eligible unsecured creditor***, see section 579Q.

### 182 Subsection 577(1)

Omit "section 574", substitute "subsection (1A)".

### 183 Subsection 577(1) (note)

Repeal the note.

### 184 Subsection 577(2)

Repeal the subsection.

### 185 Subsection 577(3)

Omit "section 574" (wherever occurring), substitute "subsection (1A)".

### 186 Paragraph 578(1)(b)

Omit "section 574", substitute "subsection 577(1A)".

### 187 Paragraph 578(1)(c)

Omit "in accordance with section 577", substitute "as referred to in section 577".

### 188 Paragraph 578(2)(c)

Omit "section 574", substitute "subsection 577(1A)".

### 189 Paragraph 578(2)(d)

Omit "in accordance with section 577", substitute "as referred to in section 577".

### 190 Paragraph 579(1)(a)

Omit "or 574", substitute "or subsection 577(1A)".

### 191 Paragraph 579A(1)(b)

Omit "statement under paragraph 574(3)(b)", substitute "document".

### 192 Paragraph 579A(1)(c)

Omit "statement", substitute "document".

## 193 Subsection 579L(1) (note)

Omit "section 548A (committee of inspection)", substitute "Division 80 (committees of inspection) of Schedule 2".

## 194 Before section 600AA

Insert:

### 599 Appeals from decisions of receivers etc.

(1) A person aggrieved by any act, omission or decision of:

(a) a person administering a compromise, arrangement or scheme referred to in Part 5.1; or

(b) a controller, or a managing controller, of property of a corporation;

may appeal to the Court in respect of the act, omission or decision and the Court may confirm, reverse or modify the act or decision, or remedy the omission, as the case may be, and make such orders and give such directions as it thinks fit.

(2) Paragraph (1)(b) does not apply to a corporation that is an Aboriginal and Torres Strait Islander corporation.

Note: Similar provision is made in relation to Aboriginal and Torres Strait Islander corporations under section 576-10 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

## 195 Sections 600A to 600E

Repeal the sections.

## 196 Paragraphs 600G(1)(b) to (e)

Repeal the paragraphs.

## 197 Paragraphs 600G(1)(j) and (k)

Repeal the paragraphs.

## 198 Paragraph 600G(1)(l)

Omit "497(2)(a)", substitute "497(1)(a)".

## 199 Paragraphs 600G(1)(m), (n), (o), (q) and (r)

Repeal the paragraphs.

## 200 Paragraph 600G(1)(x)

Omit "579K(4).", substitute "579K(4);".

## 201 At the end of subsection 600G(1)

Add:

(y) a provision of Schedule 2 or the Insolvency Practice Rules.

## 202 Subsection 600G(4)

Repeal the subsection, substitute:

(4) If the notifier makes the notice or document publicly available by electronic means, the notifier may give or send the notice or document to the recipient by notifying the recipient (using the electronic means nominated by the recipient or otherwise in writing):

(a) that the notice or document is available electronically; and

(b) the way in which the notice or document can be accessed.

(4A) Subsection (4) does not apply if the recipient notifies the notifier in accordance with the regulations, before the time for giving or sending the notice or document expires, that the recipient does not have access to the internet.

## 203 At the end of Division 3 of Part 5.9

Add:

### 600J Acts of external administrator valid etc.

(1) The acts of an external administrator are valid despite any defects that may afterwards be discovered in his or her appointment or qualification.

(2) A disposition of a company's property by an external administrator (including a disposition by way of conveyance, assignment, transfer or an instrument giving rise to a security interest) is, despite any defect or irregularity affecting the validity of the winding up or the appointment of the external administrator, valid in favour of any person taking such property in good faith and for value and without actual knowledge of the defect or irregularity.

(3) A person making or permitting a disposition of property to an external administrator is to be protected and indemnified in so doing despite any defect or irregularity affecting the validity of the winding up or the appointment of the external administrator that is not then known to that person.

(4) For the purposes of this section, a disposition of property is taken to include a payment of money.

(5) In this section:

***external administrator*** of a company has the same meaning as in Schedule 2.

## 204 Paragraph 601AC(1)(c)

Omit "509(6) (liquidator's return following winding up)", substitute "509(2) (deregistration after end of administration return is lodged)".

## 205 Subsection 601AC(2)

Repeal the subsection.

## 206 Subsection 601AD(6)

After "subsection 542(2)", insert ", or subsection 70-35(1) of Schedule 2 (retention and return or destruction of books)".

## 207 Paragraph 601BC(7)(a)

Omit "an externally-administered body corporate", substitute "a Chapter 5 body corporate".

## 208 Paragraphs 708(17A)(c) and (d)

Repeal the paragraphs, substitute:

(c) before the offer was specified in the deed, the administrator gave as many creditors as reasonably practicable a statement:

(i) that set out all relevant information about the offer that was within the knowledge of the administrator of the deed; and

(ii) that stated that the statement is not a prospectus and may contain less information than a prospectus.

### 209 Paragraph 797B(b)

Omit "an externally-administered body corporate", substitute "a Chapter 5 body corporate".

### 210 Paragraph 826B(b)

Omit "an externally-administered body corporate", substitute "a Chapter 5 body corporate".

### 211 Paragraph 905H(b)

Omit "an externally-administered body corporate", substitute "a Chapter 5 body corporate".

### 212 Paragraphs 915B(3)(b) and (4)(c)

Omit "an externally-administered body corporate", substitute "a Chapter 5 body corporate".

### 213 After subparagraph 1274(2)(a)(iaa)

Insert:

(iab) a return under section 422A (annual return by controller) or 422B (end of control return); or

### 214 Subparagraph 1274(2)(a)(i)

After "section 1279", insert "(application for registration as an auditor), or section 20-5 of Schedule 2 (application for registration as a liquidator)".

### 215 Subparagraph 1274(2)(a)(ii)

Omit "1287, 1287A or 1288", substitute "1287 (notification of matters by registered auditors), 1287A (annual statements by registered auditors), 30-1 of Schedule 2 (annual liquidator returns) or 35-1 of Schedule 2 (notice of significant events)".

### 216 After subsection 1274(4C)

Insert:

(4D) ASIC may edit from a statement of affairs any information that ASIC is satisfied is commercial-in-confidence, before allowing a person to inspect the statement, or giving a copy or extract of the statement to a person, under subsection (2).

(4E) A ***statement of affairs*** is a statement or report required to be prepared under one of the following provisions:

(a) subsection 421A(1);
(b) paragraph 429(2)(b);
(c) subsection 438B(2);
(d) subsection 475(1) or (2);
(e) subsection 494(2);
(f) subsection 497(4).

(4F) Information is ***commercial-in confidence*** if:

(a) the disclosure of the information could unreasonably affect a person, or a business or action related to a person, in an adverse manner; and
(b) the information is not in the public domain; and
(c) the information is not required to be disclosed under another law of the Commonwealth, a State or a Territory; and
(d) the information is not readily discoverable.

(4G) Despite subsection (2), a person is not entitled to inspect, or to require a copy or an extract of, any information in a statement of affairs that has been edited from the statement under subsection (4D).

### 217 Part 9.2 (heading)

Repeal the heading, substitute:

# Part 9.2—Registration of auditors

### 218 Section 1279 (heading)

Repeal the heading, substitute:

**1279 Application for registration as auditor**

### 219 Subsection 1279(1)

Repeal the subsection, substitute:

(1) A natural person may make an application to ASIC for registration as an auditor.

### 220 Sections 1282 to 1284

Repeal the sections.

### 221 Section 1286

Repeal the section.

### 222 Subsections 1287(2) and (3)

Repeal the subsections.

### 223 Subsection 1287(4)

Omit ", as a liquidator or as a liquidator of a specified corporate body".

### 224 Section 1288

Repeal the section.

### 225 Subsection 1290(1)

Omit ", as a liquidator, as a liquidator of a specified body corporate or as an official liquidator" (first occurring).

### 226 Subsection 1290(1)

Omit ", as a liquidator, as a liquidator of that body corporate or as an official liquidator, as the case may be".

### 227 Subsection 1290(2)

Omit ", as a liquidator, as a liquidator of a specified body corporate or as an official liquidator".

### 228 Sections 1290A and 1291

Repeal the sections.

### 229 Section 1292 (heading)

Repeal the heading, substitute:

**1292 Powers of Board in relation to auditors**

### 230 Subsections 1292(2) to (6)

Repeal the subsections.

### 231 Subsection 1292(7)

Omit "a prescribed person", substitute "a person who is registered as an auditor".

### 232 Subsection 1292(7)

Omit "each prescribed registration of the person", substitute "the registration of the person as an auditor".

### 233 Subsection 1292(8)

Repeal the subsection.

### 234 Subsection 1292(9)

Omit ", as a liquidator or as a liquidator of a specified body corporate" (first occurring).

### 235 Subsection 1292(9)

Omit "(2)(d) or (3)(d), as the case may be,".

### 236 Subsection 1292(9)

Omit ", liquidator or liquidator of that body, as the case may be,".

### 237 Subsection 1292(9)

Omit ", as a liquidator or as a liquidator of a specified body corporate, as the case may be".

### 238 Subsection 1292(10)

Omit "subsections (1) to (6)", substitute "subsection (1)".

### 239 Paragraph 1294(1)(a)

Omit ", as a liquidator or as a liquidator of a specified body corporate".

### 240 Subsection 1295(1)

After "registration of a person", insert "as an auditor".

### 241 Subsection 1297(1)

Omit ", as a liquidator or as a liquidator of a specified body corporate".

## 242 Section 1298

Repeal the section, substitute:

### 1298 Effect of suspension

A person whose registration as an auditor is suspended is, except for the purposes of subsection 1285(2), section 1287 (other than paragraph 1287(1)(a)), section 1287A and this Division, taken not to be registered as an auditor so long as the registration is suspended.

## 243 Section 1298A

Repeal the section.

## 244 Paragraph 1299B(e)

Omit "an externally-administered body corporate", substitute "a Chapter 5 body corporate".

## 245 Subsection 1300(3)

After "this Act", insert "(other than section 70-30 of Schedule 2)".

## 246 At the end of subsection 1300(3)

Add:

Note: Section 70-30 of Schedule 2 is about books relating to an external administration.

## 247 Paragraph 1317B(1)(c)

Omit "and Liquidators Disciplinary Board.", substitute "Disciplinary Board; or".

## 248 At the end of subsection 1317B(1)

Add:

(d) a committee convened under Part 2 of Schedule 2.

## 249 Subsection 1317B(2)

Omit "and Liquidators".

## 250 Paragraph 1317C(j)

Omit "section 1317DAI.", substitute "section 1317DAI; or".

## 251 At the end of section 1317C

Add:

(k) a decision of ASIC under section 40-5 of Schedule 2 (which deals with directing liquidators to comply with requirements to lodge documents etc.); or

(l) a decision of ASIC under section 40-10 of Schedule 2 (which deals with directing liquidators to correct inaccuracies etc.); or

(m) a decision of ASIC under section 40-100 of Schedule 2 to take no action in relation to matters raised by an industry notice lodged under that section (notice by industry bodies of possible grounds for disciplinary action); or

(n) a decision of ASIC to give a direction under section 70-70 of Schedule 2 (which deals with directing external administrators to comply with requests for information etc.); or

(o) a decision of ASIC under section 70-85 of Schedule 2 (a decision to impose a condition on the use or disclosure of relevant material).

## 252 Subsection 1317D(1)

Omit "ASIC or the Companies Auditors and Liquidators Disciplinary Board", substitute "ASIC, the Companies Auditors Disciplinary Board or a committee convened under Part 2 of Schedule 2".

## 253 Section 1321

Repeal the section.

## 254 After paragraph 1349(1)(n)

Insert:

(na) a direction under section 40-15 of Schedule 2; or

(nb) a decision of a kind mentioned in section 40-55 of Schedule 2; or

(nc) a cancellation or suspension under Division 40 of Schedule 2; or

## 255 After paragraph 1349(3)(l)

Insert:

(la) a direction under section 40-15 of Schedule 2; or
(lb) a decision of a kind mentioned in section 40-55 of Schedule 2; or
(lc) a cancellation or suspension under Division 40 of Schedule 2; or

## 256 After paragraph 1349(4)(i)

Insert:

(ia) a direction under section 40-15 of Schedule 2; or
(ib) a decision of a kind mentioned in section 40-55 of Schedule 2; or
(ic) a cancellation or suspension under Division 40 of Schedule 2; or

## 257 Subsection 1351(3) (table item 5)

Repeal the item.

## 258 Schedule 3 (after table item 120)

Insert:

| | | |
|---|---|---|
| 120A | Paragraph 429(2)(b) | 50 penalty units. |

## 259 Schedule 3 (table item 121)

Repeal the item.

## 260 Schedule 3 (table item 123)

Repeal the item, substitute:

| | | |
|---|---|---|
| 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; or<br>(b) if the offence relates to subsection 438B(2A)—5 penalty units. |

## 261 Schedule 3 (table item 127)

Repeal the item.

### 262 Schedule 3 (table item 129)

Repeal the item.

### 263 Schedule 3 (table item 130)

Repeal the item, substitute:

| | | |
|---|---|---|
| 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; or<br>(b) if the offence relates to subsection 475(4)—50 penalty units. |

### 264 Schedule 3 (table item 133)

Repeal the item, substitute:

| | | |
|---|---|---|
| 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. |

### 265 Schedule 3 (table item 143)

Repeal the item, substitute:

| | | |
|---|---|---|
| 143 | Subsection 595(1) | 50 penalty units or imprisonment for 3 months, or both. |

## *Corporations (Review Fees) Act 2003*

### 266 Paragraph 5(1)(e)

Repeal the paragraph.

### 267 Subsection 7(1) (table item 5)

Repeal the item.

## *Cross-Border Insolvency Act 2008*

### 268 Paragraph 8(b)

Repeal the paragraph, substitute:

(b) Chapter 5 (other than Parts 5.2 and 5.4A) of the *Corporations Act 2001*, section 601CL of that Act and Schedule 2 to that Act;

### 269 Paragraph 13(c)

Repeal the paragraph, substitute:

(c) all proceedings under Chapter 5 of the *Corporations Act 2001*, section 601CL of that Act or Schedule 2 to that Act, in respect of the debtor;

### 270 Paragraph 14(c)

Repeal the paragraph, substitute:

(c) any proceeding under Chapter 5 of the *Corporations Act 2001*, section 601CL of that Act or Schedule 2 to that Act, regarding the same debtor;

### 271 Paragraph 20(1)(b)

Repeal the paragraph, substitute:

(b) Chapter 5 (other than Parts 5.2 and 5.4A) of the *Corporations Act 2001*, section 601CL of that Act and Schedule 2 to that Act;

### 272 At the end of paragraph 22(1)(b)

Add "or".

### 273 After paragraph 22(1)(b)

Insert:

(c) Schedule 2 to the *Corporations Act 2001*;

## *Income Tax Assessment Act 1997*

### 274 Subparagraphs 165-208(1)(e)(i) and (ii) and (2)(e)(i) and (ii)

Omit "an externally-administered body corporate", substitute "a Chapter 5 body corporate".

### 275 Subparagraphs 165-250(1)(a)(i) and (ii) and (2)(a)(i) and (ii)

Omit "an externally-administered body corporate", substitute "a Chapter 5 body corporate".

### 276 Subparagraphs 175-100(a)(i) and (ii)

Omit "an externally-administered body corporate", substitute "a Chapter 5 body corporate".

### 277 Paragraphs 703-30(3)(a) and (b)

Omit "an externally-administered body corporate", substitute "a Chapter 5 body corporate".

## *Insurance Act 1973*

### 278 Paragraph 48(1)(c)

Omit "and Liquidators".

### 279 Subsection 52(6)

Omit "an externally-administered body corporate", substitute "a Chapter 5 body corporate".

### 280 Section 62ZP (heading)

Repeal the heading, substitute:

### 62ZP Relationship of this Division with Chapter 5 of, and Schedule 2 to, the *Corporations Act 2001*

### 281 Section 62ZP

After "Chapter 5 of", insert ", and Schedule 2 to,".

### 282 Subsection 92(4)

Omit "an official liquidator", substitute "a registered liquidator (within the meaning of the *Corporations Act 2001*)".

### 283 Subsection 92(5)

Repeal the subsection.

## *Life Insurance Act 1995*

### 284 Paragraph 125(1)(c)

Omit "and Liquidators".

### 285 Subsection 137(3)

Omit "an externally-administered body corporate", substitute "a Chapter 5 body corporate".

### 286 After section 183A

Insert:

#### 183B Application by APRA—voluntary winding up of friendly society

(1) This section applies to a friendly society that may be wound up voluntarily under subsection 180(2).

(2) APRA may apply to the Court:
  (a) to determine any question arising in the winding up of the friendly society; or
  (b) to exercise all or any of the powers that the Court might exercise if the friendly society were being wound up by the Court.

(3) The Court may make any orders on the application that it thinks fit.

## *Medical Indemnity Act 2002*

### 287 Subsection 4(1)

Insert:

***Chapter 5 body corporate*** means:

(a) a body corporate that is a Chapter 5 body corporate within the meaning of the *Corporations Act 2001*; or

(b) a body corporate to which a provisional liquidator has been appointed.

## 288 Subsection 4(1) (definition of *externally-administered body corporate*)

Repeal the definition.

## 289 Subsection 15(2)

Omit "an externally-administered body corporate", substitute "a Chapter 5 body corporate".

## 290 Subsection 17(1)

Omit "an externally-administered body corporate" (wherever occurring), substitute "a Chapter 5 body corporate".

## 291 Subparagraphs 30(2)(a)(iv) and (c)(ii)

Omit "an externally-administered body corporate" (wherever occurring), substitute "a Chapter 5 body corporate".

## 292 Subsection 30(5)

Omit "an externally-administered body corporate", substitute "a Chapter 5 body corporate".

## 293 Subsection 34L(1) (note 4)

Omit "an externally-administered body corporate", substitute "a Chapter 5 body corporate".

## 294 Subsection 34L(4) (heading)

Repeal the heading, substitute:

*What if the insurer is a Chapter 5 body corporate?*

## 295 Subsection 34L(4)

Omit "an externally-administered body corporate" (wherever occurring), substitute "a Chapter 5 body corporate".

### 296 Section 34ZD (heading)

Repeal the heading, substitute:

**34ZD MDOs and medical indemnity insurers that are Chapter 5 bodies corporate**

### 297 Subsection 34ZD(1)

Omit "an externally-administered body corporate" (wherever occurring), substitute "a Chapter 5 body corporate".

### 298 Subsections 34ZD(2) and (3)

Omit "an externally-administered body corporate", substitute "a Chapter 5 body corporate".

## *National Consumer Credit Protection Act 2009*

### 299 Subsection 5(1) (paragraph (b) of the definition of *insolvent*)

Omit "an externally administered body corporate", substitute "a Chapter 5 body corporate".

## *National Greenhouse and Energy Reporting Act 2007*

### 300 Section 7

Insert:

> ***Chapter 5 body corporate*** has the same meaning as in the *Corporations Act 2001*.

### 301 Section 7 (definition of *externally-administered body corporate*)

Repeal the definition.

### 302 Paragraph 11B(10)(c)

Omit "an externally-administered body corporate", substitute "a Chapter 5 body corporate".

### 303 Paragraph 11C(9)(c)

Omit "an externally-administered body corporate", substitute "a Chapter 5 body corporate".

### 304 Paragraph 22P(2)(b)

Omit "an externally-administered body corporate (within the meaning of the *Corporations Act 2001*)", substitute "a Chapter 5 body corporate".

## *Paid Parental Leave Act 2010*

### 305 Section 6 (paragraph (a) of the definition of *insolvent*)

Repeal the paragraph, substitute:

(a) for a natural person—the person is an insolvent under administration; and

### 306 Section 6 (subparagraph (b)(i) of the definition of *insolvent*)

Omit "an externally administered body corporate", substitute "a Chapter 5 body corporate".

## *Payment Systems and Netting Act 1998*

### 307 Section 5 (paragraph (a) of the definition of *external administration*)

Omit "an externally administered body corporate", substitute "a Chapter 5 body corporate".

## *Private Health Insurance (Prudential Supervision) Act 2015*

### 308 Paragraph 50(1)(b)

Omit "and of Division 7A of Part 5.6 of that Chapter,", substitute ", Division 7A of Part 5.6 of Chapter 5 of that Act and Divisions 75 and 90 of Schedule 2 to that Act,".

### 309 Paragraph 50(4)(b)

After "the administrator", insert "or external administrator".

### 310 Paragraph 51(2)(a)

Repeal the paragraph, substitute:

(a) must be a registered liquidator who is entitled to act as the external manager of a health benefits fund under the current conditions (if any) imposed on the person; and

### 311 At the end of section 51

Add:

(4) In this section:

***current conditions*** has the same meaning as in Schedule 2 to the *Corporations Act 2001* (the Insolvency Practice Schedule).

***registered liquidator*** has the same meaning as in the *Corporations Act 2001*.

### 312 Subsection 65(7)

After "to be done in or by regulations", insert "or instruments".

## *Qantas Sale Act 1992*

### 313 Subsection 8(3) (definition of *resolution*)

After "as in", insert "section 9 of".

### 314 Subsection 8(3) (definition of *special resolution*)

After "as in", insert "section 9 of".

## *Superannuation Industry (Supervision) Act 1993*

### 315 Subparagraph 263(3)(b)(i)

Omit "an externally-administered body corporate", substitute "a Chapter 5 body corporate".

## *Taxation Administration Act 1953*

### 316 Section 268-100

Omit "of the *Corporations Act 2001* (External administration), or the *Bankruptcy Act 1966*, to the extent that Chapter or", substitute "(External administration) or Schedule 2 to the *Corporations Act 2001*, or the *Bankruptcy Act 1966*, to the extent those provisions or that".

### 317 Section 269-55

Omit "of the *Corporations Act 2001* (External administration), to the extent that Chapter", substitute "(External administration) or Schedule 2 to the *Corporations Act 2001*, to the extent those provisions".

## *Tradex Scheme Act 1999*

### 318 Section 4

Insert:

> ***Chapter 5 body corporate*** has the same meaning as in the *Corporations Act 2001*.

### 319 Section 4 (definition of *externally-administered body corporate*)

Repeal the definition.

### 320 Section 4 (paragraphs (b) and (c) of the definition of *ineligible*)

Omit "an externally-administered body corporate", substitute "a Chapter 5 body corporate".

# Part 3—Transition to the Insolvency Practice Schedule (Corporations)

## *Australian Securities and Investments Commission Act 2001*

### 321 At the end of the Act

Add:

# Part 23—Transitional provisions relating to the Insolvency Law Reform Act 2016

### 302 Definitions

In this Part:

***commencement day*** means the day on which Part 1 of Schedule 2 to the *Insolvency Law Reform Act 2016* commences.

***control*** of the property of a corporation means:

(a) the receivership of that property; and

(b) the possession, or control, of that property for the purpose of enforcing a security interest;

and includes any functions or powers in connection with managing the corporation that may be performed or exercised by a receiver or other controller of that property.

***Insolvency Practice Schedule (Corporations)*** means Schedule 2 to the *Corporations Act 2001*, and includes rules made under section 105-1 of that Schedule.

***old Corporations Act*** means the *Corporations Act 2001*, as in force immediately before the commencement day, and includes regulations made under that Act as in force immediately before that day.

### 303 General powers of investigation continue to apply to failure to comply with duties before the commencement day

Despite the amendment of subsection 13(3) by the *Insolvency Law Reform Act 2016*, that subsection continues to apply to duties that were not performed, or may not have been performed, before the commencement day by a person who was a liquidator registered under Division 2 of Part 9.2 of the old Corporations Act.

### 304 Notice to registered liquidators concerning information and books—requirements before the commencement day

(1) For the purposes of section 30B and subsection 33(3), the ***liquidator requirements*** are taken to include:

(a) the requirements in relation to liquidators, the external administration of companies and the control of the property of corporations under Chapter 5 of the old Corporations Act; and

(b) other provisions of the old Corporations Act that relate to that Chapter.

(2) For the purposes of subparagraph 30B(2)(c)(ii), a reference to an alleged or suspected contravention of a law of the Commonwealth, or of a State or Territory in this jurisdiction includes an alleged or suspected contravention of such a law that:

(a) relates to the performance or exercise of a liquidator's functions, duties or powers before the commencement day; and

(b) either:

(i) concerns the management of the affairs of a body corporate before the commencement day; or

(ii) involves fraud or dishonesty before the commencement day and relates to a body corporate.

(3) Subsection 33(3) applies, whether or not the liquidator is a registered liquidator under the Insolvency Practice Schedule (Corporations) or was registered as a liquidator under Division 2 of Part 9.2 of the old Corporations Act.

### 305 ASIC may give information and books relating to pre-commencement activity

On and after the commencement day, section 39C applies in relation to information and books obtained or generated by ASIC before the commencement day:

(a) in relation to a person who was a liquidator of a company, or of a specified company, or an official liquidator before the commencement day—in the same way as it applies in relation to a registered liquidator on and after the commencement day; and

(b) in relation to any of the following:

(i) a company that was under administration before the commencement day;

(ii) a company in relation to which a deed of company arrangement had been entered into before the commencement day;

(iii) a company in relation to which a liquidator or provisional liquidator was appointed before the commencement day;

in the same way as it applies in relation to a company under external administration on and after the commencement day; and

(c) in relation to a corporation property of which is under control before the commencement day—in the same way as it applies to a corporation property of which is under control on or after the commencement day.

### 306 Information to be included in ASIC's annual report

The amendment of section 136 made by the *Insolvency Law Reform Act 2016* applies to reports on ASIC's operations during the financial year ending on 30 June 2017, and later financial years.

### 307 Appointments to the Companies Auditors Disciplinary Board

The amendment of section 203 made by the *Insolvency Law Reform Act 2016* applies to appointments made on or after the commencement day.

## *Corporations Act 2001*

### 322 At the end of Chapter 10

Add:

# Part 10.25—Transitional provisions relating to the Insolvency Practice Schedule (Corporations)

## Division 1—Introduction

### 1550 Simplified outline of this Part

This Part deals with the way this Act will apply when the provisions of the *Insolvency Law Reform Act 2016* begin to operate.

*Application of Part 2 of the Insolvency Practice Schedule (Corporations)*

A person registered as a liquidator before the commencement of Part 1 of Schedule 2 to the *Insolvency Law Reform Act 2016* will continue to be registered and must comply with the requirements and duties under Part 2 of the Insolvency Practice Schedule (Corporations).

*Application of Part 3 of the Insolvency Practice Schedule (Corporations)*

Part 3 of the Insolvency Practice Schedule (Corporations) will apply to an external administration that starts on or after the commencement of Part 1 of Schedule 2 to the *Insolvency Law Reform Act 2016* and to most ongoing administrations (but generally only in relation to new events).

*Proceedings before the Court or the Administrative Appeals Tribunal*

Proceedings already begun in the Court or the Administrative Appeals Tribunal before the commencement of the amendments made by Part 1 of Schedule 2 to the *Insolvency Law Reform Act 2016* will continue under the old Act. Orders of the Court under the old Act continue to have effect.

*Regulations*

Regulations may be made to deal with other transitional matters.

## 1551 Definitions

In this Part:

***commencement day*** means the day on which Part 1 of Schedule 2 to the *Insolvency Law Reform Act 2016* commences.

***Insolvency Practice Schedule (Corporations)*** means Schedule 2 to this Act, and includes rules made under section 105-1 of that Schedule.

***make***, in relation to an order that is a direction, includes give.

***new external administration*** of a company means an external administration of a company that starts on or after the commencement day.

***old Act*** means the *Corporations Act 2001*, as in force immediately before the commencement day and includes the old regulations.

***old Act registrant*** has the meaning given by subsection 1553(4).

***old Act registration day***, in relation to a person, has the meaning given by subsection 1555(2).

***old regulations*** means the *Corporations Regulations 2001*, as in force immediately before the commencement day.

***ongoing external administration*** of a company means an external administration of a company that started before the commencement day and ends after that day.

***order*** includes a direction.

***registered***: a person is ***registered*** as a liquidator, or as a liquidator of a specified body corporate, at a particular time in the circumstances set out in subsection 1552(2).

***Register of Liquidators*** means the Register of Liquidators established and maintained under section 15-1 of the Insolvency Practice Schedule (Corporations).

## Division 2—Application of Part 2 of the Insolvency Practice Schedule (Corporations) and related consequential amendments

### Subdivision A—Registering liquidators

#### 1552 Applications for registration under the old Act

(1) If, before the commencement day:

(a) a person has applied for registration as a liquidator, or as a liquidator of a specified body corporate, under section 1279 of the old Act; and

(b) the person's application has not been refused; and

(c) the person is not registered before the commencement day as a liquidator, or as a liquidator of a specified body corporate;

the application is taken never to have been made and ASIC must refund any fee paid in relation to the application.

(2) A person is ***registered*** as a liquidator, or as a liquidator of a specified body corporate, at a particular time if:

(a) a certificate of registration as a liquidator or as a liquidator of a specified body corporate has been issued to the person under subsection 1282(6) of the old Act before that time; and

(b) the day specified in the certificate as the day on which the registration would begin occurs before the day on which that time occurs.

## 1553 Persons registered under the old Act continue to be registered under the Insolvency Practice Schedule (Corporations)

*Person registered under the old Act immediately before the commencement day*

(1) If a person is registered as a liquidator, or as a liquidator of a specified body corporate, immediately before the commencement day, on the commencement day the person is taken to be registered as a liquidator under Subdivision B of Division 20 of the Insolvency Practice Schedule (Corporations).

*Person registered but suspended under the old Act before the commencement day*

(2) If:

(a) a person is registered as a liquidator, or as a liquidator of a specified body corporate, before the commencement day; and

(b) that person's registration is suspended before the commencement day; and

(c) the period of the suspension does not expire before the commencement day;

the person is taken to be registered as a liquidator under Subdivision B of Division 20 of the Insolvency Practice Schedule (Corporations) on the commencement day, but the person's registration is taken to be suspended under the Insolvency Practice Schedule (Corporations) for a period that ends when the period of the suspension under the old Act would have ended.

Note: The old Act registrant could apply under Subdivision F of Division 40 of the Insolvency Practice Schedule (Corporations) to have the suspension lifted or shortened.

*Circumstances in which person not taken to be registered*

(3) Despite subsections (1) and (2), a person mentioned in one of those subsections is not taken to be registered as a liquidator under Subdivision B of Division 20 of the Insolvency Practice Schedule (Corporations) on the commencement day if, at the beginning of that day:

(a) the person is an insolvent under administration; or

(b) the person is dead.

*Meaning of **old Act registrant***

(4) A person who is taken to be registered under Subdivision B of Division 20 of the Insolvency Practice Schedule (Corporations) because of this section is referred to as an ***old Act registrant***.

## 1554 Old Act registrant's details

(1) ASIC must enter on the Register of Liquidators, in relation to each old Act registrant, the details prescribed under subsection 15-1(3) of the Insolvency Practice Schedule (Corporations) that relate to that old Act registrant.

(2) If ASIC holds information in relation to an old Act registrant before the commencement day, ASIC may use and disclose the information for the purposes of establishing and maintaining the Register of Liquidators.

## 1555 Period of old Act registrant's registration under the Insolvency Practice Schedule (Corporations)

(1) The registration of an old Act registrant under the Insolvency Practice Schedule (Corporations) is for a period ending on the first anniversary of the old Act registration day for that person that occurs on or after the commencement day.

(2) The ***old Act registration day*** in relation to a person who was registered (or but for a suspension would have been registered) as a liquidator, or as a liquidator of a specified body corporate, immediately before the commencement day, is the day on which that registration began.

(3) To avoid doubt, the registration of an old Act registrant under the Insolvency Practice Schedule (Corporations) may be renewed in accordance with that Schedule.

## 1556 Conditions for old Act registrants—conditions under the Insolvency Practice Schedule (Corporations)

To avoid doubt, a condition may be imposed on an old Act registrant (or on a class that includes an old Act registrant) under the Insolvency Practice Schedule (Corporations) in accordance with that Schedule.

## 1557 Current conditions for old Act registrants—undertakings under the old Act

*Undertakings under the old Act*

(1) If:

(a) an old Act registrant was required to give an undertaking under paragraph 1292(9)(b) or (c) of the old Act; and

(b) that requirement is still in force immediately before the commencement day;

it is a condition of the old Act registrant's registration under the Insolvency Practice Schedule (Corporations) that he or she gives and complies with the undertaking.

(2) A condition imposed under subsection (1) is a ***current condition*** imposed on the old Act registrant.

*Varying etc. conditions of registration*

(3) Subdivision C of Division 20 of the Insolvency Practice Schedule (Corporations) applies to a condition imposed under subsection (1) in the same way as it applies to a condition imposed by a committee under the Insolvency Practice Schedule (Corporations).

## 1558 Current conditions for old Act registrants—undertakings under the ASIC Act

*Undertakings under the ASIC Act*

(1) If:

(a) before the commencement day, an old Act registrant gives ASIC an undertaking under section 93AA of the ASIC Act to engage in, or refrain from engaging in, conduct as a liquidator, or as a liquidator of a specified body corporate; and

(b) that undertaking is in force immediately before the commencement day;

it is a condition of the old Act registrant's registration under the Insolvency Practice Schedule (Corporations) that he or she comply with the undertaking.

(2) A condition imposed under subsection (1) is a ***current condition*** imposed on the old Act registrant.

*Enforcement of undertaking under the ASIC Act not affected*

(3) Nothing in this section affects the application of section 93AA of the ASIC Act in relation to a breach of an undertaking accepted under that section.

## 1559 Old Act registrant registered as liquidator of a specified body corporate

*Old Act registrant may not accept further appointments*

(1) If an old Act registrant was registered as a liquidator of a specified body corporate immediately before the commencement day, it is a condition of the old Act registrant's registration under the Insolvency Practice Schedule (Corporations) that he or she must not accept any further appointments as external administrator of a company.

(2) That condition is a ***current condition*** imposed on the old Act registrant.

*Registration cancelled once current administrations completed*

(3) On the day immediately after the external administration of the body corporate in relation to which the old Act registrant was registered ends:
   (a) the old Act registrant is taken to have lodged a request in the approved form in accordance with paragraph 40-30(1)(f) of the Insolvency Practice Schedule (Corporations) to have his or her registration as a liquidator cancelled; and
   (b) ASIC is taken to have cancelled the registration under subsection 40-30(1) of the Insolvency Practice Schedule (Corporations).

*Old Act registrant applies for registration under section 20-5 of the Insolvency Practice Schedule (Corporations)*

(4) To avoid doubt, if the old Act registrant applies under section 20-5 of the Insolvency Practice Schedule (Corporations) to be registered

as a liquidator, and is registered in response to that application, this section does not affect that registration.

## 1560 Old Act registrant chooses not to renew

*Application of this section*

(1) This section applies if an old Act registrant does not apply for renewal of his or her registration under the Insolvency Practice Schedule (Corporations) before his or her period of registration under subsection 1555(1) ends (the ***expiry day***).

*Old Act registrant may not accept further appointments after registration expires*

(2) The old Act registrant is taken to be registered as a liquidator under Subdivision B of Division 20 of the Insolvency Practice Schedule (Corporations) after the expiry day, subject to a condition that he or she must not accept any further appointments as external administrator of a company.

(3) That condition is a ***current condition*** imposed on the old Act registrant.

*Registration cancelled once current administrations completed*

(4) On the day immediately after all of the external administrations of companies that the old Act registrant is entitled to carry out in accordance with his or her current conditions ends:

(a) the old Act registrant is taken to have lodged a request in the approved form in accordance with paragraph 40-30(1)(f) of the Insolvency Practice Schedule (Corporations) to have his or her registration as a liquidator cancelled; and

(b) ASIC is taken to have cancelled the registration under subsection 40-30(1) of the Insolvency Practice Schedule (Corporations).

## Subdivision B—Annual returns and statements

### 1561 Application of obligation to lodge annual liquidator returns

*Application of the Insolvency Practice Schedule (Corporations)*

(1) Section 30-1 of the Insolvency Practice Schedule (Corporations) applies in relation to liquidator return years that begin on or after the commencement day.

*Meaning of **liquidator return year***

(2) In working out the ***liquidator return year*** for an old Act registrant under subsection 30-1(2) of the Insolvency Practice Schedule (Corporations), "the day on which that registration first began", means "the old Act registration day for that person (as defined for the purpose of Part 10.25 of this Act)".

*Annual statements under the old Act*

(3) The repeal of section 1288 by Schedule 2 to the *Insolvency Law Reform Act 2016* applies in relation to liquidator return years beginning on or after the commencement day.

## Subdivision C—Notice requirements

### 1562 Notice of significant events

(1) If:

(a) within 2 years before the commencement day, an event of a kind mentioned in subsection 35-1(1) of the Insolvency Practice Schedule (Corporations) occurs in relation to an old Act registrant; and

(b) the old Act registrant has not already informed ASIC in writing of the event before the commencement day;

the old Act registrant must lodge with ASIC a notice, in the approved form, relating to the event.

(2) The notice must be lodged:

(a) if the old Act registrant is or could reasonably be expected to be aware of the event on or before the commencement day—within one month after the commencement day; or

(b) if paragraph (a) is not satisfied, but the old Act registrant is or could reasonably be expected to be aware of the event after the commencement day—within one month after the first day on which the old Act registrant is or could reasonably be expected to be aware of the event.

(3) A person commits an offence if:

(a) the person is subject to a requirement under subsection (1) within the period specified in subsection (2); and

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

Penalty: 100 penalty units.

## Subdivision D—Cancellation by ASIC under the old Act

### 1563 Request for cancellation made before the commencement day

(1) This section applies if:

(a) before the commencement day, a person requests ASIC under section 1290 of the old Act to cancel the person's registration as a liquidator or as a liquidator of a specified body corporate; and

(b) no decision by ASIC to cancel that registration has come into effect before the commencement day.

(2) ASIC may not cancel the registration under section 1290 of the old Act.

(3) However, for the purposes of paragraph 40-30(1)(f) of the Insolvency Practice Schedule (Corporations), the person is taken to have lodged a request with ASIC in the approved form to have the person's registration as a liquidator under the Insolvency Practice Schedule (Corporations) cancelled.

(4) The amendments of section 1290 made by Schedule 2 to the *Insolvency Law Reform Act 2016* apply in relation to requests made to ASIC under section 1290 on or after the commencement day.

### 1564 Decision to cancel registration made before the commencement day

(1) This section applies if:

(a) before the commencement day, a decision is made by ASIC under section 1290A of the old Act to cancel the registration of a person as a liquidator, or as a liquidator of a specified body corporate; and

(b) the decision has not come into effect before the commencement day.

(2) On the commencement day, ASIC is taken to have made a decision under section 40-30 of the Insolvency Practice Schedule (Corporations) to cancel the registration of the person as a liquidator.

(3) Section 40-35 of the Insolvency Practice Schedule (Corporations) applies in relation to the decision as if the decision were made on the commencement day.

## Subdivision E—Disciplinary proceedings before the Board

### 1565 Matters not dealt with by the Board before the commencement day

(1) If:

(a) an application has been made under section 1292 of the old Act in relation to a person before the commencement day; and

(b) the Board has not, before the commencement day:

(i) made an order in response to the application under subsection 1292(2), (3), (4), (5), (6) or (7) of the old Act; or

(ii) dealt with the person under subsection 1292(9) of the old Act in response to the application; or

(iii) held a conference in relation to the application under section 1294A;

the Board must cease its consideration of the matter on the commencement day without making such an order, dealing with the person under subsection 1292(9) of the old Act or convening such a conference under section 1294A.

(2) If:

(a) the Board has ceased to consider a matter because of subsection (1); and

(b) a conference has been convened in relation to the matter under subsection 1294A(1), but not yet held;

the Chairperson of the Board need not give notice of the conference under subsection 1294A(3) and the conference need not be held.

(3) The fact that the Board has ceased to consider the matter does not preclude the matter, or any aspect of the matter, from being dealt with under Division 40 of the Insolvency Practice Schedule (Corporations).

(4) To avoid doubt, nothing in this section affects any right or obligation that any person has before the commencement day, including any right to review, in relation to the application or the consideration of the matter by the Board.

## 1566 Matters dealt with by the Board before the commencement day

(1) This section applies if:

(a) an application has been made under section 1292 of the old Act in relation to a person before the commencement day; and

(b) before the commencement day, the Board has:

(i) made an order in response to the application under subsection 1292(2), (3), (4), (5), (6) or (7); or

(ii) dealt with the person under subsection 1292(9) in response to the application; or

(iii) held a conference in relation to the application under section 1294A.

(2) The old Act continues to apply in relation to:

(a) the decision to:

(i) make the order under subsection 1292(2), (3), (4), (5), (6) or (7); or

(ii) deal with the matter under subsection 1292(9) in response to the application; or

(iii) convene the conference under section 1294A; and

(b) a decision made at the conference held under section 1294A; and

(c) any process ordered under subsection 1294A(4) at the conference held under that section; and

(d) the matter in relation to which the conference was held under section 1294A before the commencement day.

(3) The same matter may not be dealt with under Division 40 of the Insolvency Practice Schedule (Corporations).

### 1567 Matters which the Board refuses to deal with before the commencement day

(1) This section applies if:

(a) an application has been made under section 1292 of the old Act in relation to a person before the commencement day; and

(b) before the commencement day, the Board has decided to refuse to:

(i) make an order in response to the application under subsection 1292(2), (3), (4), (5), (6) or (7); or

(ii) deal with the person under subsection 1292(9) in response to the application; or

(iii) convene a conference in relation to the application under section 1294A.

(2) The old Act continues to apply in relation to the decision to refuse to make the order under subsection 1292(2), (3), (4), (5), (6) or (7), deal with the matter under subsection 1292(9) in response to the application or convene a conference under section 1294A.

(3) The same matter may not be dealt with under Division 40 of the Insolvency Practice Schedule (Corporations).

### 1568 Board considering terminating suspension before the commencement day

(1) If:

(a) an application has been made under section 1295 of the old Act to terminate the suspension of the registration of a person

as a liquidator, or as a liquidator of a specified body corporate; and

(b) the Board has neither refused the application nor, by order, terminated the suspension before the commencement day;

the Board must cease its consideration of the matter on the commencement day without making such an order.

(2) If:

(a) the Board, under section 1295 of the old Act, is considering of its own motion whether to terminate the suspension of the registration of a person as a liquidator, or as a liquidator of a specified body corporate; and

(b) the Board has not, by order, terminated the suspension before the commencement day;

the Board must cease its consideration of the matter on the commencement day without making such an order.

(3) The fact that the Board has ceased to consider the matter does not preclude the matter from being dealt with under Division 40 of the Insolvency Practice Schedule (Corporations).

### 1569 Sharing information between the Board and committees

(1) The Chair of a committee convened under Part 2 of the Insolvency Practice Schedule (Corporations) may request the Chairperson of the Board (the ***Board Chair***) to give the committee any information or document in the Board's possession or control in relation to a person who:

(a) is, or has at any time been, a registered liquidator under the Insolvency Practice Schedule (Corporations); or

(b) has at any time been registered as a liquidator, or as a liquidator of a specified body corporate, under the old Act.

(2) The Board Chair must comply with the request within 10 business days.

## Subdivision F—Suspension, cancellation and disciplinary action under the Insolvency Practice Schedule (Corporations)

### 1570 Direction to comply with requirement to lodge documents etc.

Subdivision B of Division 40 of the Insolvency Practice Schedule (Corporations) applies whether or not a requirement mentioned in that Subdivision to lodge a document or give information or a document arises before, on or after the commencement day.

### 1571 Suspension by ASIC under the Insolvency Practice Schedule (Corporations)

(1) Section 40-25 of the Insolvency Practice Schedule (Corporations) applies whether or not an event mentioned in subsection 40-25(1) occurs before, on or after the commencement day.

(2) However, paragraph 40-25(1)(c) of the Insolvency Practice Schedule (Corporations) does not apply in relation to the cancellation of the registration of a person as a trustee under the *Bankruptcy Act 1966*, as in force at any time before the commencement day.

### 1572 Cancellation by ASIC under the Insolvency Practice Schedule (Corporations)

(1) Section 40-30 of the Insolvency Practice Schedule (Corporations) applies whether or not an event mentioned in subsection 40-30(1) occurs before, on or after the commencement day.

(2) However, paragraph 40-30(1)(c) of the Insolvency Practice Schedule (Corporations) does not apply in relation to the cancellation of the registration of a person as a trustee under the *Bankruptcy Act 1966*, as in force at any time before the commencement day.

### 1573 Show-cause notice under the Insolvency Practice Schedule (Corporations)

Subdivision E of Division 40 of the Insolvency Practice Schedule (Corporations) applies whether or not an event mentioned in

subsection 40-40(1) of the Schedule occurs before, on or after the commencement day.

### 1574 Lifting or shortening suspension under the Insolvency Practice Schedule (Corporations)

Subdivision F of Division 40 of the Insolvency Practice Schedule (Corporations) applies whether or not a person's registration as a liquidator is suspended under a provision of the old Act or of the Insolvency Practice Schedule (Corporations).

### 1575 Action initiated by industry bodies

Section 40-100 of the Insolvency Practice Schedule (Corporations) applies, whether or not the grounds to which a notice under that section relates arise because of an action, a failure to act or circumstance that occurs before, on or after the commencement day.

## Subdivision G—Powers of the Court and other bodies

### 1576 Application of court powers under section 45-1 of the Insolvency Practice Schedule (Corporations)

The Court may exercise its powers to make an order under section 45-1 of the Insolvency Practice Schedule (Corporations), whether or not the action or failure to act in relation to which, or because of which, the order is made occurs before, on or after the commencement day.

### 1577 Powers to deal with registration under the old Act on or after the commencement day

(1) This section applies if, as a result of the continued application of the old Act on or after the commencement day, a relevant body may decide to register a person, or suspend or cancel the registration of a person, as a liquidator or as a liquidator of a specified body corporate under the old Act.

(2) A relevant body may instead:

(a) register the person, or suspend or cancel the registration of the person, as a liquidator under the Insolvency Practice Schedule (Corporations); and

(b) by order, modify the application of this Part or the Insolvency Practice Schedule (Corporations) in relation to the registration, or the suspension or cancellation of the registration, of the person as a liquidator under the Insolvency Practice Schedule (Corporations).

(3) In this section:

***relevant body*** means ASIC, the Administrative Appeals Tribunal, the Court or any other body.

# Division 3—Application of Part 3 of the Insolvency Practice Schedule (Corporations) and related consequential amendments

## Subdivision A—Introduction

### 1578 Simplified outline of this Division

This Division deals with the way this Act will apply to external administrations when the provisions of the Insolvency Practice Schedule (Corporations) begin to operate.

*New external administrations*

The Insolvency Practice Schedule (Corporations) applies to external administrations that start on or after the commencement of the *Insolvency Law Reform Act 2016* (called new external administrations).

*Ongoing external administrations*

For external administrations that start before that day but are still ongoing (called ongoing external administrations), the Insolvency Practice Schedule (Corporations) applies in accordance with this Division but usually only in relation to new events. Generally, the old Act continues to apply to old events and processes that are incomplete. There are some exceptions.

*Old external administrations*

For old external administrations that have ended but that may have ongoing obligations or processes, in most cases the old Act continues to apply.

## Subdivision B—General rules for Part 3

### 1579 Application of Part 3 of the Insolvency Practice Schedule (Corporations)—general rules

*New external administrations*

(1) Part 3 of the Insolvency Practice Schedule (Corporations) applies in relation to a new external administration of a company.

*Ongoing external administrations*

(2) Part 3 of the Insolvency Practice Schedule (Corporations) applies in relation to an ongoing external administration of a company in accordance with this Division.

## Subdivision C—Remuneration and other benefits received by external administrators

### 1580 Application of Division 60 of the Insolvency Practice Schedule (Corporations)—general rule

Subdivision B to D of Division 60 of the Insolvency Practice Schedule (Corporations) applies in relation to an external administrator of a company under ongoing external administration who is appointed on or after the commencement day.

### 1581 Old Act continues to apply in relation to remuneration for administrators already appointed

(1) Despite the repeal of sections 449E and 473 and the repeal and substitution of subsections 499(3) to (7) of the old Act by Schedule 2 to the *Insolvency Law Reform Act 2016*, the old Act continues to apply in relation to the remuneration of an external

administrator of a company who is appointed before the commencement day.

(2) Despite subsection (1), if, under Subdivision F of this Division, Division 75 of the Insolvency Practice Schedule (Corporations) rather than the old Act would apply to a meeting that deals with the remuneration of an external administrator of a company who is appointed before the commencement day, Division 75 of the Insolvency Practice Schedule (Corporations) applies to that meeting.

### 1582 Duties of administrators relating to remuneration and other benefits

(1) Section 60-20 of the Insolvency Practice Schedule (Corporations) applies in relation to an external administrator of an ongoing external administration of a company whether or not the administrator was appointed before, on or after the commencement day.

(2) However, that section does not apply in relation to arrangements made before the commencement day.

### 1583 Old Act continues to apply in relation to any right of indemnity

(1) This section applies if the remuneration of an external administrator of a company is fixed under section 449E of the old Act:

(a) before the commencement day; or

(b) on or after the commencement day (in accordance with a provision of this Division).

(2) Despite the repeal of that section and the amendment of paragraph 443D(b) of the old Act by Schedule 2 to the *Insolvency Law Reform Act 2016*, the old Act continues to apply in relation to any right of indemnity that the external administrator has as if that repeal and amendment had not happened.

### 1584 Application of new provisions about vacancies of court-appointed liquidator

Subsection 473A(1) (as inserted by Schedule 2 to the *Insolvency Law Reform Act 2016*) applies whether or not the vacancy in the office of liquidator occurred before, on or after the commencement day.

### 1585 Application of new provisions about exercise of powers while company under external administration

*Application of new section 198G*

(1) Section 198G (as inserted by Schedule 2 to the *Insolvency Law Reform Act 2016*) applies in relation to an exercise of power or a performance of a function that occurs on or after the commencement day.

*Approval under old Act continues to have effect*

(2) If, under subsection 499(4) of the old Act, a committee of inspection or the company's creditors give approval for a director of the company to continue to perform or exercise the director's powers or functions, subsections 198G(1) and (2) (as inserted by Schedule 2 to the *Insolvency Law Reform Act 2016*) do not apply in relation to the director.

## Subdivision D—Funds handling

### 1586 Application of Division 65 of the Insolvency Practice Schedule (Corporations)—general rule

Division 65 of the Insolvency Practice Schedule (Corporations) applies in relation to an ongoing external administration of a company.

### 1587 Administration account

If, immediately before the commencement day, a person has a liquidator's general account in relation to the external administration of:

(a) a company; or

(b) a company in a pooled group;

the account is taken on and after the commencement day to be an administration account for the company for the purposes of section 65-5 of the Insolvency Practice Schedule (Corporations).

### 1588 Paying money into administration account

*Application of the Insolvency Practice Schedule (Corporations)*

(1) Sections 65-5 and 65-15 of the Insolvency Practice Schedule (Corporations) do not apply in relation to money received before the commencement day.

*Old regulations continue to apply to money received before commencement*

(2) Paragraph 5.6.06(1)(b) of the old regulations continues to apply in relation to money received before the commencement day.

### 1589 Paying money out of administration account

Section 65-25 of the Insolvency Practice Schedule (Corporations) does not apply in relation to money paid out of an administration account before the commencement day.

### 1590 Handling securities

*Application of the Insolvency Practice Schedule (Corporations)*

(1) Section 65-40 of the Insolvency Practice Schedule (Corporations) does not apply in relation to negotiable instruments and other securities received before the commencement day.

*Old regulations continue to apply to money received before commencement*

(2) Regulation 5.6.07 of the old regulations continues to apply in relation to bills, notes and other securities received before the commencement day.

## Subdivision E—Information

### 1591 Application of Division 70 of the Insolvency Practice Schedule (Corporations)—general rule

Division 70 of the Insolvency Practice Schedule (Corporations) applies in relation to an ongoing external administration of a company.

### 1592 Accounts and administration returns

*Administration returns for 2017-18 and later years*

(1) Sections 70-5 and 70-6 of the Insolvency Practice Schedule (Corporations) apply in relation to the financial year starting on 1 July 2017 and later financial years.

*Accounts under old Act*

(2) Subsection (3) of this section applies in relation to the repeal of each of the following sections of the old Act by Schedule 2 to the *Insolvency Law Reform Act 2016*:

(a) 438E;

(b) 445J;

(c) 539.

(3) To the extent that a repealed section relates to a period for which an account or statement must be lodged:

(a) the repeal of the section applies in relation to periods starting on or after 1 July 2017; and

(b) the section applies in relation to periods starting before 1 July 2017 and ending after that day as if the period ends on 30 June 2017.

*Continuation of audits under old Act*

(4) For the avoidance of doubt, despite the repeal of a section mentioned in subsection (2) by Schedule 2 to the *Insolvency Law Reform Act 2016*, audits may be continued under that section in relation to accounts lodged under that section as if the old Act continued to apply.

## 1593 Administration books

*Application of the Insolvency Practice Schedule (Corporations)*

(1) Section 70-10 of the Insolvency Practice Schedule (Corporations) does not apply in relation to events:

(a) that occur before the commencement day; and

(b) in respect of which, or because of which, entries or minutes are to be made.

*Old Act continues to apply to events etc. before commencement day*

(2) Despite the repeal of section 531 of the old Act by Schedule 2 to the *Insolvency Law Reform Act 2016*, that section continues to apply in relation to events:

(a) that occur before the commencement day; and

(b) in respect of which, or because of which, entries or minutes must be made.

## 1594 Audit of administration books

Sections 70-15 to 70-25 of the Insolvency Practice Schedule (Corporations) apply to books relating to an ongoing external administration whether or not the books are kept under a provision of the old Act or of the Insolvency Practice Schedule (Corporations).

## 1595 Transfer of administration books

*Application of the Insolvency Practice Schedule (Corporations)*

(1) Sections 70-30 and 70-31 of the Insolvency Practice Schedule (Corporations) apply in relation to a person who ceases to be the external administrator of a company on or after the commencement day.

*Application of repeal of old Act*

(2) The repeal of section 1298A of the old Act by Schedule 2 to the *Insolvency Law Reform Act 2016* applies in relation to a person whose registration as a liquidator is cancelled or suspended on or after the commencement day.

## 1596 Retention and destruction of administration books

*Application of the Insolvency Practice Schedule (Corporations)*

(1) To avoid doubt, section 70-35 of the Insolvency Practice Schedule (Corporations) applies to books relating to an ongoing external administration whether or not the books were kept under a provision of the old Act or of the Insolvency Practice Schedule (Corporations).

*Old Act continues to apply in relation to books for old external administrations*

(2) If:

(a) an external administration of a company ends before the commencement day; and

(b) immediately before that day, a person was required under section 542 of the old Act to retain books of the company for a period; and

(c) but for the repeal of that section by Schedule 2 to the *Insolvency Law Reform Act 2016*, that period would have ended on or after the commencement day;

section 542 of the old Act continues to apply (despite its repeal by Schedule 2 to the *Insolvency Law Reform Act 2016*) on and after the commencement day in relation to the person for the remainder of that period.

*Continued effect of consent by ASIC under old Act*

(3) If before the commencement day, a person is entitled under subsections 542(3) and (4) of the old Act to destroy books of a company (or of the person's that are relevant to the affairs of the company) then, despite section 70-35 of the Insolvency Practice Schedule (Corporations), those books may be destroyed.

## 1597 Giving information to creditors etc.

Subdivision D of Division 70 of the Insolvency Practice Schedule (Corporations) applies whether or not the information, report or document referred to in subsection 70-40(1), 70-45(1), 70-46(2), 70-47(2) or 70-50(1) of the Insolvency Practice Schedule (Corporations):

(a) was obtained or generated; or
(b) was made or prepared; or
(c) is in respect of actions or events that occurred;

before, on or after the commencement day.

### 1598 Commonwealth may request information

Section 70-55 of the Insolvency Practice Schedule (Corporations) applies whether or not the information, report or document referred to in subsection 70-55(2):

(a) was obtained or generated; or
(b) was made or prepared; or
(c) is in respect of actions or events that occurred;

before, on or after the commencement day.

### 1599 Reporting to ASIC

Section 70-60 of the Insolvency Practice Schedule (Corporations) applies whether or not the information, report or document referred to in subsection 70-60(1):

(a) was obtained or generated; or
(b) was made or prepared; or
(c) is in respect of actions or events that occurred;

before, on or after the commencement day.

### 1600 Old Act continues to apply in relation to notices to remedy default

Despite its repeal by Schedule 2 to the *Insolvency Law Reform Act 2016*, section 540 of the old Act continues to apply in relation to a notice mentioned in that section that is served on a person before the commencement day.

## Subdivision F—Meetings

### 1601 Application of Division 75 of the Insolvency Practice Schedule (Corporations)—general rule

(1) Division 75 of the Insolvency Practice Schedule (Corporations) applies in relation to an ongoing external administration of a company.

(2) However, Division 75 of the Insolvency Practice Schedule (Corporations) does not apply in relation to meetings convened or held before the commencement day.

### 1602 External administrator must convene meetings in certain circumstances

*Application of the Insolvency Practice Schedule (Corporations)*

(1) Section 75-15 of the Insolvency Practice Schedule (Corporations) does not apply in relation to:
  (a) directions given before the commencement day; or
  (b) resolutions passed before the commencement day.

*Old Act continues to apply in relation to resolutions for voluntary winding up passed before commencement day*

(2) Despite their repeal by Schedule 2 to the *Insolvency Law Reform Act 2016*:
  (a) sections 497 and 498 of the old Act continue to apply on and after the commencement day in relation to a resolution for voluntary winding up that is passed before the commencement day; and
  (b) subsection 477(4) of the old Act continues to apply on and after the commencement day if a meeting of creditors has not been held under section 497 of the old Act in relation to a voluntary winding up a resolution for which is passed before the commencement day.

### 1603 Old Act continues to apply in relation to reporting for first year of administration

(1) This section applies if, in relation to a company, a year mentioned in subsection 508(1) of the old Act starts before the commencement day but ends after that day.

(2) Despite its repeal by Schedule 2 to the *Insolvency Law Reform Act 2016*, section 508 of the old Act continues to apply on and after the commencement day in relation to the company for that year.

### 1604 Old Act continues to apply to the deregistration of companies

The repeal and substitution of section 509 by Schedule 2 to the *Insolvency Law Reform Act 2016* applies where the external administration of the company ends during a financial year starting on or after 1 July 2017.

### 1605 Old Act continues to apply for certain meetings convened etc. before commencement day

(1) If:

(a) the administrator of a company under external administration is required to convene a meeting of the company's creditors under section 439A of the old Act; and

(b) the convening period for the meeting as fixed by subsection 439A(5) of the old Act (or extended under subsection (6) of that section) ends on or after the commencement day; and

(c) as at the commencement day, the meeting has not been convened;

then the old Act continues to apply on and after the commencement day (despite the repeal of subsections 439A(3) and (4) and section 439B by Schedule 2 to the *Insolvency Law Reform Act 2016*) in relation to the meeting.

(2) Despite the repeal of section 445F of the old Act and the amendment of section 445A of the old Act by Schedule 2 to the *Insolvency Law Reform Act 2016*, those sections continue to apply on and after the commencement day in relation to meetings for which a notice under subsection 445F(2) is given before the commencement day.

(3) Despite its repeal by Schedule 2 to the *Insolvency Law Reform Act 2016*, section 479 of the old Act continues to apply on and after the commencement day in relation to meetings which have been convened under subsection 479(2) or for which a direction or request is given under that subsection before the commencement day.

(4) Despite the amendment of subsection 496(8) of the old Act by Schedule 2 to the *Insolvency Law Reform Act 2016*, that subsection continues to apply on and after the commencement day in relation to meetings convened before the commencement day as if the amendment had not been made.

### 1606 Outcome of voting at creditors' meeting determined by related entity or on casting vote—Court powers

Sections 75-41 to 75-45 of the Insolvency Practice Schedule (Corporations) apply whether a proposal has been voted on or a resolution passed before, on or after the commencement day.

## Subdivision G—Committees of inspection

### 1607 Application of Division 80 of the Insolvency Practice Schedule (Corporations)—general rules

(1) Division 80 of the Insolvency Practice Schedule (Corporations) applies in relation to a committee of inspection for an ongoing external administration of a company:

(a) that is appointed under that Division on or after the commencement day; or

(b) that is appointed under a provision of the old Act but is taken to be a committee of inspection under subsection 1608(2) of this Subdivision.

(2) However, Division 80 of the Insolvency Practice Schedule (Corporations) does not apply in relation to meetings of, or related to, the committee of inspection convened or held before the commencement day.

## 1608 Appointing committees of inspection

*Committees appointed under old Act taken to be committee of inspection*

(1) Subsection (2) applies if there is, in relation to the external administration of a company:

(a) a committee of creditors validly appointed under section 436E of the old Act; or

(b) a committee of inspection validly appointed under section 548 of the old Act; or

(c) a committee of inspection validly appointed under section 548A of the old Act.

(2) On and after the day specified in subsection (3), the committee (the ***continued committee***) is taken for the purposes of the Insolvency Practice Schedule (Corporations) to be:

(a) in the case of a committee appointed under section 436E or 548 of the old Act—a committee of inspection established under section 80-10 of the Insolvency Practice Schedule (Corporations) in relation to the external administration of the company; and

(b) in the case of a committee appointed under section 548A of the old Act—a committee of inspection established under section 80-26 of the Insolvency Practice Schedule (Corporations) in relation to a pooled group of which the company is a member.

(3) For the purposes of subsection (2), the day is:

(a) in the case of a committee appointed on or before the commencement day—the commencement day; and

(b) in the case of a committee appointed on a day that is after the commencement day in accordance with a provision of this section—that later day.

*Old Act continues to apply to certain meetings*

(4) If:

(a) because of the operation of section 436E, 548 or 548A (the ***repealed section***) of the old Act before the commencement

day, the administrator or liquidator of a company is required to convene a meeting; and

(b) as at the commencement day, the meeting has not been convened;

then (despite their repeal by Schedule 2 to the *Insolvency Law Reform Act 2016*) the repealed sections of the old Act continue to apply on and after the commencement day in relation to the meeting.

## 1609 Old Act continues to apply to certain reports by administrator

If, before the commencement day, the administrator of a company under administration is directed under subsection 436F(3) of the old Act to give a report, then despite the repeal of section 436F by Schedule 2 to the *Insolvency Law Reform Act 2016*, that section continues to apply on and after commencement day in relation to the report.

## 1610 Membership of continued committees

*Members of continued committees*

(1) The members of a continued committee are the members appointed to the committee under section 436E (in accordance with section 436G), 548 or 548A of the old Act, as the case requires.

*Old Act continues to apply to members of continued committees*

(2) If a person is a member of a continued committee, then despite the repeal of:

(a) section 436G, 548 or 548A (and any regulations made under that section), as the case requires; and

(b) section 550;

by Schedule 2 to the *Insolvency Law Reform Act 2016*, those provisions continue to apply in relation to the person.

*Application of the Insolvency Practice Schedule (Corporations)*

(3) The following provisions do not apply in relation to members of a continued committee:

(a) sections 80-15 to 80-25 and paragraph 80-26(2)(b) of the Insolvency Practice Schedule (Corporations);
(b) Insolvency Practice Rules made under section 80-30 of the Insolvency Practice Schedule (Corporations) that relate to membership of a committee of inspection.

Note: However, the committee could dissolve and the members could form a new committee to which these provisions would then apply.

### 1611 Validity of appointment under section 548 of the old Act not affected by lack of separate meeting of contributories

(1) The appointment of a committee of inspection under section 548 of the old Act before the commencement day is not invalid merely because a separate meeting of contributories was not convened for the purposes of determining:
(a) whether a committee of inspection should be appointed; and
(b) where a committee of inspection is to be appointed:
(i) the numbers of members to represent the creditors and the contributories, respectively; and
(ii) the persons who are to be members of the committee representing creditors and contributories, respectively.

(2) However, if:
(a) a debt or claim has been paid in the winding up of a company before the commencement day; and
(b) the priority given to the debt or claim was determined under section 556 of the *Corporations Act 2001* on the basis that a committee of inspection was not validly appointed because a separate meeting of contributories was not convened for the purposes mentioned in paragraphs (1)(a) and (b); and
(c) but for subsection (1), the committee of inspection would not have been validly appointed;
the priority of the payment is not affected by subsection (1).

### 1612 Continued application of directions by creditors or committees under the old Act

Sections 80-35 and 85-5 of the Insolvency Practice Schedule (Corporations) apply whether or not the direction is given before, on or after the commencement day.

### 1613 Committee of inspection may request information

Section 80-40 of the Insolvency Practice Schedule (Corporations) applies whether or not the information, report or document referred to in subsection 80-40(1):

(a) was obtained or generated; or

(b) was made or prepared; or

(c) is in respect of actions or events that occurred;

before, on or after the commencement day.

### 1614 Duties of members of committee of inspection and creditors relating to profits and advantages etc.

Sections 80-55 and 80-60 of the Insolvency Practice Schedule (Corporations) apply to arrangements made on or after the commencement day.

## Subdivision H—Review of the external administration of a company

### 1615 Application of Division 90 of the Insolvency Practice Schedule (Corporations)—general rule

Division 90 of the Insolvency Practice Schedule (Corporations) applies in relation to an ongoing external administration whether or not the matter to be reviewed occurred before, on or after the commencement day.

### 1616 Application of the Insolvency Practice Schedule (Corporations) provisions that conflict with old Act Court orders—general rule

(1) This section applies if a court makes an order in relation to a person or the external administration of a company under the old Act (the ***old Act order***).

(2) The old Act order does not cease to have effect because a provision of the old Act under which it was made has been amended or repealed by Schedule 2 to the *Insolvency Law Reform Act 2016*.

(3) If the old Act order is inconsistent with a provision of this Act that is amended or inserted by Schedule 2 to the *Insolvency Law Reform Act 2016*, then, subject to this Part, the provision does not apply to the extent that it is inconsistent with the old Act order.

## 1617 Old Act continues to apply in relation to ongoing proceedings before a court—general rule

(1) This section applies if proceedings are brought under the old Act in a court (on application or on the initiative of the court) in relation to the external administration of a company either:
  (a) before the commencement day; or
  (b) on or after the commencement day (in accordance with a provision of this Division).

(2) Subject to this Part, nothing in Schedule 2 to the *Insolvency Law Reform Act 2016* affects:
  (a) the proceedings; or
  (b) the power of the court to make orders in relation to the proceedings; or
  (c) any orders made by the court in relation to the proceedings; or
  (d) any enforcement in relation to, or as a result of, the proceedings (including giving effect to any court orders); or
  (e) any appeal or review in relation to the proceedings.

(3) Subject to this Part, the old Act continues to apply on and after the commencement day in relation to the proceedings despite the amendments and repeals made by Schedule 2 to the *Insolvency Law Reform Act 2016*.

(4) In this section:

***proceedings*** include civil and criminal proceedings, inquiries by the court, enforcement processes and any other processes.

## 1618 Court powers to inquire into and make orders

*Application of the Insolvency Practice Schedule (Corporations)*

(1) Subsections (2) to (4) are for the avoidance of doubt.

(2) Sections 90-5 and 90-10 of the Insolvency Practice Schedule (Corporations) apply whether or not the information, report or document mentioned in subsections 90-5(2) and 90-10(4) was prepared before, on or after the commencement day.

(3) Paragraph 90-15(3)(f) of the Insolvency Practice Schedule (Corporations) applies whether or not the remuneration is paid or payable before, on or after the commencement day.

(4) Subsection 90-15(4) of the Insolvency Practice Schedule (Corporations) applies whether or not the action or failure to act occurred before, on or after the commencement day.

*Old Act continues to apply for inquiries started under section 536*

(5) Despite the repeal of section 536 of the old Act by Schedule 2 to the *Insolvency Law Reform Act 2016*, that section continues to apply in relation to inquiries commenced by ASIC before the commencement day (including inquiries commenced because of the extension of section 536 by subsection 411(9) to persons appointed under the terms of a compromise or arrangement).

*Application of new section 599*

(6) Section 599 (as inserted by Schedule 2 to the *Insolvency Law Reform Act 2016*) applies whether or not the act, omission or decision occurred before, on or after the commencement day.

## 1619 Review by another registered liquidator

(1) The following subsections are for the avoidance of doubt.

(2) Sections 90-24 and 90-26 of the Insolvency Practice Schedule (Corporations) apply whether or not:

(a) the remuneration is paid or payable; or

(b) the cost or expense is incurred or paid;

before, on or after the commencement day.

(3) A period determined by the Court under paragraph 90-26(4)(d) of the Insolvency Practice Schedule (Corporations) or prescribed under paragraph 90-26(4)(c) may include a period that:

(a) starts before the commencement day but ends after that day; or

(b) starts and ends before the commencement day.

(4) Section 90-28 of the Insolvency Practice Schedule (Corporations) applies whether or not the books or information mentioned in paragraph 90-28(2)(a) were prepared before, on or after the commencement day.

(5) Rules made for the purposes of section 90-29 of the Insolvency Practice Schedule (Corporations) in relation to the meaning of properly incurred may make provision for or in relation to costs and expenses incurred before, on or after the commencement day.

### 1620 Removal by creditors

For the avoidance of doubt, section 90-35 of the Insolvency Practice Schedule (Corporations) applies whether or not the external administrator was appointed before, on or after the commencement day.

## Division 4—Administrative review

### 1621 Administrative Appeals Tribunal proceedings

(1) This section applies if an application is made to the Administrative Appeals Tribunal for review of a decision made under the old Act either:
(a) before the commencement day; or
(b) on or after the commencement day (in accordance with a provision of this Part).

(2) Subject to this Part, nothing in the *Insolvency Law Reform Act 2016* affects:
(a) any proceedings before the Administrative Appeals Tribunal in relation to the decision; or
(b) the powers of the Administrative Appeals Tribunal in relation to the decision; or
(c) any enforcement in relation to, or as a result of, a decision of the Administrative Appeals Tribunal in relation to the decision; or
(d) any appeal or review in relation to a decision of the Administrative Appeals Tribunal in relation to the decision.

(3) Subject to this Part, the old Act continues to apply on and after the commencement day in relation to the proceedings despite the amendments and repeals made by Schedule 2 to the *Insolvency Law Reform Act 2016*.

*Applications for review made after the commencement day*

(4) Despite the repeals and amendments made by the *Insolvency Law Reform Act 2016*, applications may be made to the Administrative Appeals Tribunal for review of the decision.

## Division 5—Application of other consequential amendments

### 1622 Outcome of voting at creditors' meeting determined by related entity or on casting vote—Court powers

Sections 415A to 415C, as inserted by the *Insolvency Law Reform Act 2016*, apply whether a proposed resolution has been voted on before, on or after the commencement day.

### 1623 Returns and accounts by controllers

*Returns by controllers for 2017-18 and later years*

(1) Sections 422A and 422B, as inserted by Schedule 2 to the *Insolvency Law Reform Act 2016*, apply in relation to the financial year starting on 1 July 2017 and later financial years.

*Accounts under old Act*

(2) Subsection (3) of this section applies in relation to the amendment of section 432 of the old Act by Schedule 2 to the *Insolvency Law Reform Act 2016*.

(3) To the extent that section 432 of the old Act relates to a period for which an account must be lodged:

(a) the amendment of the section applies in relation to periods starting on or after 1 July 2017; and

(b) the unamended section applies in relation to periods starting before 1 July 2017 and ending after that day as if the period ends on 30 June 2017.

*Continuation of audits under old Act*

(4) For the avoidance of doubt, despite the amendment of section 432 of the old Act by Schedule 2 to the *Insolvency Law Reform Act 2016*, audits may be continued under that section in relation to accounts lodged under that section as if the old Act continued to apply.

## 1624 Transfer of books by a controller to a new controller or ASIC

Sections 422C and 422D, as inserted by Schedule 2 to the *Insolvency Law Reform Act 2016*, apply in relation to a person who ceases to act as a controller of property of a corporation on or after the commencement day.

## 1625 Officers reporting to controller about corporation's affairs

The amendment of paragraph 429(2)(b) by Schedule 2 to the *Insolvency Law Reform Act 2016* applies in relation to notices received on or after the commencement day.

## 1626 Lodging notice of execution of a deed of company arrangement

The amendment of paragraph 450B(c), and substitution with paragraph 450B(b), by Schedule 2 to the *Insolvency Law Reform Act 2016* applies in relation to deeds of company arrangement executed on or after the commencement day.

## 1627 Office of liquidator appointed by the Court

*Vacancies in office of liquidator appointed by the Court*

(1) Despite the repeal of section 473 of the old Act by Schedule 2 to the *Insolvency Law Reform Act 2016*, that section continues to apply in relation to a vacancy in the office of a liquidator appointed by the Court that occurs before the commencement day.

(2) Section 473A, as inserted by Schedule 2 to the *Insolvency Law Reform Act 2016*, applies in relation to vacancies in the office of a liquidator appointed by the Court that occur on or after the commencement day.

*Where there are 2 or more liquidators appointed by the Court*

(3) Subsections 473A(4) and (5), as inserted by Schedule 2 to the *Insolvency Law Reform Act 2016*, apply in relation to 2 or more liquidators appointed by the Court, whether the liquidators were appointed before, on or after the commencement day.

## 1628 Report as to company's affairs to be submitted to liquidator

(1) The amendments of section 475 by Schedule 2 to the *Insolvency Law Reform Act 2016* apply where a winding up order is made on or after the commencement day.

(2) The repeal of section 476 of the old Act by Schedule 2 to the *Insolvency Law Reform Act 2016* applies where a report referred to in subsection 475(1) or (2) is received on or after the commencement day.

## 1629 Orders for release or deregistration

Despite the amendment of paragraph 481(1)(a) by Schedule 2 to the *Insolvency Law Reform Act 2016*, that paragraph continues to apply in relation to auditors appointed by ASIC under section 539 of the old Act.

## 1630 Meeting relating to the voluntary winding up of a company

The repeal and substitution of section 506A by Schedule 2 to the *Insolvency Law Reform Act 2016* applies where the resolution for the voluntary winding up of a company is passed on or after the commencement day.

## 1631 Pooling determinations

(1) The repeal of sections 574 to 576 of the old Act by Schedule 2 to the *Insolvency Law Reform Act 2016* apply where a pooling determination is made or varied on or after the commencement day.

(2) Subsection 577(1A), as inserted by Schedule 2 to the *Insolvency Law Reform Act 2016*, applies where a pooling determination is made or varied on or after the commencement day.

(3) The repeal of subsection 577(2) of the old Act by Schedule 2 to the *Insolvency Law Reform Act 2016* applies to resolutions agreed on or after the commencement day.

### 1632 Electronic methods of giving or sending certain notices

(1) If:

(a) a notice or other document was authorised or required to be given or sent under a provision of the old Act mentioned in a paragraph of subsection 600G(1) that is repealed by Schedule 2 to the *Insolvency Law Reform Act 2016*; and

(b) although the authorisation or requirement arose before the commencement day, the notice or other document is required to be given or sent on or after the commencement day;

that paragraph of subsection 600G(1) continues to apply in relation to the giving or sending of the notice or other document.

(2) Subsections 600G(4) and (4A), as inserted by Schedule 2 to the *Insolvency Law Reform Act 2016*, apply in relation to notices or other documents given or sent on or after the commencement day.

### 1633 Deregistration following winding up

(1) If, on or after the commencement day, the Court orders the deregistration of a company under subsection 509(6) of the old Act, subsection 601AC(1) of the old Act continues to apply in relation to the order.

(2) Subsection 601AC(2) of the old Act continues to apply in relation to a company for which a return has been lodged under section 509 before the commencement day.

## Division 6—Regulations

### 1634 Regulations

(1) The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments and repeals made by Schedule 2 to the *Insolvency Law Reform Act 2016*.

(2) The regulations may provide that certain provisions of Schedule 2 to the *Insolvency Law Reform Act 2016* are taken to be modified as set out in the regulations. Those provisions then have effect as if they were so modified.

(3) The provisions of Schedule 2 to the *Insolvency Law Reform Act 2016* that provide for regulations to deal with matters do not limit each other.

# Schedule 3—Other amendments

## Part 1—Payments for property

### *Corporations Act 2001*

#### 1 Subsection 443B(3)

Repeal the subsection, substitute:

(3) Within 5 business days after the beginning of the administration, the administrator may give to the owner or lessor a notice that:

(a) specifies the property; and

(b) states that the company does not propose to exercise rights in relation to the property; and

(c) if the administrator:

(i) knows the location of the property; or

(ii) could, by the exercise of reasonable diligence, know the location of the property;

specifies the location of the property.

# Part 2—Contravention of deed of company arrangement

## *Corporations Act 2001*

### 2 After Division 11 of Part 5.3A

Insert:

## Division 11AA—Notification of contravention of deed

### 445HA Notification of contravention of deed of company arrangement

*Director to notify administrator*

(1) If a director of a company that is subject to a deed of company arrangement becomes aware that:

(a) there has been a material contravention of the deed by a person bound by the deed (who may be the director); or

(b) there is likely to be a material contravention of the deed by a person bound by the deed (who may be the director);

the director must, as soon as practicable after becoming aware of the contravention or likely contravention, give notice of the contravention or likely contravention to the administrator of the deed of company arrangement. The notice must be in the prescribed form.

*Administrator to notify company's creditors*

(2) If the administrator of a deed of company arrangement becomes aware that:

(a) there has been a material contravention of the deed by a person bound by the deed (who may be the administrator); or

(b) there is likely to be a material contravention of the deed by a person bound by the deed (who may be the administrator);

the administrator must, as soon as practicable after becoming aware of the contravention or likely contravention, give notice of the contravention or likely contravention to as many of the

company's creditors as reasonably practicable. The notice must be in the prescribed form.

### 3 After paragraph 482(2A)(d)

Insert:

(da) any notice that has been given to the administrator of the deed of company arrangement or the company's creditors under section 445HA (notification of contravention of deed of company arrangement);

## *Private Health Insurance (Prudential Supervision) Act 2015*

### 4 Paragraph 50(1)(b)

After "11,", insert "11AA,".

# Part 3—Company's former name

## *Corporations Act 2001*

### 5 Subsection 161A(2)

Omit ", (ii), (iii), (v) or (vi)".

### 6 Subsection 161A(3)

Omit "subparagraph (1)(b)(iv)", substitute "subparagraph (1)(b)(ii), (iii), (iv), (v) or (vi)".

### 7 Subsection 161A(6)

Repeal the subsection, substitute:

(6) The Court may only grant leave under subsection (3) on the application of:

(a) if subparagraph (1)(b)(ii) applies—the liquidator of the company; or

(b) if subparagraph (1)(b)(iii) applies—the administrator of the company; or

(c) if subparagraph (1)(b)(iv) applies—the administrator of the deed of company arrangement; or

(d) if subparagraph (1)(b)(v) applies—the managing controller; or

(e) if subparagraph (1)(b)(vi) applies—the receiver.

(6A) As soon as practicable after applying for leave under subsection (3), the applicant must lodge with ASIC a notice stating that the application has been made. The notice must be in the prescribed form.

# Part 4—Termination of deed of company arrangement

## *Corporations Act 2001*

### 8 At the end of subsection 440A(1)

Add "or 446AA".

### 9 After section 446A

Insert:

#### 446AA Administrator becomes liquidator—additional cases

*Scope*

(1) This section applies if a company has executed a deed of company arrangement and:

(a) the Court, at a particular time, makes an order under section 445D terminating the deed of company arrangement; or

(b) both:

(i) the deed of company arrangement specifies circumstances in which the deed is to terminate and the company is to be wound up; and

(ii) those circumstances exist at a particular time.

*Resolution that company be wound up voluntarily*

(2) The company is taken:

(a) to have passed, at the time referred to in paragraph (1)(a) or subparagraph (1)(b)(ii), as the case may be, a special resolution under section 491 that the company be wound up voluntarily; and

(b) to have done so without a declaration having been made and lodged under section 494.

*Information about company's affairs*

(3) Section 497 is taken to have been complied with in relation to the winding up.

*Notice of resolution*

(4) The liquidator must:

(a) within 5 business days after the day on which the company is taken to have passed the resolution, lodge with ASIC a written notice in the prescribed form:

(i) stating that the company is taken because of this section to have passed such a resolution; and

(ii) specifying that day; and

(b) cause the notice to be published, within 5 business days after that day, in the prescribed manner.

*Power to stay or terminate winding up*

(5) Section 482 applies in relation to the winding up as if it were a winding up in insolvency or by the Court.

Note: Section 482 empowers the Court to stay or terminate a winding up and give consequential directions.

(6) An application under section 482 as applying because of subsection (5) may be made:

(a) despite section 198G (exercise of directors' powers while company under external administration), by the company pursuant to a resolution of the board; or

(b) by the liquidator; or

(c) by a creditor; or

(d) by a contributory.

Note: See also section 499 (appointment of liquidator).

## 10 Subsection 446B(3)

After "(7)", insert "and 446AA(2) to (6)".

## 11 Subsection 499(2)

Repeal the subsection, substitute:

(2) However, subsection (1) does not apply to the company if:

(a) section 446A or 446AA applies in relation to the company; or

(b) regulations made for the purposes of section 446B have the effect that the company is taken to have passed a special resolution under section 491 that the company be wound up voluntarily.

## 12 After subsection 499(2C)

Insert:

(2D) If section 446AA applies in relation to the company because of paragraph 446AA(1)(a):

(a) the Court may, immediately after it makes the order referred to in that paragraph, appoint a person to be the liquidator for the purpose of winding up the affairs and distributing the property of the company; and

(b) if no appointment is made under paragraph (a) of this subsection:

(i) the company is taken to have appointed the administrator of the deed of company arrangement referred to in section 446AA to be the liquidator for the purpose of winding up the affairs and distributing the property of the company; and

(ii) the appointment takes effect at the time referred to in paragraph 446AA(1)(a).

(2E) If section 446AA applies in relation to the company because of paragraph 446AA(1)(b):

(a) the company is taken to have appointed the administrator of the deed of company arrangement referred to in section 446AA to be the liquidator for the purpose of winding up the affairs and distributing the property of the company; and

(b) the appointment takes effect at the time referred to in subparagraph 446AA(1)(b)(ii).

(2F) If regulations made for the purposes of section 446B have the effect that a company under administration is taken to have passed a special resolution under section 491 that the company be wound up voluntarily:

(a) the company is taken to have appointed the administrator of the company to be the liquidator for the purpose of winding up the affairs and distributing the property of the company; and

(b) the appointment takes effect when the resolution is taken to have been passed.

(2G) If regulations made for the purposes of section 446B have the effect that a company subject to a deed of company arrangement is taken to have passed a special resolution under section 491 that the company be wound up voluntarily:

(a) the company is taken to have appointed the administrator of the deed to be the liquidator for the purpose of winding up the affairs and distributing the property of the company; and

(b) the appointment takes effect when the resolution is taken to have been passed.

## 13 At the end of paragraph 513B(d)

Add "or".

## 14 After paragraph 513B(d)

Insert:

(da) if the resolution is taken to have been passed under section 446AA because of:

(i) the making of an order under section 445D by the Court terminating a deed of company arrangement executed by the company; or

(ii) the existence of circumstances that are specified in a deed of company arrangement executed by the company to be circumstances in which the deed is to terminate and the company is to be wound up;

on the section 513C day in relation to the administration that ended when the deed was executed; or

## 15 Subsection 553(1A) (note 2)

Omit "513B(c) and (d)", substitute "513B(c), (d) and (da)".

## 16 Subsection 553(1A) (note 2)

Omit "Subsection 446A(2)", substitute "Subsections 446A(2) and 446AA(2)".

# Part 5—Relation-back day

## *Corporations Act 2001*

### 17 Section 9 (definition of *relation-back day*)

Repeal the definition, substitute:

***relation-back day*** has the meaning given by section 91.

### 18 After section 90

Insert:

### 91 Relation-back day

For the purposes of this Act, the following table sets out the meaning of ***relation-back day*** in relation to a winding up of a company or Part 5.7 body.

| **Relation-back day** | | |
|---|---|---|
| **Item** | **If:** | **the *relation-back day* is:** |
| 1 | in the case of a company:<br>(a) the Court orders under section 233, 459A, 459B or 461 that the company be wound up; and<br>(b) immediately before the order was made, the company was under administration; and<br>(c) the order was made in response to an application filed at or after the beginning of the administration; | the section 513C day in relation to the administration. |
| 2 | in the case of a company:<br>(a) the Court orders under section 233, 459A, 459B or 461 that the company be wound up; and<br>(b) immediately before the order was made, the company was | the day on which that application was filed. |

| **Relation-back day** | | |
|---|---|---|
| **Item** | **If:** | **the *relation-back day* is:** |
| | under administration; and<br>(c) the order was made in response to an application filed before the beginning of the administration; | |
| 3 | in the case of a company:<br>(a) the Court orders under section 233, 459A, 459B or 461 that the company be wound up; and<br>(b) immediately before the order was made, a deed of company arrangement had been executed by the company and had not yet terminated; and<br>(c) the order was made in response to an application filed at or after the beginning of the administration that ended when the deed was executed; | the section 513C day in relation to that administration. |
| 4 | in the case of a company:<br>(a) the Court orders under section 233, 459A, 459B or 461 that the company be wound up; and<br>(b) immediately before the order was made, a deed of company arrangement had been executed by the company and had not yet terminated; and<br>(c) the order was made in response to an application filed before the beginning of the administration that ended when the deed was executed; | the day on which that application was filed. |
| 5 | in the case of a company:<br>(a) the company resolves by special resolution that it be wound up voluntarily; and<br>(b) immediately before the | the section 513C day in relation to the administration. |

| **Relation-back day** | | |
|---|---|---|
| **Item** | **If:** | **the *relation-back day* is:** |
| | resolution was passed, the company was under administration; and<br>(c) no application for an order under section 233, 459A, 459B or 461 that the company be wound up was filed before the beginning of the administration; | |
| 6 | in the case of a company:<br>(a) the company resolves by special resolution that it be wound up voluntarily; and<br>(b) immediately before the resolution was passed, the company was under administration; and<br>(c) an application for an order under section 233, 459A, 459B or 461 that the company be wound up was filed before the beginning of the administration, but that application was dismissed or withdrawn before the administration commenced; | the section 513C day in relation to the administration. |
| 7 | in the case of a company:<br>(a) the company resolves by special resolution that it be wound up voluntarily; and<br>(b) immediately before the resolution was passed, the company was under administration; and<br>(c) an application for an order under section 233, 459A, 459B or 461 that the company be wound up was filed before the beginning of the administration; and<br>(d) that application had not been dismissed or withdrawn before the administration commenced; | the day on which that application was filed. |

| **Relation-back day** | | |
|---|---|---|
| **Item** | **If:** | **the *relation-back day* is:** |
| 8 | in the case of a company, the company is taken to have passed a special resolution that it be wound up voluntarily because, at a meeting convened by the administrator of a deed of company arrangement executed by the company, the company's creditors:<br>(a) passed a resolution terminating the deed of company arrangement; and<br>(b) also resolved under section 445E that the company be wound up;<br>and either:<br>(c) no application for an order under section 233, 459A, 459B or 461 that the company be wound up was filed before the beginning of the administration that ended when the deed was executed; or<br>(d) an application for an order under section 233, 459A, 459B or 461 that the company be wound up was filed before the beginning of the administration that ended when the deed was executed, but that application was dismissed or withdrawn before the administration commenced; | the section 513C day in relation to the administration that ended when the deed was executed. |
| 9 | in the case of a company, the company is taken to have passed a special resolution that it be wound up voluntarily because, at a meeting convened by the administrator of a deed of company arrangement executed by the company, the company's creditors:<br>(a) passed a resolution terminating the deed of company arrangement; and | the day on which that application was filed. |

| **Relation-back day** | | |
|---|---|---|
| **Item** | **If:** | **the *relation-back day* is:** |
| | (b) also resolved under section 445E that the company be wound up;<br>and both:<br>(c) an application for an order under section 233, 459A, 459B or 461 that the company be wound up was filed before the beginning of the administration that ended when the deed was executed; and<br>(d) that application has not been dismissed or withdrawn before the first-mentioned resolution is taken to have been passed; | |
| 10 | in the case of a company, the company is taken to have passed a special resolution that it be wound up voluntarily because the Court made an order under section 445D terminating a deed of company arrangement executed by the company, and either:<br>(a) no application for an order under section 233, 459A, 459B or 461 that the company be wound up was filed before the beginning of the administration that ended when the deed was executed; or<br>(b) an application for an order under section 233, 459A, 459B or 461 that the company be wound up was filed before the beginning of the administration that ended when the deed was executed, but that application was dismissed or withdrawn before the administration commenced; | the section 513C day in relation to the administration that ended when the deed was executed. |
| 11 | in the case of a company:<br>(a) the company is taken to have passed a special resolution that it be wound up voluntarily because | the day on which that application was filed. |

| **Relation-back day** | | |
|---|---|---|
| **Item** | **If:** | **the *relation-back day* is:** |
| | the Court made an order under section 445D terminating a deed of company arrangement executed by the company; and<br>(b) an application for an order under section 233, 459A, 459B or 461 that the company be wound up was filed before the beginning of the administration that ended when the deed was executed; and<br>(c) that application has not been dismissed or withdrawn before the resolution is taken to have been passed; | |
| 12 | in the case of a company, the company is taken to have passed a special resolution that it be wound up voluntarily because:<br>(a) a deed of company arrangement executed by the company specifies particular circumstances in which the deed is to terminate and the company is to be wound up; and<br>(b) those circumstances exist at a particular time;<br>and either:<br>(c) no application for an order under section 233, 459A, 459B or 461 that the company be wound up was filed before the beginning of the administration that ended when the deed was executed; or<br>(d) an application for an order under section 233, 459A, 459B or 461 that the company be wound up was filed before the beginning of the administration that ended when the deed was executed, but that application was dismissed or | the section 513C day in relation to the administration that ended when the deed was executed. |

| **Relation-back day** | | |
|---|---|---|
| **Item** | **If:** | **the *relation-back day* is:** |
| | withdrawn before the administration commenced; | |
| 13 | in the case of a company, the company is taken to have passed a special resolution that it be wound up voluntarily because:<br>(a) a deed of company arrangement executed by the company specifies particular circumstances in which the deed is to terminate and the company is to be wound up; and<br>(b) those circumstances exist at a particular time;<br>and both:<br>(c) an application for an order under section 233, 459A, 459B or 461 that the company be wound up was filed before the beginning of the administration that ended when the deed was executed; and<br>(d) that application had not been dismissed or withdrawn before the resolution is taken to have been passed; | the day on which that application was filed. |
| 14 | because of Division 1A of Part 5.6, the winding up is taken to have begun on the day when an order that the company or body be wound up was made; | the day on which the application for the order was filed. |
| 15 | any other case applies; | the day on which the winding up is taken, because of Division 1A of Part 5.6, to have begun. |

# Part 6—Miscellaneous amendments

## *Corporations Act 2001*

### 19 Section 9 (definition of *civil penalty disqualification*)

Repeal the definition.

### 20 At the end of section 418

Add:

(4) In this section:

***senior manager*** does not include a receiver and manager.

### 21 Paragraph 435C(3)(h)

Repeal the paragraph, substitute:

(h) if the company is a general insurer (within the meaning of the *Insurance Act 1973*)—management of the general insurer vests in a judicial manager of the company appointed by the Federal Court under Part VB of the *Insurance Act 1973*; or

(i) if the company is a life company (within the meaning of the *Life Insurance Act 1995*)—management of the life company vests in a judicial manager of the life company appointed by the Federal Court under Part 8 of the *Life Insurance Act 1995*.

### 22 After subsection 436DA(4)

Insert:

(4A) As soon as practicable after making a declaration under subsection (2), the administrator must lodge a copy of the declaration with ASIC.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

### 23 After subsection 436DA(6)

Insert:

(6A) As soon as practicable after making a replacement declaration under subsection (5), the administrator must lodge a copy of the replacement declaration with ASIC.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

## 24 Subsection 442C(4)

Omit "of the company".

## 25 After subsection 449CA(4)

Insert:

(4A) As soon as practicable after making a declaration under subsection (2), the administrator must lodge a copy of the declaration with ASIC.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

## 26 After subsection 449CA(6)

Insert:

(6A) As soon as practicable after making a replacement declaration under subsection (5), the administrator must lodge a copy of the replacement declaration with ASIC.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

## 27 Paragraph 477(1)(a)

Omit "so far as is necessary for the beneficial disposal or winding up of that business", substitute "so far as is, in the opinion of the liquidator, required for the beneficial disposal or winding up of that business".

## 28 Paragraph 491(2)(a)

Omit "lodge a printed copy of the resolution", substitute "lodge with ASIC, in the prescribed form, a notice setting out the text of the resolution".

## 29 After subsection 506A(2)

Insert:

(3) As soon as practicable after making a declaration under subsection (2), the administrator must lodge a copy of the declaration with ASIC.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

## 30 After subsection 506A(5)

Insert:

(6) As soon as practicable after making a replacement declaration under subsection (4), the administrator must lodge a copy of the replacement declaration with ASIC.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

## 31 At the end of section 579A

Add:

(3) If the Court makes an order under subsection (1), the applicant for the order must:
(a) lodge with ASIC a notice setting out the text of the order; and
(b) do so within 2 business days after the making of the order.
The notice must be in the prescribed form.

## 32 At the end of section 579B

Add:

(3) If the Court makes an order under subsection (2), the applicant for the order must:
(a) lodge with ASIC a notice setting out the text of the order; and
(b) do so within 2 business days after the making of the order.
The notice must be in the prescribed form.

## 33 At the end of section 579C

Add:

(5) If the Court makes an order under subsection (2), the applicant for the order must:
(a) lodge with ASIC a notice setting out the text of the order; and
(b) do so within 2 business days after the making of the order.

The notice must be in the prescribed form.

(6) If the Court makes a declaration under subsection (3), the applicant for the declaration must:

(a) lodge with ASIC a notice setting out the text of the declaration; and

(b) do so within 2 business days after the making of the declaration.

The notice must be in the prescribed form.

(7) If the Court makes an order under subsection (4) on the application of a person, the applicant for the order must:

(a) lodge with ASIC a notice setting out the text of the order; and

(b) do so within 2 business days after the making of the order.

The notice must be in the prescribed form.

## 34 Subsections 588FGA(1) and (4)

Omit "Court", substitute "court".

## Part 7—Application of amendments

### *Corporations Act 2001*

#### 35 At the end of Chapter 10

Add:

# Part 10.26—Transitional provisions relating to Schedule 3 to the Insolvency Law Reform Act 2016

#### 1635 Application of amendments made by Schedule 3 to the *Insolvency Law Reform Act 2016*

(1) The amendment made by Part 1 of Schedule 3 to the *Insolvency Law Reform Act 2016* applies in relation to the administration of a company that begins on or after the commencement of that Schedule.

(2) The amendment made by Part 2 of Schedule 3 to the *Insolvency Law Reform Act 2016* applies in relation to material contraventions, and likely material contraventions, of a deed of company arrangement that occur on or after the commencement of that Schedule, regardless of when the deed was executed.

(3) The amendment made by item 9 of Part 4 of Schedule 3 to the *Insolvency Law Reform Act 2016* applies in relation to deeds of company arrangement that are terminated on or after the commencement of that Schedule.

(4) The amendments made by Part 5 of Schedule 3 to the *Insolvency Law Reform Act 2016* apply for the purposes of working out the relation-back day in relation to a winding up of a company or Part 5.7 body starting on or after the commencement of that Schedule.

(5) The amendments made by items 22, 23, 25, 26, 29 and 30 of Part 6 of Schedule 3 to the *Insolvency Law Reform Act 2016* apply in

relation to declarations made after the commencement of that Schedule.

(6) The amendment made by item 28 of Part 6 of Schedule 3 to the *Insolvency Law Reform Act 2016* applies in relation to resolutions passed on or after the commencement of that Schedule.

(7) The amendments made by items 31 and 32 of Part 6 of Schedule 3 to the *Insolvency Law Reform Act 2016* apply in relation to orders made on or after the commencement of that Schedule.

(8) The amendment made by item 33 of Part 6 of Schedule 3 to the *Insolvency Law Reform Act 2016* applies in relation to orders and declarations made on or after the commencement of that Schedule.

(9) The amendment made by item 34 of Part 6 of Schedule 3 to the *Insolvency Law Reform Act 2016* applies whether the payment of an amount in respect of a liability was made before, on or after the commencement of that Schedule.

[*Minister's second reading speech made in—*
*House of Representatives on 3 December 2015*
*Senate on 22 February 2016*]

(219/15)