

# EXPOSURE DRAFT

2013-2014

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT (07/11/2014)
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## **Insolvency Law Reform Bill 2014**

**No.     , 2014**

*(Treasury)*

**A Bill for an Act to amend the law in relation to  
personal and corporate insolvency, and for related  
purposes**

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1  
2 **A Bill for an Act to amend the law in relation to**  
3 **personal and corporate insolvency, and for related**  
4 **purposes**

5 The Parliament of Australia enacts:

6 **1 Short title**

7 This Act may be cited as the *Insolvency Law Reform Act 2014*.

8 **2 Commencement**

9 (1) Each provision of this Act specified in column 1 of the table  
10 commences, or is taken to have commenced, in accordance with  
11 column 2 of the table. Any other statement in column 2 has effect  
12 according to its terms.  
13

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	A day or days to be fixed by Proclamation. However, if any of the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
3. Schedule 2, Part 1	At the same time as the provisions covered by table item 2.	
4. Schedule 2, items 3 to 34	At the same time as the provisions covered by table item 2.	
5. Schedule 2,	The later of:	

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**Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
items 35 and 36	(a) immediately after the commencement of the provisions covered by table item 2; and (b) immediately after the commencement of item 151 of Schedule 1 to the <i>Carbon Farming Initiative Amendment Act 2014</i> . However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	
6. Schedule 2, item 37	At the same time as the provisions covered by table item 2.	
7. Schedule 2, item 38	At the same time as the provisions covered by table item 2. However, the provisions do not commence at all if item 164A of Schedule 1 to the <i>Carbon Farming Initiative Amendment Act 2014</i> commences at or before that time.	
8. Schedule 2, item 39	The later of: (a) immediately after the commencement of the provisions covered by table item 2; and (b) immediately after the commencement of item 164A of Schedule 1 to the <i>Carbon Farming Initiative Amendment Act 2014</i> . However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	
9. Schedule 2, items 40 to 303	At the same time as the provisions covered by table item 2.	
10. Schedule 3	Immediately after the commencement of the provisions covered by table item 2.	

1  
2  
3

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.



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

## 4 **3 Schedules**

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

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

**Part 1** Insolvency Practice Schedule (Bankruptcy)

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

4 **Part 1—Insolvency Practice Schedule (Bankruptcy)**

5 *Bankruptcy Act 1966*

6 **1 After section 4**

7 Insert:

8 **4A Insolvency Practice Schedule**

9 Schedule 2 has effect.

10 **2 At the end of the Act**

11 Add:

12 **Schedule 2—Insolvency Practice Schedule**  
13 **(Bankruptcy)**

14 Note: See section 4A.

15 **Part 1—Introduction**

16 **Division 1—Introduction**

17 **1-1 Object of this Schedule**

18 (1) The object of this Schedule is to ensure that any person registered  
19 as a trustee:

20 (a) has an appropriate level of expertise; and

21 (b) behaves ethically; and

22 (c) maintains sufficient insurance to cover his or her liabilities in  
23 practising as a registered trustee.

24 (2) The object of this Schedule is also:

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

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

## 7 **1-5 Simplified outline of this Schedule**

### 8 *Registering trustees*

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

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

### 13 *Consistently regulating the administration of regulated debtors'* 14 *estates*

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

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

### 21 *Other provisions*

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

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

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

# EXPOSURE DRAFT

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

Part 1 Insolvency Practice Schedule (Bankruptcy)

---

1 **Division 5—Definitions**

2 **Subdivision A—Introduction**

3 **5-1 Simplified outline of this Division**

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

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

10 **Subdivision B—The Dictionary**

11 **5-5 The Dictionary**

12 In this Schedule:

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

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

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

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

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

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

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

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

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

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- 1 **end of an administration** of a regulated debtor's estate means:
- 2 (a) in the case of a bankruptcy—the day on which the bankrupt
- 3 is discharged or the bankruptcy is annulled, whichever
- 4 happens first; and
- 5 (b) in the case of an administration under Part X—the day 3
- 6 years after the day on which a personal insolvency agreement
- 7 made by the debtor for the administration of the debtor's
- 8 estate took effect; and
- 9 (c) in the case of an administration under Part XI—the day 3
- 10 years after the day on which the administration is taken to
- 11 have commenced under section 247A.
- 12 **GST** has the same meaning as in the *A New Tax System (Goods*
- 13 *and Services Tax) Act 1999*.
- 14 **Insolvency Practice Rules** means the rules made by the Minister
- 15 under section 105-1.
- 16 **Insolvency Practice Schedule (Corporations)** means Schedule 2 to
- 17 the *Corporations Act 2001*, and includes rules made under
- 18 section 105-1 of that Schedule.
- 19 **maximum default amount** for a trustee of a regulated debtor's
- 20 estate: see section 60-15.
- 21 **notified estate charge**: see subsection 20-75(7).
- 22 **prescribed** means prescribed by the Insolvency Practice Rules.
- 23 **registered trustee** means an individual who is registered as a
- 24 trustee under Part 2 of this Schedule.
- 25 **Register of Trustees** means the register established and maintained
- 26 by the Inspector-General under section 15-1.
- 27 **regulated debtor**: see section 5-15.
- 28 **regulated debtor's estate**: see section 5-16.
- 29 **remuneration determination**, for a trustee of a regulated debtor's
- 30 estate, means a determination made:
- 31 (a) under section 60-10 or 60-11 in relation to the trustee; and
- 32 (b) in accordance with section 60-12.
-

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

Part 1 Insolvency Practice Schedule (Bankruptcy)

---

1                    *this Schedule* includes the Insolvency Practice Rules.

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

## 3                    **Subdivision C—Other definitions**

### 4                    **5-10 Meaning of *current conditions***

- 5                    (1) Each of the following is a *current condition* imposed on a  
6                    registered trustee:
- 7                    (a) a condition that a committee decides that the registered  
8                    trustee is to be subject to under subsection 20-20(5) or (6),  
9                    subject to any variation that a committee has decided should  
10                    be made to the condition under section 20-55;
  - 11                    (b) a condition that a committee decides that the registered  
12                    trustee is to be subject to under paragraph 40-55(1)(f) or (g),  
13                    subject to any variation that a committee has decided should  
14                    be made to the condition under section 20-55;
  - 15                    (c) a condition imposed under subsection 40-15(2) (direction not  
16                    to accept further appointments);
  - 17                    (d) a condition imposed on all registered trustees, or on  
18                    registered trustees of the trustee's class, under section 20-35;
  - 19                    (e) a condition imposed on the registered trustee by the Court  
20                    under section 45-1.

- 21                    (2) However, the *current conditions* imposed on a registered trustee  
22                    do not include:
- 23                    (a) a condition that a committee has decided to remove under  
24                    section 20-55; or
  - 25                    (b) a condition that is removed under subsection 40-15(4)  
26                    (condition removed because a direction not to accept further  
27                    appointments has been withdrawn); or
  - 28                    (c) a condition that the Court has ordered be removed under  
29                    section 45-1.

### 30                    **5-15 Meaning of *regulated debtor***

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

- 32                    (a) a bankrupt; or
-

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- 1 (b) a person whose property is subject to control under  
2 Division 2 of Part X; or  
3 (c) a debtor under a personal insolvency agreement; or  
4 (d) a deceased person whose estate is being administered under  
5 Part XI.

## 6 **5-16 Meaning of *regulated debtor's estate***

- 7 An estate is a *regulated debtor's estate* if it is:  
8 (a) in relation to a bankrupt—the estate of the bankrupt, other  
9 than any estate of the bankrupt administered under Part XI  
10 because the bankrupt is a deceased person; and  
11 (b) in relation to a person whose property is subject to control  
12 under Division 2 of Part X—the estate of the person; and  
13 (c) in relation to a debtor under a personal insolvency  
14 agreement—the estate of the debtor; and  
15 (d) in relation to a deceased person whose estate is being  
16 administered under Part XI—the estate of the person being  
17 administered under that Part.

## 18 **5-20 Meaning of *trustee of a regulated debtor's estate***

- 19 A person is the *trustee of a regulated debtor's estate* if the person  
20 is:  
21 (a) in relation to a bankrupt—the trustee of the bankrupt's estate;  
22 and  
23 (b) in relation to a person whose property is subject to control  
24 under Division 2 of Part X—the controlling trustee; and  
25 (c) in relation to a debtor under a personal insolvency  
26 agreement—the trustee of the agreement; and  
27 (d) in relation to a deceased person whose estate is being  
28 administered under Part XI—the trustee administering the  
29 estate under that Part.

## 30 **5-25 References to the trustee of a regulated debtor's estate**

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

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

**Part 1** Insolvency Practice Schedule (Bankruptcy)

---

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

7 **Division 6—Application of this Schedule to Official Trustee**

8 **6-1 Schedule generally does not apply to the Official Trustee**

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

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

12 **Division 10—Introduction**

13 **10-1 Simplified outline of this Part**

14

*Registering trustees*

15

An individual may apply to the Inspector-General to be registered  
16 as a trustee. The Inspector-General will refer the application to a  
17 committee who will consider the applicant's qualifications,  
18 conduct and fitness and whether the applicant will take out  
19 appropriate insurance. Registration may be subject to conditions, is  
20 for 3 years and may be renewed.

21

A registered trustee must:

22

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

24

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

26

*Disciplining registered trustees*

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1 If a registered trustee fails to lodge a document or give  
2 information, the Inspector-General may give directions that may  
3 result in the trustee being unable to accept further appointments.  
4 The Inspector-General may also seek a Court order.

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

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

## 12 *Court powers*

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

## 15 **10-5 Working cooperatively with ASIC**

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

## 21 **Division 15—Register of trustees**

### 22 **15-1 Register of Trustees**

- 23 (1) The Inspector-General must establish and maintain a Register of  
24 Trustees.
- 25 (2) The Register of Trustees may be kept in any form that the  
26 Inspector-General considers appropriate.
- 27 (3) The Insolvency Practice Rules may provide for and in relation to  
28 the Register of Trustees.

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

### Part 1 Insolvency Practice Schedule (Bankruptcy)

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- 1 (4) Without limiting subsection (3), the Insolvency Practice Rules may  
2 provide for and in relation to:  
3 (a) the details to be entered on the Register of Trustees; and  
4 (b) the parts of the Register that are to be made available to the  
5 public.
- 6 (5) Without limiting paragraph (4)(a), those details may include:  
7 (a) details of any disciplinary action decided by a committee  
8 under section 40-55; and  
9 (b) details of persons who have had their registration as a trustee  
10 under this Act suspended or cancelled.

## 11 **Division 20—Registering trustees**

### 12 **Subdivision A—Introduction**

#### 13 **20-1 Simplified outline of this Division**

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

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

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

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

---

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

## 5 **Subdivision B—Registration**

### 6 **20-5 Application for registration**

- 7 (1) An individual may apply to the Inspector-General to be registered  
8 as a trustee.
- 9 (2) The application must be lodged with the Inspector-General in the  
10 approved form.
- 11 (3) The application must be accompanied by the application fee  
12 determined by the Minister by legislative instrument.
- 13 (4) The application is properly made if subsections (2) and (3) are  
14 complied with.

### 15 **20-10 Inspector-General may convene a committee to consider**

- 16 (1) The Inspector-General may convene a committee for the purposes  
17 of considering an application, or applications, for registration as a  
18 trustee.
- 19 (2) The committee must consist of:  
20 (a) the Inspector-General; and  
21 (b) a registered trustee chosen by a prescribed body; and  
22 (c) a person appointed by the Minister.

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

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

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

**Part 1** Insolvency Practice Schedule (Bankruptcy)

---

1     **20-15 Inspector-General must refer applications to a committee**

- 2             (1) The Inspector-General must refer an application for registration as  
3             a trustee that is properly made to a committee convened under  
4             section 20-10 for consideration.
- 5             (2) The Inspector-General must do so within 3 months after receiving  
6             the application.

7     **20-20 Committee to consider applications**

8             *Committee must consider referred applications*

- 9             (1) If an application for registration as a trustee is referred to a  
10            committee, the committee must consider the application.
- 11            (2) For the purposes of considering the application, the committee:  
12            (a) must interview the applicant; and  
13            (b) may require the applicant to sit for an exam.

14            *Decision of committee*

- 15            (3) Within 45 business days after interviewing the applicant, the  
16            committee must decide whether the applicant should be registered  
17            as a trustee or not.
- 18            (4) The committee must decide that the applicant should be registered  
19            as a trustee if it is satisfied that the applicant:  
20            (a) has the qualifications, experience, knowledge and abilities  
21            prescribed; and  
22            (b) will take out:  
23            (i) adequate and appropriate professional indemnity  
24            insurance; and  
25            (ii) adequate and appropriate fidelity insurance;  
26            against the liabilities that the applicant may incur working as  
27            a registered trustee; and  
28            (c) has not been convicted, within 10 years before making the  
29            application, of an offence involving fraud or dishonesty; and  
30            (d) is not, and has not been within 10 years before making the  
31            application, an insolvent under administration; and
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- 1 (e) has not had his or her registration as a trustee under this Act  
2 cancelled within 10 years before making the application,  
3 other than in response to a written request by the applicant to  
4 have the registration cancelled; and  
5 (f) has not had his or her registration as a liquidator under the  
6 *Corporations Act 2001* cancelled within 10 years before  
7 making the application, other than in response to a written  
8 request by the applicant to have the registration cancelled;  
9 and  
10 (g) is not disqualified from managing corporations under  
11 Part 2D.6 of the *Corporations Act 2001*, or under a law of an  
12 external Territory or a law of a foreign country; and  
13 (h) is otherwise a fit and proper person; and  
14 (i) is resident in Australia.
- 15 (5) The committee may decide that the applicant should be registered  
16 even if the committee is not satisfied of a matter mentioned in  
17 paragraph (4)(a) or (i), provided the committee is satisfied that the  
18 applicant would be suitable to be registered as a trustee if the  
19 applicant complied with conditions specified by the committee.

20 *Registration may be subject to conditions*

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

23 *Spent convictions*

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

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

## 30 **20-25 Committee to report**

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

- 33 (a) the committee's decision on the application; and  
34 (b) the committee's reasons for that decision; and
-

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

**Part 1** Insolvency Practice Schedule (Bankruptcy)

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- 1 (c) if the committee decides under subsection 20-20(5) or (6)  
2 that the applicant should be registered subject to a condition:  
3 (i) the condition; and  
4 (ii) the committee's reasons for imposing the condition.

## 5 **20-30 Registration**

### 6 *Registration as trustee*

- 7 (1) The Inspector-General must register the applicant as a trustee if:  
8 (a) the committee has decided that the applicant should be  
9 registered; and  
10 (b) the applicant has produced evidence in writing to the  
11 Inspector-General that the applicant has taken out:  
12 (i) adequate and appropriate professional indemnity  
13 insurance; and  
14 (ii) adequate and appropriate fidelity insurance;  
15 against the liabilities that the applicant may incur working as  
16 a registered trustee; and  
17 (c) the applicant has paid the registration fee determined by the  
18 Minister by legislative instrument.
- 19 (2) The Inspector-General registers an applicant by entering on the  
20 Register of Trustees the details relating to the applicant prescribed  
21 for the purposes of subsection 15-1(3).

### 22 *Registration subject to current conditions*

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

### 25 *Certificate of registration*

- 26 (4) After registering a person as a trustee, the Inspector-General must  
27 give the person a certificate of registration.
- 28 (5) The certificate may be given electronically.

### 29 *Period of registration*

- 30 (6) The registration has effect for 3 years.
-

# EXPOSURE DRAFT

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

---

1 **20-35 Conditions imposed on all registered trustees or a class of**  
2 **registered trustees**

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

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

9 **20-40 Application to vary etc. conditions of registration**

- 10 (1) If a committee has decided under this Schedule that a person's  
11 registration as a trustee is to be subject to a condition, the person  
12 may apply to the Inspector-General for the condition to be varied  
13 or removed.
- 14 (2) However, an application cannot be made:  
15 (a) if the person's registration as a trustee is suspended; or  
16 (b) if the condition is of a prescribed kind; or  
17 (c) in prescribed circumstances.
- 18 (3) The application must be lodged with the Inspector-General in the  
19 approved form.
- 20 (4) The application is properly made if:  
21 (a) an application can be made; and  
22 (b) subsection (3) is complied with.
- 23 (5) A single application by a registered trustee may deal with more  
24 than one condition.

25 **20-45 Inspector-General may convene a committee to consider**  
26 **applications**

- 27 (1) The Inspector-General may convene a committee for the purposes  
28 of considering an application, or applications, made under  
29 section 20-40.
- 30 (2) The committee must consist of:
-

# EXPOSURE DRAFT

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

### Part 1 Insolvency Practice Schedule (Bankruptcy)

---

- 1 (a) the Inspector-General; and  
2 (b) a registered trustee chosen by a prescribed body; and  
3 (c) a person appointed by the Minister.

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

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

#### 9 **20-50 Inspector-General must refer applications to a committee**

- 10 (1) The Inspector-General must refer an application that is properly  
11 made under section 20-40 to a committee convened under  
12 section 20-45 for consideration.  
13 (2) The Inspector-General must do so within 3 months after receiving  
14 the application.

#### 15 **20-55 Committee to consider applications**

- 16 (1) If an application to vary or remove a condition of registration is  
17 referred to a committee, the committee must consider the  
18 application.  
19 (2) Unless the applicant otherwise agrees, the committee must, for the  
20 purposes of considering the application, interview the applicant.  
21 (3) The committee must, within 20 business days after interviewing  
22 the applicant or obtaining the agreement of the applicant as  
23 referred to in subsection (2):  
24 (a) decide whether the condition to which the application relates  
25 should be varied or removed; and  
26 (b) if a condition is to be varied, specify the way in which it is to  
27 be varied.

#### 28 **20-60 Committee to report**

- 29 The committee must give the applicant and the Inspector-General a  
30 report setting out:  
31 (a) the committee's decision on the application; and  
32 (b) the committee's reasons for that decision; and
-



# EXPOSURE DRAFT

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

## 3 **20-65 Committee’s decision given effect**

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

## 7 **Subdivision D—Renewal**

### 8 **20-70 Application for renewal**

- 9 (1) An individual may apply to the Inspector-General to have the  
10 individual’s registration as a trustee renewed.
- 11 (2) The application must be lodged with the Inspector-General, in the  
12 approved form, before the applicant’s registration as a trustee  
13 ceases to have effect.
- 14 Note: The Court may extend the time within which an application must be  
15 lodged: see paragraph 33(1)(c).
- 16 (3) If an individual applies to have his or her registration as a trustee  
17 renewed, the individual must, at least 1 month before the  
18 registration ceases to have effect, pay the renewal fee determined  
19 by the Minister by legislative instrument. If the renewal fee is not  
20 paid before that time, an additional amount equal to 20% of the  
21 renewal fee is payable by the applicant by way of penalty.
- 22 (4) The application is properly made if subsection (2) is complied  
23 with.

### 24 **20-75 Renewal**

#### 25 *Renewal of registration*

- 26 (1) On application under section 20-70, the Inspector-General must  
27 renew the registration of the applicant as a trustee if:  
28 (a) the application is properly made; and  
29 (b) the applicant has produced evidence in writing to the  
30 Inspector-General that the applicant maintains:
-

# EXPOSURE DRAFT

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

### Part 1 Insolvency Practice Schedule (Bankruptcy)

---

- 1 (i) adequate and appropriate professional indemnity  
2 insurance; and  
3 (ii) adequate and appropriate fidelity insurance;  
4 against the liabilities that the applicant may incur working as  
5 a registered trustee; and  
6 (c) the applicant has complied with any condition dealing with  
7 continuing professional education to which the applicant is  
8 subject during the applicant's current registration; and  
9 (d) the applicant has paid the renewal fee determined by the  
10 Minister under subsection 20-70(3), and any late payment  
11 penalty under that subsection; and  
12 (e) the applicant does not owe more than the prescribed amount  
13 of notified estate charges.

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

18 *Registration subject to current conditions*

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

21 *Certificate of registration*

- 22 (4) After renewing the registration of a person as a trustee, the  
23 Inspector-General must give the person a certificate of registration.  
24 (5) The certificate may be given electronically.

25 *Period of registration*

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

29 *When a notified estate charge is owed*

- 30 (7) A person owes a **notified estate charge** if:  
31 (a) the person owes either of the following:
-

# EXPOSURE DRAFT

- 1 (i) a charge under the *Bankruptcy (Estate Charges) Act*  
2 *1997* (the *estate charge*);  
3 (ii) a penalty under section 281 (late payment penalty) of  
4 this Act in respect of that charge; and  
5 (b) the Inspector-General notified the person of the unpaid estate  
6 charge at least one month and 10 business days before the  
7 person's registration as a trustee ceases to have effect.

## 8 **Subdivision E—Offences relating to registration**

### 9 **20-80 False representation that person is a registered trustee**

- 10 A person commits an offence if:  
11 (a) the person makes a representation; and  
12 (b) the representation is that the person is a registered trustee;  
13 and  
14 (c) the representation is false.

15 Penalty: 30 penalty units.

## 16 **Division 25—Insurance**

### 17 **25-1 Registered trustees to maintain insurance**

18 *Registered trustee must maintain insurance*

- 19 (1) A registered trustee must maintain:  
20 (a) adequate and appropriate professional indemnity insurance;  
21 and  
22 (b) adequate and appropriate fidelity insurance;  
23 against the liabilities that the trustee may incur working as a  
24 registered trustee.
- 25 (2) The Inspector-General may, by legislative instrument, determine  
26 what constitutes adequate and appropriate professional indemnity  
27 insurance, and adequate and appropriate fidelity insurance, in  
28 relation to either or both of the following:  
29 (a) specified circumstances;  
30 (b) one or more specified classes of registered trustees.

# EXPOSURE DRAFT

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

**Part 1** Insolvency Practice Schedule (Bankruptcy)

---

1

## *Offence*

2

(3) A person commits an offence if:

3

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

4

and

5

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

6

requirement.

7

Penalty: 1,000 penalty units.

8

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

9

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

10

and

11

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

12

Penalty: 60 penalty units.

13

## **Division 30—Annual trustee returns**

14

### **30-1 Annual trustee returns**

15

#### *Registered trustee must lodge annual return*

16

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

17

18

19

20

(2) Each of the following is a **return year** for a person who is or was registered as a trustee under section 20-30:

21

22

(a) the period of 12 months beginning on the day on which that registration first began;

23

24

(b) each subsequent period of 12 months.

25

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

26

(a) be in the approved form; and

27

(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:

28

29

30

(i) adequate and appropriate professional indemnity insurance; and

31

# EXPOSURE DRAFT

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

---

- 1 (ii) adequate and appropriate fidelity insurance;  
2 against the liabilities that the person may incur working as a  
3 registered trustee.
- 4 (4) The Inspector-General may, on the application of the registered  
5 trustee made before the end of the period for lodging a return under  
6 subsection (1), extend, or further extend, that period.

7 *Offence*

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

12 Penalty: 5 penalty units.

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

14 **Division 35—Notice requirements**

15 **35-1 Notice of significant events**

16 *Registered trustee must lodge notice*

- 17 (1) A registered trustee must lodge with the Inspector-General a  
18 notice, in the approved form, if any of the following events occur:  
19 (a) the trustee becomes an insolvent under administration;  
20 (b) a bankruptcy notice is issued under this Act in relation to the  
21 trustee as debtor, or a corresponding notice is issued in  
22 relation to the trustee as debtor under a law of an external  
23 Territory or a law of a foreign country;  
24 (c) the trustee is convicted of an offence involving fraud or  
25 dishonesty;  
26 (d) the trustee is disqualified from managing corporations under  
27 Part 2D.6 of the *Corporations Act 2001*, or under a law of an  
28 external Territory or a law of a foreign country;  
29 (e) the trustee ceases to have:  
30 (i) adequate and appropriate professional indemnity  
31 insurance; or

# EXPOSURE DRAFT

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

### Part 1 Insolvency Practice Schedule (Bankruptcy)

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- 1 (ii) adequate and appropriate fidelity insurance;  
2 against the liabilities that the trustee may incur working as a  
3 registered trustee;  
4 (f) the trustee is issued with a notice under section 40-40 of  
5 Schedule 2 to the *Corporations Act 2001* (a show-cause  
6 notice) in relation to the trustee's registration as a liquidator  
7 under that Act;  
8 (g) the trustee's registration as a liquidator under the  
9 *Corporations Act 2001* is suspended or cancelled;  
10 (h) any other event prescribed.

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

#### 14 *Offence*

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

20 Penalty: 100 penalty units.

### 21 **35-5 Notice of other events**

#### 22 *Registered trustee must lodge notice*

- 23 (1) A registered trustee must lodge with the Inspector-General a  
24 notice, in the approved form, if any of the following events occur:  
25 (a) information included in an annual trustee return, or in an  
26 annual administration return, prepared by or on behalf of the  
27 trustee is or becomes inaccurate in a material particular;  
28 (b) any other event prescribed.

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

# EXPOSURE DRAFT

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

---

1                    *Offence*

2                    (2) A person commits an offence if:

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

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

7                    Penalty: 5 penalty units.

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

9                    **Division 40—Disciplinary and other action**

10                   **Subdivision A—Introduction**

11                   **40-1 Simplified outline of this Division**

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

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

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

22                   If the Inspector-General reasonably suspects that information that a  
23                   registered trustee is required to give the Inspector-General under  
24                   this Act is incomplete or inaccurate, the Inspector-General can  
25                   direct the trustee to confirm, complete or correct the information.  
26                   The Inspector-General can also direct the trustee to tell someone  
27                   about the defect in the information. If the trustee fails to comply  
28                   with a direction, the Inspector-General can direct that the trustee  
29                   accept no further appointments or seek an order from the Court  
30                   directing the trustee to comply.

# EXPOSURE DRAFT

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

**Part 1** Insolvency Practice Schedule (Bankruptcy)

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*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).

20 **Subdivision B—Direction to comply**

21 **40-5 Registered trustee to remedy failure to lodge documents or give**  
22 **information or documents**

23 *Application of this section*

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



# EXPOSURE DRAFT

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

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1 *Inspector-General may give direction to comply*

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

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

8 *Consequences for failing to comply*

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

17 *Direction is not a legislative instrument*

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

19 *Relationship with other laws*

20 (6) Nothing in this section limits the operation of any other provision  
21 of this Act, or any other law, in relation to a person who fails to  
22 comply with a requirement to lodge a document with, or give  
23 information or a document to, the Inspector-General.

## 24 **40-10 Registered trustee to correct inaccuracies etc.**

25 *Application of this section*

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



# EXPOSURE DRAFT

1 **40-15 Direction not to accept further appointments**

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

- 4 (1) The Inspector-General may, in writing, direct a registered trustee  
5 not to accept any further appointments as a trustee, or not to accept  
6 any further appointments as a trustee during a period specified in  
7 the direction, if:
- 8 (a) the trustee has failed to comply with a direction given to the  
9 trustee under section 40-5 (direction to remedy failure to  
10 lodge documents, or give information or documents); or
  - 11 (b) the trustee has failed to comply with a direction given to the  
12 trustee under section 40-10 (direction to correct  
13 inaccuracies); or
  - 14 (c) a committee has decided under paragraph 40-55(1)(d) that  
15 the Inspector-General should give the direction referred to in  
16 that paragraph; or
  - 17 (d) the trustee has failed to comply with a direction given to the  
18 trustee under section 70-70 (direction to give relevant  
19 material).

20 *Condition of registration to comply with direction*

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

24 *Withdrawal of direction*

- 25 (3) The Inspector-General may withdraw a direction given under  
26 subsection (1).
- 27 (4) The condition is removed from the trustee's registration if the  
28 Inspector-General withdraws the direction.

29 *Direction is not a legislative instrument*

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

# EXPOSURE DRAFT

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

**Part 1** Insolvency Practice Schedule (Bankruptcy)

---

1

*Relationship with other laws*

2

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

3

4

(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

5

6

7

(b) a person giving incomplete or incorrect information; or

8

9

(c) any matter in relation to which a committee makes a decision under subsection 40-55(1).

10

(7) Nothing in this section limits the power of the Inspector-General to apply to the Court under subsection 70-90(2) for an order that the trustee of a regulated debtor's estate comply with a direction given under section 70-70 (direction to give relevant material).

11

12

13

14

## **Subdivision C—Automatic cancellation**

15

### **40-20 Automatic cancellation**

16

(1) The registration of a person as a trustee is cancelled if:

17

(a) the person becomes an insolvent under administration; or

18

(b) the person dies.

19

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

20

21

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

22

23

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

24

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

25

26

(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

27

28

29

(b) the person ceases to have:

30

31

(i) adequate and appropriate professional indemnity insurance; or

# EXPOSURE DRAFT

- 1 (ii) adequate and appropriate fidelity insurance;  
2 against the liabilities that the person may incur working as a  
3 registered trustee; or  
4 (c) the person's registration as a liquidator under the  
5 *Corporations Act 2001* has been cancelled or suspended,  
6 other than in compliance with a written request by the person  
7 to cancel or suspend the registration; or  
8 (d) the person owes more than the prescribed amount of notified  
9 estate charges; or  
10 (e) if the Court has made an order under section 90-15 that the  
11 person repay remuneration—the person has failed to repay  
12 the remuneration; or  
13 (f) the person has been convicted of an offence involving fraud  
14 or dishonesty; or  
15 (g) the person lodges a request with the Inspector-General in the  
16 approved form to have the registration suspended.

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

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

## 23 **40-30 Inspector-General may cancel registration**

- 24 (1) The Inspector-General may cancel the registration of a person as a  
25 trustee if:  
26 (a) the person is disqualified from managing corporations under  
27 Part 2D.6 of the *Corporations Act 2001*, or under a law of an  
28 external Territory or a law of a foreign country; or  
29 (b) the person ceases to have:  
30 (i) adequate and appropriate professional indemnity  
31 insurance; or  
32 (ii) adequate and appropriate fidelity insurance;  
33 against the liabilities that the person may incur working as a  
34 registered trustee; or  
35 (c) the person's registration as a liquidator under the  
36 *Corporations Act 2001* has been cancelled, other than in

# EXPOSURE DRAFT

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

### Part 1 Insolvency Practice Schedule (Bankruptcy)

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- 1 compliance with a written request by the person to cancel the  
2 registration; or  
3 (d) the person owes more than the prescribed amount of notified  
4 estate charges; or  
5 (e) if the Court has made an order under section 90-15 that the  
6 person repay remuneration—the person has failed to repay  
7 the remuneration; or  
8 (f) the person has been convicted of an offence involving fraud  
9 or dishonesty; or  
10 (g) the person lodges a request with the Inspector-General in the  
11 approved form to have the registration cancelled.

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

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

#### 18 **40-35 Notice of suspension or cancellation**

##### 19 *Application of this section*

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

##### 23 *Inspector-General must give notice of decision*

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

##### 27 *When decision comes into effect*

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

# EXPOSURE DRAFT

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

- 2 (4) A failure by the Inspector-General to give the notice under  
3 subsection (2) within 10 business days does not affect the validity  
4 of the decision.

## 5 **Subdivision E—Disciplinary action by committee**

### 6 **40-40 Inspector-General may give a show-cause notice**

- 7 (1) The Inspector-General may give a registered trustee notice in  
8 writing asking the trustee to give the Inspector-General a written  
9 explanation why the trustee should continue to be registered, if the  
10 Inspector-General believes that:
- 11 (a) the trustee no longer has the qualifications, experience,  
12 knowledge and abilities prescribed under  
13 paragraph 20-20(4)(a); or
  - 14 (b) the trustee has committed an act of bankruptcy within the  
15 meaning of this Act or a corresponding law of an external  
16 Territory or a foreign country; or
  - 17 (c) the trustee is disqualified from managing corporations under  
18 Part 2D.6 of the *Corporations Act 2001*, or under a law of an  
19 external Territory or a law of a foreign country; or
  - 20 (d) the trustee has ceased to have:
    - 21 (i) adequate and appropriate professional indemnity  
22 insurance; or
    - 23 (ii) adequate and appropriate fidelity insurance;  
24 against the liabilities that the person may incur working as a  
25 registered trustee; or
  - 26 (e) the trustee has breached a current condition imposed on the  
27 trustee; or
  - 28 (f) the trustee has contravened a provision of this Act; or
  - 29 (g) the trustee's registration as a liquidator under the  
30 *Corporations Act 2001* has been cancelled or suspended,  
31 other than in compliance with a written request by the trustee  
32 to cancel or suspend the registration; or
  - 33 (h) the trustee owes more than the prescribed amount of notified  
34 estate charges; or

# EXPOSURE DRAFT

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

### Part 1 Insolvency Practice Schedule (Bankruptcy)

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- 1 (i) if the Court has made an order under section 90-15 that the  
2 trustee repay remuneration—the trustee has failed to repay  
3 the remuneration; or  
4 (j) the trustee has been convicted of an offence involving fraud  
5 or dishonesty; or  
6 (k) the trustee is permanently or temporarily unable to perform  
7 the functions and duties of a trustee because of physical or  
8 mental incapacity; or  
9 (l) the trustee has failed to carry out adequately and properly  
10 (whether in Australia or in an external Territory or in a  
11 foreign country):  
12 (i) the duties of a trustee; or  
13 (ii) any other duties or functions that a registered trustee is  
14 required to carry out under a law of the Commonwealth  
15 or of a State or Territory, or under the general law; or  
16 (m) if the trustee is or was the administrator of a debt  
17 agreement—the trustee has failed to carry out adequately and  
18 properly (whether in Australia or in an external Territory or  
19 in a foreign country) the duties of an administrator in relation  
20 to a debt agreement; or  
21 (n) the trustee is not a fit and proper person; or  
22 (o) the trustee is not resident in Australia; or  
23 (p) the trustee has failed to comply with a standard prescribed for  
24 the purposes of subsection (4).
- 25 (2) A notice under subsection (1) is not a legislative instrument.
- 26 (3) Nothing in this section affects the operation of Part VIIC of the  
27 *Crimes Act 1914*.
- 28 Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain  
29 circumstances, relieve persons from the requirement to disclose spent  
30 convictions and require persons aware of such convictions to disregard  
31 them.
- 32 (4) The Insolvency Practice Rules may prescribe standards applicable  
33 to the exercise of powers, or the carrying out of duties, of  
34 registered trustees.
-



# EXPOSURE DRAFT

## 1 **40-45 Inspector-General may convene a committee**

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

5 (2) The committee must consist of:

6 (a) the Inspector-General; and

7 (b) a registered trustee chosen by a prescribed body; and

8 (c) a person appointed by the Minister.

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

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

## 14 **40-50 Inspector-General may refer matters to the committee**

15 The Inspector-General may refer a registered trustee to a  
16 committee convened under section 40-45 if the Inspector-General:

17 (a) gives the trustee a notice under section 40-40 (a show-cause  
18 notice); and

19 (b) either:

20 (i) does not receive an explanation within 20 business days  
21 after the notice is given; or

22 (ii) is not satisfied by the explanation.

## 23 **40-55 Decision of the committee**

24 (1) If a registered trustee is referred to a committee under  
25 section 40-50, the committee must decide one or more of the  
26 following:

27 (a) that the trustee should continue to be registered;

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

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

32 (d) that the Inspector-General should direct the trustee not to  
33 accept any further appointments as trustee, or not to accept

# EXPOSURE DRAFT

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

### Part 1 Insolvency Practice Schedule (Bankruptcy)

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- 1 any further appointments as trustee during the period  
2 specified in the decision;
- 3 (e) that the trustee should be publicly admonished or  
4 reprimanded;
- 5 (f) that a condition specified in the decision should be imposed  
6 on the trustee;
- 7 (g) that a condition should be imposed on all other registered  
8 trustees that they must not allow the trustee to carry out any  
9 of the functions or duties, or exercise any of the powers, of a  
10 trustee on their behalf (whether as employee, agent,  
11 consultant or otherwise) for a period specified in the decision  
12 of no more than 10 years;
- 13 (h) that the Inspector-General should publish specified  
14 information in relation to the committee's decision and the  
15 reasons for that decision.
- 16 (2) Without limiting paragraph (1)(f), conditions imposed under that  
17 paragraph may include one or more of the following:
- 18 (a) a condition that the trustee engage in, or refrain from  
19 engaging in, specified conduct;
- 20 (b) a condition that the trustee engage in, or refrain from  
21 engaging in, specified conduct except in specified  
22 circumstances;
- 23 (c) a condition that the trustee publish specified information;
- 24 (d) a condition that the trustee notify a specified person or class  
25 of persons of specified information;
- 26 (e) a condition that the trustee publish a specified statement;
- 27 (f) a condition that the trustee make a specified statement to a  
28 specified person or class of persons.
- 29 (3) In making its decision, the committee may have regard to:
- 30 (a) any information provided to the committee by the  
31 Inspector-General; and
- 32 (b) any explanation given by the trustee; and
- 33 (c) any other information given by the trustee to the committee;  
34 and
- 35 (d) if the trustee is or was also a registered liquidator under the  
36 *Corporations Act 2001*—any information in relation to the  
37 trustee given to the committee by ASIC or a committee
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# EXPOSURE DRAFT

- 1 convened under the Insolvency Practice Schedule  
2 (Corporations); and  
3 (e) any other matter that the committee considers relevant.

## 4 **40-60 Committee to report**

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

## 18 **40-65 Inspector-General must give effect to the committee's decision**

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

## 21 **Subdivision F—Lifting or shortening suspension**

### 22 **40-70 Application to lift or shorten suspension**

#### 23 *Application of this section*

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

#### 26 *Suspended trustee may apply to the Inspector-General*

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

# EXPOSURE DRAFT

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

### Part 1 Insolvency Practice Schedule (Bankruptcy)

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

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

#### 5 **40-75 Inspector-General may convene a committee to consider** 6 **applications**

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

10 (2) The committee must consist of:

11 (a) the Inspector-General; and

12 (b) a registered trustee chosen by a prescribed body; and

13 (c) a person appointed by the Minister.

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

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

#### 19 **40-80 Inspector-General must refer applications to a committee**

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

23 (2) The Inspector-General must do so within 3 months after receiving  
24 the application.

#### 25 **40-85 Committee to consider applications**

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

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

# EXPOSURE DRAFT

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

## 8 **40-90 Committee to report**

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

## 15 **40-95 Committee’s decision given effect**

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

## 19 **Subdivision G—Action initiated by industry body**

### 20 **40-100 Notice by industry bodies of possible grounds for disciplinary** 21 **action**

22 *Industry body may lodge notice*

- 23 (1) An industry body may lodge with the Inspector-General a notice in  
24 the approved form (an *industry notice*):  
25 (a) stating that the body reasonably suspects that there are  
26 grounds for the Inspector-General:  
27 (i) to suspend the registration of a registered trustee under  
28 section 40-25; or  
29 (ii) to cancel the registration of a registered trustee under  
30 section 40-30; or

# EXPOSURE DRAFT

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

### Part 1 Insolvency Practice Schedule (Bankruptcy)

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- 1 (iii) to give a registered trustee a notice under section 40-40  
2 (a show-cause notice); or  
3 (iv) to impose a condition on a registered trustee under  
4 another provision of this Schedule; and  
5 (b) identifying the registered trustee; and  
6 (c) including the information and copies of any documents upon  
7 which the suspicion is founded.

8 *Inspector-General must consider information and documents*

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

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

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

16 *45 business days to consider and decide*

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

22 *Inspector-General not precluded from taking action*

- 23 (5) The Inspector-General is not precluded from:  
24 (a) suspending the registration of a registered trustee under  
25 section 40-25; or  
26 (b) cancelling the registration of a registered trustee under  
27 section 40-30; or  
28 (c) giving a registered trustee a notice under section 40-40 (a  
29 show-cause notice); or  
30 (d) imposing a condition on a registered trustee under another  
31 provision of this Schedule;  
32 wholly or partly on the basis of information or a copy of a  
33 document included with the industry notice, merely because the
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# EXPOSURE DRAFT

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

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1 Inspector-General has given a notice under subsection (3) in  
2 relation to the matters raised by the industry notice.

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

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

8 *Notices are not legislative instruments*

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

## 10 **40-105 No liability for notice given in good faith etc.**

11 (1) An industry body is not liable civilly, criminally or under any  
12 administrative process for giving a notice under  
13 subsection 40-100(1) if:

- 14 (a) the body acted in good faith in giving the notice; and  
15 (b) the suspicion that is the subject of the notice is a reasonable  
16 suspicion.

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

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

## 26 **40-110 Meaning of *industry bodies***

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

# EXPOSURE DRAFT

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

**Part 1** Insolvency Practice Schedule (Bankruptcy)

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1 **Division 45—Court oversight of registered trustees**

2 **45-1 Court may make orders in relation to registered trustees**

- 3 (1) The Court may make such orders as it thinks fit in relation to a  
4 registered trustee.
- 5 (2) The Court may exercise the power under subsection (1):  
6 (a) on its own initiative, during proceedings before the Court; or  
7 (b) on application under subsection (3).
- 8 (3) Each of the following persons may apply for an order under  
9 subsection (1):  
10 (a) the registered trustee;  
11 (b) the Inspector-General.
- 12 (4) Without limiting the matters which the Court may take into  
13 account when making orders, the Court may take into account:  
14 (a) whether the registered trustee has faithfully performed, or is  
15 faithfully performing, the registered trustee's duties; and  
16 (b) whether an action or failure to act by the registered trustee is  
17 in compliance with this Act and the Insolvency Practice  
18 Rules; and  
19 (c) whether an action or failure to act by the registered trustee is  
20 in compliance with an order of the Court; and  
21 (d) whether any person has suffered, or is likely to suffer, loss or  
22 damage because of an action or failure to act by the  
23 registered trustee; and  
24 (e) the seriousness of the consequences of any action or failure  
25 to act by the registered trustee, including the effect of that  
26 action or failure to act on public confidence in registered  
27 trustees as a group.
- 28 (5) This section does not limit the Court's powers under any other  
29 provision of this Act, or under any other law.



# EXPOSURE DRAFT

## 1 **45-5 Court may make orders about costs**

- 2 (1) Without limiting section 45-1, the Court may make orders in  
3 relation to a registered trustee that deal with the costs of a matter  
4 considered by the Court.
- 5 (2) Those orders may include an order that:  
6 (a) the registered trustee is personally liable for some or all of  
7 those costs; and  
8 (b) the registered trustee is not entitled to be reimbursed by a  
9 regulated debtor's estate or creditors in relation to some or all  
10 of those costs.
- 11 (3) This section does not limit the Court's powers under any other  
12 provision of this Act, or under any other law.

## 13 **Division 50—Committees under this Part**

### 14 **50-1 Simplified outline of this Division**

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

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

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

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

# EXPOSURE DRAFT

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

Part 1 Insolvency Practice Schedule (Bankruptcy)

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1 **50-5 Prescribed body appointing a person to a committee**

2 *Application of this section*

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

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

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

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

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

17 **50-10 Minister appointing a person to a committee**

18 *Application of this section*

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

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

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

26 (a) business;

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

28 (c) economics;

29 (d) accounting;

30 (e) public policy relating to bankruptcy.

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1     **50-15 Single committee may consider more than one matter**

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

- 4             (a) a matter or matters relating to one applicant for registration  
5                 as a trustee;
- 6             (b) a matter or matters relating to more than one applicant for  
7                 registration as a trustee;
- 8             (c) a matter or matters relating to one registered trustee;
- 9             (d) a matter or matters relating to more than one registered  
10                 trustee.

11     **50-20 Ongoing consideration of matters by committee**

12             If a committee is convened under this Part to consider a matter:

- 13             (a) the committee's powers, functions and duties in relation to  
14                 the matter are not affected by a change in the membership of  
15                 the committee; and
- 16             (b) the committee may adjourn its consideration of the matter,  
17                 and may do so more than once; and
- 18             (c) the matter may be transferred to another committee with  
19                 powers, functions and duties under this Part in relation to  
20                 matters of that kind.

21     **50-25 Procedure and other rules relating to committees**

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

- 23             (a) the manner in which the committees convened under this Part  
24                 are to perform their functions, including:
- 25                 (i) meetings of committees; and
- 26                 (ii) the number of committee members required to  
27                     constitute a quorum; and
- 28                 (iii) disclosure of interests in a matter before a committee;  
29                     and
- 30                 (iv) the manner in which questions are to be decided by the  
31                     committee; and
- 32             (b) the reconstitution of a committee; and
- 33             (c) the termination of the consideration of a matter by a  
34                 committee, and the transfer of matters to another committee.
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# EXPOSURE DRAFT

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

**Part 1** Insolvency Practice Schedule (Bankruptcy)

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1     **50-30 Remuneration of committee members**

- 2             (1) A member of a committee convened under this Part is entitled to  
3             receive the remuneration that is determined by the Remuneration  
4             Tribunal. If no determination of that remuneration by the Tribunal  
5             is in operation, the member is entitled to receive such remuneration  
6             as the Minister determines in writing.
- 7             (2) A member is entitled to receive such allowances as the Minister  
8             determines in writing.
- 9             (3) This section has effect subject to the *Remuneration Tribunal Act*  
10            1973.

11     **50-35 Committee must only use information etc. for purposes for**  
12     **which disclosed**

13             *Offence*

- 14            (1) A person commits an offence if:  
15            (a) the person is or was a member of a committee convened  
16            under this Part; and  
17            (b) information or a document is or was disclosed to the person  
18            for the purposes of exercising powers or performing  
19            functions as a member of the committee; and  
20            (c) the person uses or discloses the information or document for  
21            any other purpose.

22            Penalty: 50 penalty units.

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

- 25            (2) Subsection (1) does not apply if the information is disclosed:  
26            (a) to ASIC to assist ASIC to exercise its powers or perform its  
27            functions under Chapter 5 of the *Corporations Act 2001* or  
28            the Insolvency Practice Schedule (Corporations); or  
29            (b) to a committee convened under Part 2 of the Insolvency  
30            Practice Schedule (Corporations) to assist the committee to  
31            exercise its powers or perform its functions under that Part;  
32            or

# EXPOSURE DRAFT

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

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- 1 (c) to another committee convened under this Part to assist the  
2 committee to exercise its powers or perform its functions  
3 under this Part; or  
4 (d) to enable or assist a body prescribed for the purposes of this  
5 paragraph to perform its disciplinary function in relation to  
6 its members; or  
7 (e) in order to enable or assist an authority or person in:  
8 (i) a State or Territory; or  
9 (ii) a foreign country;  
10 to perform or exercise a function or power that corresponds,  
11 or is analogous, to any of the committee's or the  
12 Inspector-General's functions and powers; or  
13 (f) to a court or tribunal in relation to proceedings before the  
14 court or tribunal.

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

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

## 19 **Part 3—General rules relating to estate** 20 **administrations**

### 21 **Division 55—Introduction**

#### 22 **55-1 Simplified outline of this Part**

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

25 The main provisions deal with:

- 26 • the remuneration of the trustee;
- 27 • the duties of the trustee in handling the money and other  
28 property of the estate;
- 29 • conflicts of interest;

# EXPOSURE DRAFT

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

**Part 1** Insolvency Practice Schedule (Bankruptcy)

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- 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;
- creditor meetings;
- the creation and conduct of a committee to monitor the administration (called a committee of inspection);
- the rights of creditors to review the administration;
- the rights of creditors to remove the trustee and appoint another; and
- 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.

## 14 **Division 60—Remuneration and other benefits received by** 15 **the trustee**

### 16 **Subdivision A—Introduction**

#### 17 **60-1 Simplified outline of this Division**

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##### *Remuneration*

The trustee of a regulated debtor's estate is entitled to receive remuneration for the necessary and proper work 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).

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1 However, if there is no remuneration determination, the trustee will  
2 be entitled to receive a reasonable amount for the work. The  
3 maximum amount that the trustee may receive in this way is  
4 \$5,000 (exclusive of GST and indexed).

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

9 The trustee of a regulated debtor's estate must not give up  
10 remuneration to another person.

### 11 *Other benefits*

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

- 13 • employ a related entity without the creditors' consent;
- 14 • purchase any assets of the estate; or
- 15 • get any other benefits or profits from the administration of the  
16 estate.

## 17 **Subdivision B—Remuneration of trustees**

### 18 **60-5 Trustee's remuneration**

#### 19 *Remuneration in accordance with remuneration determinations*

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

#### 25 *Remuneration for trustees if no remuneration determination made*

- 26 (2) If no remuneration determination is made in relation to the  
27 necessary and proper work performed by a trustee in relation to the

# EXPOSURE DRAFT

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

**Part 1** Insolvency Practice Schedule (Bankruptcy)

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1 administration of the regulated debtor's estate, the trustee is  
2 entitled to receive reasonable remuneration for the work. However,  
3 that remuneration must not exceed the maximum default amount.

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

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

7 **60-10 Remuneration determinations—creditors or committee of**  
8 **inspection**

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

- 13 (a) by resolution of the creditors; or  
14 (b) if there is a committee of inspection and a determination is  
15 not made under paragraph (a)—by the committee of  
16 inspection.

17 **60-11 Remuneration determinations—Inspector-General**

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

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

25 (3) Insolvency Practice Rules made for the purposes of subsection (2)  
26 may provide for and in relation to:

- 27 (a) a matter referred to in section 60-12; or  
28 (b) any other matter.



# EXPOSURE DRAFT

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

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1 **60-12 Remuneration determinations—general rules**

2 *Manner in which remuneration may be specified*

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

9 *Remuneration on a time-cost basis*

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

15 *Remuneration on a percentage basis*

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

24 *More than one remuneration determination may be made*

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

# EXPOSURE DRAFT

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

Part 1 Insolvency Practice Schedule (Bankruptcy)

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1       **60-15 Maximum default amount**

2                               *Maximum default amount*

- 3               (1) The **maximum default amount** for a trustee is an amount  
4               (exclusive of GST) worked out as follows:
- 5                       (a) if the trustee is appointed as the trustee of the regulated  
6                       debtor's estate during the financial year beginning on 1 July  
7                       2015—\$5,000;
- 8                       (b) if the trustee is appointed as the trustee of the regulated  
9                       debtor's estate during a financial year beginning on or after  
10                      1 July 2016—the greater of:
- 11                               (i) the amount worked out by multiplying the indexation  
12                               factor for the financial year (worked out under  
13                               subsections (3) and (4)) by the maximum default  
14                               amount for a trustee appointed as the trustee of a  
15                               regulated debtor's estate during the previous financial  
16                               year; and
- 17                               (ii) the amount (if any) prescribed for the purposes of this  
18                               subparagraph.

19                               *Rounding*

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

22                               *Indexation factor*

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

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

- 32               (5) In working out the indexation factor:
-

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- 1 (a) use only the index numbers published in terms of the most  
2 recently published index reference period for the Consumer  
3 Price Index; and  
4 (b) disregard index numbers published in substitution for  
5 previously published index numbers (except where the  
6 substituted numbers are published to take account of changes  
7 in the index reference period).

8 *Definition—index number*

- 9 (6) In this section:

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

## 14 **Subdivision E—Duties of trustees relating to remuneration and** 15 **benefits etc.**

### 16 **60-20 Trustee must not derive profit or advantage from the** 17 **administration of the estate**

18 *Deriving profit or advantage from the estate*

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

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

- 23 (2) To avoid doubt, a trustee of a regulated debtor's estate is taken to  
24 derive a profit or advantage from the administration of the estate if:  
25 (a) the trustee directly or indirectly derives a profit or advantage  
26 from a transaction (including a sale or purchase) entered into  
27 for or on account of the estate; or  
28 (b) the trustee directly or indirectly derives a profit or advantage  
29 from a creditor of the estate; or  
30 (c) a related entity of the trustee directly or indirectly derives a  
31 profit or advantage from the administration of the estate.

# EXPOSURE DRAFT

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

### Part 1 Insolvency Practice Schedule (Bankruptcy)

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1

#### *Exceptions*

2

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

3

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

4

5

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

6

7

Note: Subsection (1) would not, for example, prevent the trustee from recovering remuneration for the necessary and proper work 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.

8

9

10

11

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

12

13

(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

14

15

16

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

17

(c) either:

18

(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; or

19

20

21

(ii) the creditors consent to the related entity being employed or engaged.

22

23

(5) Subsection (1) does not apply to the extent that the profit or advantage is a payment that:

24

25

(a) is made to the trustee by or on behalf of the Commonwealth or an agency or authority of the Commonwealth; and

26

27

(b) is of a kind prescribed.

28

#### *Offence*

29

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

30

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

31

32

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

33

Penalty: 50 penalty units.

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# EXPOSURE DRAFT

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

4 *Effect of contravention of this section*

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

## 7 **60-25 Trustee must not give up remuneration**

8 *Trustee must not give up remuneration*

9 (1) A person who is, or has been, the trustee of a regulated debtor's  
10 estate must not:

11 (a) make an arrangement for giving up; or

12 (b) give up;

13 to any other person, any or all of the remuneration which the  
14 trustee is entitled to receive under this Act in relation to the  
15 administration of the estate.

16 *Offence*

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

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

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

21 Penalty: 50 penalty units.

## 22 **60-26 Payments in respect of performance by third parties**

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

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

# EXPOSURE DRAFT

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

**Part 1** Insolvency Practice Schedule (Bankruptcy)

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1

## *Exception*

2

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

3

4

(a) the creditors; or

5

(b) the committee of inspection (if any).

6

## *Offence*

7

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

8

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

9

10

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

11

Penalty: 50 penalty units.

12

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

13

14

## **Subdivision F—Remuneration and expenses for former trustees**

15

### **60-30 Remuneration for former trustees**

16

#### *Application of this section*

17

(1) This section applies if a person (the *former trustee*) ceases to be the trustee of a regulated debtor's estate and another person (the *new trustee*) becomes the trustee of the regulated debtor's estate.

18

19

20

(2) To avoid doubt, this section applies in relation to a former trustee even if the new trustee is the Official Trustee.

21

22

Note: For the remuneration payable to the Official Trustee, see section 163.

23

#### *Former trustee may agree remuneration for work performed*

24

(3) If:

25

(a) the former trustee and the new trustee agree on the

26

remuneration that the former trustee is entitled to receive for

27

necessary and proper work performed by the former trustee

28

in relation to the administration of the regulated debtor's

29

estate; and

30

(b) the creditors, by resolution, endorse that agreement;

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# EXPOSURE DRAFT

1 the creditors are taken to have made a determination under  
2 section 60-10 specifying the agreed remuneration as the  
3 remuneration that the former trustee is entitled to receive for the  
4 work.

5 *Exception to section 60-25—former trustee does not give up*  
6 *remuneration by agreeing*

7 (4) For the purposes of section 60-25, the former trustee does not give  
8 up remuneration in relation to the administration of the regulated  
9 debtor's estate even if the remuneration agreed and endorsed as  
10 mentioned in subsection (3) is less than the remuneration to which  
11 the former trustee might otherwise be entitled.

12 Note 1: Under section 60-25, the trustee of a regulated debtor's estate must not  
13 give up remuneration.

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

## 16 **60-35 Expenses of former trustees**

17 *Application of this section*

18 (1) This section applies if a person (the *former trustee*) ceases to be  
19 the trustee of a regulated debtor's estate and another person (the  
20 *new trustee*) becomes the trustee of the regulated debtor's estate.

21 (2) To avoid doubt, this section applies in relation to a former trustee  
22 even if the new trustee is the Official Trustee.

23 Note: For the remuneration payable to the Official Trustee, see section 163.

24 *Former trustee may agree expenses*

25 (3) If:

26 (a) the former trustee and the new trustee agree on the expenses  
27 of the administration of the bankruptcy incurred by the  
28 former trustee; and

29 (b) the creditors, by resolution, endorse that agreement;  
30 then, for the purposes of paragraph 109(1)(a) (priority payments),  
31 those expenses are taken to be expenses of the administration of  
32 the bankruptcy incurred by the former trustee.

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# EXPOSURE DRAFT

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

Part 1 Insolvency Practice Schedule (Bankruptcy)

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1 **Division 65—Funds handling**

2 **65-1 Simplified outline of this Division**

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The trustee of a regulated debtor's estate has duties to:

- promptly pay all money of the estate into an account (called an administration account);
- promptly deposit instruments such as securities with the bank at which the account is held;
- not pay any money into the account unless it is money of a regulated debtor's estate for which the account is held; and
- 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.

20 **65-5 The administration account**

21  
22  
23  
24  
25

*Trustee must maintain an administration account*

- (1) The trustee of a regulated debtor's estate must maintain a bank account in relation to the estate.
- (2) The trustee must ensure that the bank account complies with the requirements (if any) prescribed.



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- 1 (3) A bank account maintained in relation to a regulated debtor's estate  
2 that complies with the requirements (if any) prescribed is the  
3 **administration account** for the estate.

4 *Qualification*

- 5 (4) The trustee is taken to comply with subsections (1) and (2) in  
6 relation to a regulated debtor's estate (the **relevant estate**) if:  
7 (a) the trustee maintains a single bank account, that complies  
8 with the requirements (if any) prescribed, in relation to more  
9 than one estate of a regulated debtor or regulated debtors; and  
10 (b) the relevant estate is one of those estates.

11 In that case, that account is the **administration account** for the  
12 relevant estate.

13 *Exception*

- 14 (5) If the Court gives a direction that is inconsistent with  
15 subsection (1), (2) or (4), the relevant subsection does not apply to  
16 the extent of the inconsistency.

17 *Offence*

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

22 Penalty: 50 penalty units.

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

25 **65-10 Trustee must pay all money into the administration account**

26 *Trustee must pay money into the administration account*

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

# EXPOSURE DRAFT

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

**Part 1** Insolvency Practice Schedule (Bankruptcy)

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1

## *Exception*

2

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

3

4

5

## *Offence*

6

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

7

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

8

and

9

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

10

Penalty: 50 penalty units.

11

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

12

13

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

14

15

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

16

- (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:

17

18

19

(a) the estate; or

20

(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.

21

22

23

## *Exception*

24

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

25

26

27

## *Offence*

28

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

29

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

30

and

# EXPOSURE DRAFT

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

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

2 Penalty: 50 penalty units.

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

## 5 **65-20 Consequences for failure to pay money into administration** 6 **account**

### 7 *Application of this section*

8 (1) This section applies if:

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

10 (i) is subject to a requirement under subsection 65-10(1)  
11 (paying money into administration account); and

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

14 (b) the amount exceeds:

15 (i) \$50; or

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

### 17 *Exception*

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

### 22 *Trustee must pay penalty on excess*

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

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

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

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

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

# EXPOSURE DRAFT

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

Part 1 Insolvency Practice Schedule (Bankruptcy)

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1       **65-25 Paying money out of administration account**

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

- 4               (1) The trustee of a regulated debtor's estate must not pay any money  
5               out of the administration account for the estate otherwise than:  
6                       (a) for purposes related to the administration of the estate; or  
7                       (b) in accordance with this Act; or  
8                       (c) in accordance with a direction of the Court.

9                       *Offence*

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

14                       Penalty: 50 penalty units.

15       **65-30 Payments by cheque or electronic transfer**

16              (1) A payment out of the administration account for a regulated  
17              debtor's estate may be made by cheque or by electronic funds  
18              transfer.

- 19              (2) A cheque referred to in subsection (1) must:  
20                       (a) have the name of the regulated debtor written on it; and  
21                       (b) be signed by the trustee.

22       **65-31 Interest on administration account**

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

28              (2) If, under subsection (1), the trustee is only entitled to part of a  
29              payment of interest, the rest of that payment:

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- 1 (a) if the administration account contains money from only one  
2 estate of a regulated debtor—forms part of that estate; or  
3 (b) if the administration account contains money from more than  
4 estate of a regulated debtor or regulated debtors—forms part  
5 of those estates in proportion to the respective amounts of  
6 money held in the administration account on account of each  
7 of those estates.
- 8 (3) Interest on money in the administration account for a regulated  
9 debtor’s estate is not subject to taxation under a law of the  
10 Commonwealth, a State or a Territory except as provided in Part 2  
11 of the *Bankruptcy (Estate Charges) Act 1997*.

## 12 **65-32 Reconciliation of administration account**

### 13 *Application of this section*

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

### 16 *Trustee must maintain separate records*

- 17 (2) The trustee must:
- 18 (a) maintain a separate record for each of those estates of:
- 19 (i) money received by the trustee from the regulated debtor  
20 in relation to the estate; and  
21 (ii) payments made by the trustee in relation to the estate;  
22 and  
23 (iii) the balance of money held by the trustee in relation to  
24 the estate; and  
25 (b) at least once every 25 business days, reconcile the balance  
26 relating to each estate held in the account with the  
27 corresponding record maintained under paragraph (a).

## 28 **65-35 Receipts for payments into and out of the estate**

- 29 (1) The trustee of a regulated debtor’s estate must issue a receipt for a  
30 payment into the estate if asked to do so by the person making the  
31 payment.

# EXPOSURE DRAFT

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

**Part 1** Insolvency Practice Schedule (Bankruptcy)

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- 1 (2) The trustee must, wherever practicable, obtain a receipt for a  
2 payment made out of the estate.
- 3 (3) This section applies to the Official Trustee in the same way as it  
4 applies to the trustee of a regulated debtor's estate.

## 5 **65-40 Handling securities**

6 *Securities must be deposited with administration account bank*

- 7 (1) The trustee of a regulated debtor's estate must deposit in the bank  
8 with which the administration account for the estate is held:  
9 (a) the bills of exchange; and  
10 (b) the promissory notes; and  
11 (c) any other negotiable instrument or security;  
12 payable to the regulated debtor or the trustee as soon as practicable  
13 after they are received by the trustee.

14 *Exception*

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

18 *Offence*

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

23 **Penalty:** 5 penalty units.

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

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

27 *Delivery of securities*

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

# EXPOSURE DRAFT

1       **65-45 Handling of money and securities—Court directions**

- 2               (1) The Court may, on application, give directions regarding the  
3               payment, deposit or custody of:  
4               (a) money; and  
5               (b) bills of exchange, promissory notes and other negotiable  
6               instruments and securities;  
7               that are payable to, or held by, the trustee of a regulated debtor’s  
8               estate.
- 9               (2) The Court may, on application, give directions authorising the  
10              trustee of a regulated debtor’s estate to make payments into and out  
11              of a special bank account.
- 12             (3) Without limiting subsection (2), the Court may:  
13             (a) authorise the payments for the time and on the terms it thinks  
14             fit; and  
15             (b) if the Court thinks the account is no longer required—at any  
16             time order it to be closed.
- 17             (4) A copy of an order under paragraph (3)(b) must be served by the  
18             trustee on the bank with which the special bank account was  
19             opened.
- 20             (5) An application under this section may be made by:  
21             (a) a creditor; or  
22             (b) the regulated debtor; or  
23             (c) the trustee; or  
24             (d) any other person with a financial interest in the  
25             administration of the estate.

26       **65-46 Review of payments to third parties**

- 27             (1) The Insolvency Practice Rules may provide for and in relation to  
28             the review by the Inspector-General of a bill of costs for services  
29             provided by a person in relation to the administration of a regulated  
30             debtor’s estate.
- 31             (2) Without limiting subsection (1), the Insolvency Practice Rules may  
32             provide for and in relation to:

# EXPOSURE DRAFT

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

### Part 1 Insolvency Practice Schedule (Bankruptcy)

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- 1 (a) the application for the review (including who may apply);  
2 and  
3 (b) the powers available to the Inspector-General in relation to  
4 the review; and  
5 (c) the provision of information or documents to the  
6 Inspector-General for the purposes of the review; and  
7 (d) the decisions that may be made by the Inspector-General in  
8 relation to the review; and  
9 (e) the notification of decisions made by the Inspector-General;  
10 and  
11 (f) the consideration of the decisions made by the  
12 Inspector-General in relation to the review by the Court.

13 **65-50 Rules in relation to consequences for failure to comply with**  
14 **this Division**

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

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

28 **Division 70—Information**

29 **Subdivision A—Introduction**

30 **70-1 Simplified outline of this Division**

31 

The trustee of a regulated debtor's estate must:
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# EXPOSURE DRAFT

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16

- give annual reports of the administration of the estate (called annual administrative returns) to the Inspector-General;
- keep books of meetings and other affairs of the estate;
- allow those books to be audited if required to do so;
- allow access to those books by creditors; and
- 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.

## 17 **Subdivision B—Annual administration return**

### 18 **70-5 Annual administration return**

#### 19 *Application of this section*

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

#### 22 *Annual administration return to be lodged*

- 23 (2) The person must lodge a return in relation to the person's  
24 administration of that estate during that year or part of that year (as  
25 the case requires).
- 26 (3) The return must:  
27 (a) be in the approved form; and

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1 (b) be lodged with the Inspector-General within 25 days after the  
2 end of the financial year.

3 *Late lodgement fee payable*

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

## 8 **Subdivision C—Record-keeping**

### 9 **70-6 Subdivision applies to the Official Trustee**

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

### 12 **70-10 Administration books**

13 *Trustee must keep proper books*

14 (1) The trustee of a regulated debtor's estate must keep proper books  
15 in which the trustee must cause to be made:

16 (a) entries or minutes of proceedings at meetings relating to the  
17 administration of the estate; and

18 (b) such other entries as are necessary to give a complete and  
19 correct record of the trustee's administration of the estate.

20 (2) The trustee must:

21 (a) ensure that the books are available at the trustee's office for  
22 inspection; and

23 (b) permit a creditor, or another person acting on the creditor's  
24 behalf, to inspect the books at all reasonable times.

25 *Exception*

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

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1                    *Offence*

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

6                    Penalty: 5 penalty units.

7                    Note 1:     A defendant bears an evidential burden in relation to the matter in

8                         subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

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

10                   **70-11 Trustee's books when trading**

11                         *Trustee must keep trading books etc.*

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

18                         *Offence*

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

23                    Penalty: 5 penalty units.

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

25                   **70-15 Audit of administration books—Inspector-General**

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

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

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

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

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

6 *Auditor must prepare a report*

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

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

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

13 *Costs of an audit*

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

16 *Qualified privilege in relation to audit reports*

- 17 (6) A person who conducts an audit under this section has qualified  
18 privilege (within the meaning of the *Corporations Act 2001*) in  
19 respect of any report prepared under subsection (2) that is given to  
20 a person under subsection (4) or otherwise published.

## 21 **70-20 Audit of administration books—on order of the Court**

- 22 (1) The Court may order that the Inspector-General audit, or cause to  
23 be audited, the books referred to in section 70-5 (annual  
24 administration return), 70-10 (administration books) or 70-11  
25 (books when trading).  
26 (2) The order may be made on application of any person with a  
27 financial interest in the administration of the regulated debtor's  
28 estate.

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

## 5 **70-25 Trustee to comply with auditor requirements**

### 6 *Application of this section*

- 7 (1) This section applies if books are audited under section 70-15 or  
8 70-20.

### 9 *Trustee must give assistance etc.*

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

### 13 *Exception*

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

### 16 *Offence*

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

21 Penalty: 5 penalty units.

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

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

## 25 **70-30 Transfer of books to new trustee**

### 26 *Application of this section*

- 27 (1) This section applies if:
-

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- 1 (a) a person (the *former trustee*) ceases to be the trustee of a  
2 regulated debtor's estate; and  
3 (b) a registered trustee (the *new trustee*) is appointed as trustee  
4 of the estate instead.

5 *Transfer of books to new trustee*

- 6 (2) The former trustee must transfer to the new trustee, within 5  
7 business days after the new trustee is appointed, any books relating  
8 to the administration of the estate that are in the former trustee's  
9 possession or control.  
10 (3) The former trustee may take a copy of any part of the books before  
11 transferring them to the new trustee.

12 *New trustee must allow inspection etc.*

- 13 (4) After the books are transferred, the new trustee must allow the  
14 former trustee to inspect them at any reasonable time and take a  
15 copy of any part of the books.

16 *Offence*

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

22 Penalty: 50 penalty units.

23 *Lien against books not prejudiced*

- 24 (6) If the new trustee is entitled to take possession of the books under  
25 this section:  
26 (a) a person is not entitled, as against the new trustee, to claim a  
27 lien on the books; and  
28 (b) such a lien is not otherwise prejudiced.

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1 **70-35 Retention, return or destruction of books**

2 *Retention period for books*

- 3 (1) The last trustee to administer a regulated debtor's estate must retain  
4 all books that:  
5 (a) relate to the administration of the estate; and  
6 (b) are in the last trustee's possession or control at the end of the  
7 administration;  
8 for a period (the *retention period*) of 7 years from the end of the  
9 administration.

10 *Exception—reasonable excuse*

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

13 *Exception—books given by regulated debtor*

- 14 (3) Despite subsection (1), any books that the regulated debtor has  
15 given to the trustee of the estate may be returned to the regulated  
16 debtor within the retention period:  
17 (a) if there is a committee of inspection—as the committee  
18 directs; or  
19 (b) otherwise—as the creditors by resolution direct.

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

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

23 *Offence*

- 24 (5) A person commits an offence if:  
25 (a) the person is subject to a requirement under subsection (1);  
26 and  
27 (b) the person intentionally or recklessly fails to comply with the  
28 requirement.

29 Penalty: 50 penalty units.

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

#### 3 *Relationship with other laws*

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

#### 7 **70-36 Return or destruction of irrelevant books**

- 8 (1) The trustee of a regulated debtor's estate may, at any time during  
9 the administration of the estate, return to the regulated debtor, or  
10 destroy, any books that:
- 11 (a) the regulated debtor has given to any trustee of the estate; and
  - 12 (b) the trustee considers will not help the administration of the  
13 estate.
- 14 (2) Despite subsection (1), the trustee is not permitted to return the  
15 books to the regulated debtor, or to destroy them, if the trustee  
16 knows, or reasonably ought to know, that:
- 17 (a) another person had a lien over the books before the trustee  
18 took possession of them; or
  - 19 (b) another person has a legal right to possession of the books; or
  - 20 (c) the trustee is not permitted to return the books to the  
21 regulated debtor or destroy them (as the case requires),  
22 because of another provision of this Act, or a provision of  
23 any other law.

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

#### 25 **70-37 Subdivision applies to the Official Trustee**

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

#### 28 **70-40 Right of creditors to request information etc. from trustee**

- 29 (1) The creditors may by resolution request the trustee of a regulated  
30 debtor's estate to:
- 31 (a) give information; or
-



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- 1 (b) provide a report; or  
2 (c) produce a document;  
3 to the creditors.
- 4 (2) The trustee must comply with the request unless:  
5 (a) the information, report or document is not relevant to the  
6 administration of the regulated debtor's estate; or  
7 (b) the trustee would breach his or her duties in relation to the  
8 administration of the regulated debtor's estate if the trustee  
9 complied with the request; or  
10 (c) it is otherwise not reasonable for the trustee to comply with  
11 the request.
- 12 (3) The Insolvency Practice Rules may prescribe circumstances in  
13 which it is, or is not, reasonable for a trustee to comply with a  
14 request of a kind mentioned in subsection (1).

## 15 **70-45 Right of individual creditor to request information etc. from** 16 **trustee**

- 17 (1) A creditor may request the trustee of a regulated debtor's estate to:  
18 (a) give information; or  
19 (b) provide a report; or  
20 (c) produce a document;  
21 to the creditor.
- 22 (2) The trustee must comply with the request unless:  
23 (a) the information, report or document is not relevant to the  
24 administration of the regulated debtor's estate; or  
25 (b) the trustee would breach his or her duties in relation to the  
26 administration of the regulated debtor's estate if the trustee  
27 complied with the request; or  
28 (c) it is otherwise not reasonable for the trustee to comply with  
29 the request.
- 30 (3) The Insolvency Practice Rules may prescribe circumstances in  
31 which it is, or is not, reasonable for the trustee of a regulated  
32 debtor's estate to comply with a request of a kind mentioned in  
33 subsection (1).

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

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1     **70-50 Reporting to creditors**

2             (1) The Insolvency Practice Rules may provide for and in relation to  
3             the obligations of trustees of regulated debtors' estates:

4                 (a) to give information; and

5                 (b) to provide reports; and

6                 (c) to produce documents;

7             to creditors or the regulated debtor.

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

10                (a) other circumstances in which the trustee of a regulated  
11                debtor's estate must give information, provide a report or  
12                produce a document to a creditor or the regulated debtor; and

13                (b) the manner and form in which information is to be given, a  
14                report provided or a document produced; and

15                (c) the timeframes in which information is to be given, a report  
16                provided or a document produced; and

17                (d) who is to bear the cost of giving information, providing a  
18                report or producing a document.

19             (3) The Insolvency Practice Rules may:

20                (a) make different provision in relation to different kinds of  
21                estate administration; and

22                (b) provide that specified requirements imposed under the  
23                Insolvency Practice Rules may be replaced or modified, by  
24                resolution, by:

25                    (i) the creditors; or

26                    (ii) if there is a committee of inspection—the committee.

27     **Subdivision E—Other requests for information etc.**

28     **70-51 Subdivision applies to the Official Trustee**

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

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1 **70-55 Commonwealth may request information etc.**

2 *Application of this section*

- 3 (1) This section applies if either:  
4 (a) a former employee of a regulated debtor has made a claim for  
5 financial assistance from the Commonwealth in relation to  
6 unpaid employment entitlements; or  
7 (b) the Commonwealth considers that such a claim is likely to be  
8 made.

9 *Commonwealth may request information etc.*

- 10 (2) The Commonwealth may request the trustee of the regulated  
11 debtor's estate to provide specified information, reports or  
12 documents in relation to the administration of the regulated  
13 debtor's estate.  
14 (3) The trustee must comply with the request.  
15 (4) The Insolvency Practice Rules may provide for and in relation to  
16 who is to bear the cost of providing the information, reports or  
17 documents.

18 **70-56 Right of regulated debtor to request information etc. from**  
19 **trustee**

- 20 (1) A regulated debtor may request the trustee of the regulated debtor's  
21 estate to:  
22 (a) give information; or  
23 (b) provide a report; or  
24 (c) produce a document;  
25 to the regulated debtor.  
26 (2) The trustee must comply with the request unless:  
27 (a) the information, report or document is not relevant to the  
28 administration of the regulated debtor's estate; or  
29 (b) the trustee would breach his or her duties in relation to the  
30 administration of the regulated debtor's estate if the trustee  
31 complied with the request; or

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

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

#### 7 **Subdivision F—Reporting to the Inspector-General**

#### 8 **70-60 Insolvency Practice Rules may provide for reporting to** 9 **Inspector-General**

10 (1) The Insolvency Practice Rules may provide for and in relation to  
11 the obligations of trustees of regulated debtor's estates:

12 (a) to give information; and

13 (b) to provide reports; and

14 (c) to produce documents;

15 to the Inspector-General.

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

18 (a) the manner and form in which information is to be given, a  
19 report provided or a document produced; and

20 (b) the timeframes in which information is to be given, a report  
21 provided or a document produced; and

22 (c) who is to bear the cost of giving information, providing a  
23 report or producing a document.

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

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

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1 **Subdivision G—Trustee may be compelled to comply with**  
2 **requests for information etc.**

3 **70-65 Application of this Subdivision**

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

- 6 (a) Subdivision D; or  
7 (b) Subdivision E; or  
8 (c) section 80-40; or  
9 (d) a rule made under section 70-50;

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

11 (2) In this Subdivision:

- 12 (a) the information, report or document is referred to as the  
13 ***relevant material***; and  
14 (b) the request is referred to as the ***request for relevant material***;  
15 and  
16 (c) giving the information, providing the report or producing the  
17 document is referred to as ***giving*** the relevant material.

18 **70-70 Inspector-General may direct trustee to comply with the**  
19 **request for relevant material**

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

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

25 **70-75 Inspector-General must notify trustee before giving a**  
26 **direction under section 70-70**

- 27 (1) Before giving the trustee a direction under section 70-70, the  
28 Inspector-General must give the trustee notice in writing:  
29 (a) stating that the Inspector-General proposes to give the trustee  
30 a direction under that section; and  
31 (b) identifying:
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- 1 (i) the relevant material, or the part of the relevant material,  
2 that the Inspector-General proposes to direct be given;  
3 and  
4 (ii) the person or persons to whom the Inspector-General  
5 proposes to direct that the relevant material, or that part  
6 of the relevant material, be given; and  
7 (c) inviting the trustee to make a written submission to the  
8 Inspector-General within 10 business days after the notice is  
9 given, stating:  
10 (i) whether the trustee has any objection to giving the  
11 relevant material, or that part of the relevant material, to  
12 a person or persons as proposed; and  
13 (ii) if the trustee has such an objection—the reasons for that  
14 objection.
- 15 (2) If the trustee objects to giving the relevant material, or part of the  
16 relevant material, to a person, the Inspector-General must take into  
17 account the reasons for that objection when deciding whether to  
18 direct that the relevant material, or that part of the relevant  
19 material, be given to the person.
- 20 (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**

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

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

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

- 32 (1) The Inspector-General may, by notice in writing to the person or  
33 persons to whom the relevant material is to be given, impose
-

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1 conditions on the use and disclosure of the relevant material, or  
2 part of the relevant material, by the person or persons.

3 *Offence*

- 4 (2) A person commits an offence if:  
5 (a) the Inspector-General directs that the relevant material, or  
6 part of the relevant material, be given to the person; and  
7 (b) the Inspector-General has given the person notice under  
8 subsection (1) imposing a condition in relation to the use or  
9 disclosure of that material by the person; and  
10 (c) the person does not comply with the condition.

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

12 *Notice is not a legislative instrument*

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

## 14 **70-90 Court may order relevant material to be given**

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

18 (2) If:

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

25 (3) On application under subsection (1) or (2), the Court may:

- 26 (a) order the trustee to give the person, or any or all of the  
27 persons, who made the request for the relevant material all or  
28 part of that material; and  
29 (b) make such other orders, including orders as to costs, as it  
30 thinks fit.

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

Part 1 Insolvency Practice Schedule (Bankruptcy)

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1 **Division 75—Meetings of creditors**

2 **75-1 Simplified outline of this Division**

3 The trustee of a regulated debtor’s estate may convene creditor  
4 meetings at any time and must convene them in particular  
5 circumstances, for example when requested by certain creditors or  
6 directed by the Inspector-General.

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

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

12 **75-2 Division applies to the Official Trustee**

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

15 **75-5 Other obligations to convene meetings not affected**

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

20 **75-10 Trustee may convene meetings**

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

23 **75-15 Trustee must convene meeting in certain circumstances**

24 (1) The trustee of a regulated debtor’s estate must convene a meeting  
25 of the creditors if:

26 (a) where there is a committee of inspection—the committee of  
27 inspection requests the trustee to do so; or



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- 1 (b) the creditors direct the trustee to do so by resolution; or  
2 (c) at least 25% in value of the creditors direct the trustee to do  
3 so in writing; or  
4 (d) both of the following are satisfied:  
5 (i) less than 25%, but more than 10%, in value of the  
6 creditors direct the trustee to do so in writing;  
7 (ii) security for the cost of holding the meeting is given to  
8 the trustee before the meeting is convened.
- 9 (2) However, the trustee of a regulated debtor's estate need not comply  
10 with the request or direction if the request or direction is not  
11 reasonable.
- 12 (3) The Insolvency Practice Rules may prescribe circumstances in  
13 which a request or direction is, or is not, reasonable.
- 14 (4) For the purposes of paragraphs (1)(c) and (d), the value of the  
15 creditors is to be worked out by reference to the value of the  
16 creditors' claims against the regulated debtor's estate that are  
17 known at the time the direction is given.

## 18 **75-20 Trustee must convene meeting if required by the** 19 **Inspector-General**

- 20 (1) The Inspector-General may, in writing, direct the trustee of a  
21 regulated debtor's estate to convene a meeting of the creditors.
- 22 (2) The Inspector-General may include in the direction requirements to  
23 be complied with by the trustee in notifying the creditors of the  
24 meeting and conducting the meeting.
- 25 (3) The trustee must comply with a direction given under  
26 subsection (1), and any requirements included in the direction  
27 under subsection (2).
- 28 (4) A direction given under subsection (1) is not a legislative  
29 instrument.

## 30 **75-25 Trustee's representative at meetings**

- 31 (1) The trustee of a regulated debtor's estate may, in writing, appoint a  
32 person to represent the trustee at a meeting.
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- 1 (2) Subsection (1) does not apply to a meeting of a kind prescribed.
- 2 (3) If the trustee is not personally present at a meeting, then a
- 3 reference in a provision of this Act to a trustee, in respect of
- 4 matters occurring at or in connection with the meeting, is a
- 5 reference to a person so appointed to represent the trustee at the
- 6 meeting.

7 **75-30 Inspector-General may attend meetings**

- 8 (1) The Inspector-General is entitled to attend any meeting of creditors
- 9 held under this Act.
- 10 (2) Subject to any provision of this Act (including any provision in
- 11 relation to voting), the Inspector-General is entitled to participate
- 12 in any meeting of creditors held under this Act.

13 **75-35 Commonwealth may attend certain meetings etc.**

- 14 If:
- 15 (a) a former employee of a regulated debtor has made a claim for
- 16 financial assistance from the Commonwealth in relation to
- 17 unpaid employment entitlements; or
- 18 (b) the Commonwealth considers that such a claim is likely to be
- 19 made;
- 20 the Commonwealth is entitled to nominate a representative to
- 21 attend any meeting of creditors held in relation to the
- 22 administration of the regulated debtor's estate.

23 **75-40 Proposals to creditors without meeting**

24 *Proposal by notice to creditors*

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

28 *Content and service of notice*

- 29 (2) The notice must:
- 30 (a) contain a single proposal; and

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- 1 (b) include a statement of the reasons for the proposal and the  
2 likely impact it will have on creditors (if it is passed); and  
3 (c) be given to each creditor who would be entitled to receive  
4 notice of a meeting of creditors; and  
5 (d) invite the creditor to either:  
6 (i) vote Yes or No on the proposal; or  
7 (ii) object to the proposal being resolved without a meeting  
8 of creditors; and  
9 (e) specify a reasonable time by which replies must be received  
10 by the trustee (in order to be taken into account).

11 *Evidentiary certificate relating to proposals*

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

15 *Insolvency Practice Rules relating to proposals*

- 16 (4) The Insolvency Practice Rules may provide for and in relation to  
17 proposals without meeting under this section.  
18 (5) Without limiting subsection (4), the Insolvency Practice Rules may  
19 provide for and in relation to:  
20 (a) the circumstances in which a proposal is taken to be passed;  
21 and  
22 (b) whether a proposal, if passed, is to be taken to have been  
23 passed as a resolution or a special resolution; and  
24 (c) costs and security for those costs in relation to a proposal.

25 **75-50 Rules relating to meetings**

- 26 (1) The Insolvency Practice Rules may provide for and in relation to  
27 meetings of creditors.  
28 (2) Without limiting subsection (1), the Insolvency Practice Rules may  
29 provide for and in relation to:  
30 (a) the circumstances in which meetings must or may be  
31 convened; and  
32 (b) notice for convening meetings; and

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

**Part 1** Insolvency Practice Schedule (Bankruptcy)

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- 1 (c) agenda; and  
2 (d) information to be given to creditors; and  
3 (e) who is to preside at meetings; and  
4 (f) the number of creditors required to constitute a quorum; and  
5 (g) proxies and attorneys; and  
6 (h) motions; and  
7 (i) voting (including casting votes); and  
8 (j) the circumstances in which a resolution or a special  
9 resolution must or may be put to creditors in a meeting; and  
10 (k) the circumstances in which a resolution or a special  
11 resolution put to creditors in a meeting is passed; and  
12 (l) facilities, including electronic communication facilities, to be  
13 available at meetings; and  
14 (m) minutes; and  
15 (n) costs in relation to meetings and security for those costs.

## 16 **Division 80—Committees of inspection**

### 17 **80-1 Simplified outline of this Division**

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

#### 21 *Appointing the committee*

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

- 24 • the creditors by resolution;  
25 • a single creditor who is owed, or a group of creditors who  
26 together are owed, a large amount;  
27 • a single employee who is owed, or a group of employees who  
28 together are owed, a large amount.

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Amendments relating to the Insolvency Practice Schedule (Bankruptcy) **Schedule 1**  
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1                   Once a person exercises a right in one capacity to appoint a  
2                   member, the person cannot exercise a right in another capacity to  
3                   do so. A person can exercise the right under a particular capacity to  
4                   appoint only one person (unless the person is filling a vacancy in  
5                   that appointment).

6                   *Procedures and powers*

7                   This Division also deals with the procedures and powers of  
8                   committees of inspection (including requesting information,  
9                   documents and reports from the trustee and obtaining specialist  
10                  advice).

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

13                  *Review*

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

16                  **80-2 Division applies to the Official Trustee**

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

19                  **80-5 Creditors may request meeting to establish committee of  
20                  inspection**

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

- 24                  (a) whether there is to be a committee of inspection for the  
25                  estate;  
26                  (b) if there is, or is to be, a committee of inspection—who are to  
27                  be appointed members of the committee.

# EXPOSURE DRAFT

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

**Part 1** Insolvency Practice Schedule (Bankruptcy)

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1 **80-10 Committee of inspection**

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

5 **80-15 Appointment and removal of members of committee of**  
6 **inspection by creditors generally**

- 7 (1) The creditors of a regulated debtor's estate may, by resolution,  
8 appoint members of a committee of inspection in relation to the  
9 administration of the estate.
- 10 (2) The creditors of a regulated debtor's estate may by resolution:  
11 (a) remove a person appointed as a member of the committee  
12 under this section; and  
13 (b) appoint another person to fill a vacancy in the office of a  
14 member of the committee appointed under this section.
- 15 (3) A person is not entitled to vote on a resolution to appoint or  
16 remove a member of a committee of inspection under this section  
17 if:  
18 (a) the person, acting either alone or with others, has appointed a  
19 person as a member of the committee under section 80-20; or  
20 (b) the person, acting either alone or with others, has appointed a  
21 person as a member of the committee under section 80-25.

22 **80-20 Appointment of committee member by large creditor**

- 23 (1) A creditor representing at least 10% in value of the creditors, or a  
24 group of creditors who together represent at least 10% in value of  
25 the creditors, of a regulated debtor's estate may appoint a person as  
26 a member of a committee of inspection in relation to the  
27 administration of the estate.
- 28 (2) If a creditor or a group of creditors appoints a person as a member  
29 of a committee of inspection under this section, the creditor or  
30 group of creditors may by resolution:  
31 (a) remove the person as a member of the committee; and  
32 (b) appoint another person to fill a vacancy in the office of that  
33 member of the committee.
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- 1 (3) A creditor, acting either alone or with others, is not entitled to  
2 appoint a person as a member of a committee of inspection under  
3 subsection (1) if:  
4 (a) a resolution has already passed under subsection 80-15(1)  
5 appointing members of the committee; or  
6 (b) the creditor, acting either alone or with others, has already  
7 appointed a member of the committee under  
8 subsection 80-25(1); or  
9 (c) the creditor, acting either alone or with others, has already  
10 appointed a member of the committee under subsection (1) of  
11 this section.

## 12 **80-25 Appointment of committee member by employees**

- 13 (1) Either:  
14 (a) an employee of the regulated debtor; or  
15 (b) the employees of the regulated debtor;  
16 representing at least 50% in value of amounts owed to or in respect  
17 of employees by the regulated debtor, in respect of services  
18 rendered to or for the regulated debtor, may appoint a person as a  
19 member of a committee of inspection to represent the employees.
- 20 (2) If an employee or a group of employees appoints a person under  
21 this section, the employee or group of employees may by  
22 resolution:  
23 (a) remove the person as a member of the committee; and  
24 (b) appoint another person to fill a vacancy in the office of that  
25 member of the committee.
- 26 (3) An employee, acting either alone or with others, is not entitled to  
27 appoint a person as a member of a committee of inspection under  
28 subsection (1) if:  
29 (a) a resolution has already passed under subsection 80-15(1)  
30 appointing members of the committee; or  
31 (b) the employee, acting either alone or with others, has already  
32 appointed a member of the committee under  
33 subsection 80-20(1); or

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

**Part 1** Insolvency Practice Schedule (Bankruptcy)

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

4 **80-30 Committees of inspection—procedures etc.**

- 5 (1) Subject to subsection (2), a committee of inspection is to determine  
6 its own procedures.
- 7 (2) The Insolvency Practice Rules may provide for and in relation to  
8 committees of inspection.
- 9 (3) Without limiting subsection (2), the Insolvency Practice Rules may  
10 provide for and in relation to:
- 11 (a) eligibility to be appointed as a member of a committee of  
12 inspection; and
- 13 (b) the convening of, conduct of, and procedure and voting at,  
14 meetings; and
- 15 (c) resignation and removal of members; and  
16 (d) vacancies in membership.

17 **80-35 Functions of committee of inspection**

- 18 (1) A committee of inspection has the following functions:
- 19 (a) to advise and assist the trustee of the regulated debtor's  
20 estate;
- 21 (b) to give directions to the trustee of the regulated debtor's  
22 estate;
- 23 (c) to monitor the conduct of the administration of the estate;
- 24 (d) such other functions as are conferred on the committee by  
25 this Act;
- 26 (e) to do anything incidental or conducive to the performance of  
27 any of the above functions.
- 28 (2) The trustee of a regulated debtor's estate must have regard to any  
29 directions given to the trustee by the committee of inspection, but  
30 the trustee is not required to comply with such directions.



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- 1 (3) If the trustee of a regulated debtor's estate does not comply with a  
2 direction, the trustee must make a written record of that fact, along  
3 with the trustee's reasons for not complying with the direction.

## 4 **80-40 Committee of inspection may request information etc.**

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

## 22 **80-45 Reporting to committee of inspection**

- 23 (1) The Insolvency Practice Rules may provide for and in relation to  
24 the obligations of trustees of regulated debtors' estates:  
25 (a) to give information; and  
26 (b) to provide reports; and  
27 (c) to produce documents;  
28 to committees of inspection.
- 29 (2) Without limiting subsection (1), the Insolvency Practice Rules may  
30 provide for and in relation to:  
31 (a) other circumstances in which the trustee must give  
32 information, provide a report or produce a document to a  
33 committee of inspection; and

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

### Part 1 Insolvency Practice Schedule (Bankruptcy)

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- 1 (b) the manner and form in which information is to be given, a  
2 report provided or a document produced; and  
3 (c) the timeframes in which information is to be given, a report  
4 provided or a document produced; and  
5 (d) who is to bear the cost of giving information, providing a  
6 report or producing a document.
- 7 (3) The Insolvency Practice Rules may:  
8 (a) make different provision in relation to different classes of  
9 regulated debtor, or regulated debtor's estates; and  
10 (b) provide that specified requirements imposed under the  
11 Insolvency Practice Rules may be replaced or modified, by  
12 resolution, by:  
13 (i) the creditors; or  
14 (ii) the committee of inspection.

#### 80-50 Committee of inspection may obtain specialist advice or assistance

- 15  
16
- 17 (1) A committee of inspection may resolve that a member of the  
18 committee obtain, on behalf of the committee, such advice or  
19 assistance as the committee considers desirable in relation to the  
20 conduct of the administration of the regulated debtor's estate.
- 21 (2) The committee of inspection must obtain the approval of the  
22 trustee of the regulated debtor's estate or the Court before expenses  
23 are incurred in obtaining the advice or assistance.
- 24 (3) To avoid doubt, an expense incurred under subsection (2) is to be  
25 taken to be an expense of the administration of the estate.

#### 80-55 Obligations of members of committee of inspection

##### *Deriving profit or advantage from the estate*

- 26  
27
- 28 (1) A member of a committee of inspection must not directly or  
29 indirectly derive any profit or advantage from the administration of  
30 the regulated debtor's estate.

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- 1                                    *Circumstances in which profit or advantage is taken to be derived*
- 2                    (2) To avoid doubt, a member of a committee of inspection is taken to  
3                    derive a profit or advantage from the administration of the  
4                    regulated debtor's estate if:
- 5                                    (a) the member directly or indirectly derives a profit or  
6                                    advantage from a transaction (including a sale or purchase)  
7                                    entered into for or on account of the estate; or
- 8                                    (b) the member directly or indirectly derives a profit or  
9                                    advantage from a creditor of the estate; or
- 10                                   (c) a related entity of the member directly or indirectly derives a  
11                                   profit or advantage from the administration of the estate.

12                                    *Exceptions*

- 13                    (3) Subsection (1) does not apply if the creditors resolve otherwise.
- 14                    (4) The member of the committee is not entitled to vote on the  
15                    resolution referred to in subsection (3).
- 16                    (5) Subsection (1) does not apply to the extent that:
- 17                                    (a) another provision of this Act, or of another law, requires or  
18                                    permits the member of the committee of inspection to derive  
19                                    the profit or advantage; or
- 20                                    (b) the Court gives leave to the member of the committee to  
21                                    derive the profit or advantage.
- 22                    Note:            Subsection (1) would not, for example, prevent a creditor from  
23                                    recovering debts proved in the bankruptcy, as this is permitted under  
24                                    Division 2 of Part VI.
- 25                    (6) Despite paragraph (2)(c), subsection (1) does not apply to the  
26                    extent that:
- 27                                    (a) the profit or advantage arises because the trustee employs or  
28                                    engages a person to provide services in connection with the  
29                                    administration of the regulated debtor's estate; and
- 30                                    (b) the person is a related entity of a member of the committee of  
31                                    inspection; and
- 32                                    (c) one of the following applies:
- 33    (i) the member does not know, and could not reasonably be  
34    expected to know, that the person employed or engaged  
35    by the trustee is a related entity of the member;

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

### Part 1 Insolvency Practice Schedule (Bankruptcy)

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- 1 (ii) the member discloses to the trustee and the committee  
2 that the person employed or engaged by the trustee is a  
3 related entity of the member, and does so as soon as is  
4 practicable after the member becomes aware that the  
5 entity is a related entity and has been employed or  
6 engaged by the trustee;  
7 (iii) the creditors consent to the related entity being  
8 employed or engaged.

9 *Offence*

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

14 Penalty: 50 penalty units.

15 Note: A defendant bears an evidential burden in relation to the matters in  
16 subsections (3), (5) and (6) (see subsection 13.3(3) of the *Criminal*  
17 *Code*).

18 *Effect of contravention of this section*

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

21 **80-60 Obligations of creditor appointing a member of committee of**  
22 **inspection**

23 *Application of this section*

- 24 (1) This section applies if a creditor representing at least 10% in value  
25 of the creditors of a regulated debtor's estate appoints a person  
26 under section 80-20 as a member of a committee of inspection in  
27 relation to the administration of the estate.  
28 (2) The creditor must not directly or indirectly become the purchaser  
29 of any part of the regulated debtor's estate.

30 *Exceptions*

- 31 (3) Subsection (2) does not apply if the creditors resolve otherwise.
-

# EXPOSURE DRAFT

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

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- 1 (4) The creditor is not entitled to vote on the resolution referred to in  
2 subsection (3).
- 3 (5) Subsection (2) does not apply to the extent that:  
4 (a) another provision of this Act, or of another law, requires or  
5 permits the creditor to purchase the property; or  
6 (b) the Court gives leave to the creditor to purchase the property.
- 7 *Offence*
- 8 (6) A person commits an offence of strict liability if:  
9 (a) the person is subject to a requirement under subsection (2);  
10 and  
11 (b) the person fails to comply with the requirement.
- 12 Penalty: 50 penalty units.
- 13 Note: A defendant bears an evidential burden in relation to the matters in  
14 subsections (3) and (5) (see subsection 13.3(3) of the *Criminal Code*).
- 15 *Effect of contravention of this section*
- 16 (7) A transaction or any other arrangement entered into in  
17 contravention of this section may be set aside by the Court.

## 18 **80-65 The Inspector-General may attend committee meetings**

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

## 21 **80-70 The Court may inquire into conduct of the committee**

22 The Court may inquire into the conduct of a committee of  
23 inspection and make such orders as it thinks fit to ensure the proper  
24 conduct of the committee.

# EXPOSURE DRAFT

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

Part 1 Insolvency Practice Schedule (Bankruptcy)

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1 **Division 85—Directions by creditors**

2 **85-1 Simplified outline of this Division**

3 

<p>4 The trustee of a regulated debtor's estate must have regard to 5 directions given to the trustee by the creditors of the estate but is not obliged to comply with those directions.</p>
--

6 **85-2 Division applies to the Official Trustee**

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

9 **85-5 Trustee to have regard to directions given by creditors**

- 10 (1) The creditors may, by resolution, give directions to the trustee of a  
11 regulated debtor's estate in relation to the administration of the  
12 estate.
- 13 (2) The trustee must have regard to any directions mentioned in  
14 subsection (1), but the trustee is not required to comply with such  
15 directions.
- 16 (3) If the trustee does not comply with a direction, the trustee must  
17 make a written record of that fact, along with the trustee's reasons  
18 for not complying with the direction.
- 19 (4) If there is a conflict between directions given by the creditors  
20 under subsection (1) and by the committee of inspection under  
21 section 80-35, directions given by the creditors override any  
22 directions given by the committee.

# EXPOSURE DRAFT

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

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1 **Division 90—Review of the administration of a regulated**  
2 **debtor’s estate**

3 **Subdivision A—Introduction**

4 **90-1 Simplified outline of this Division**

5 *Review by the Court*

6 The Court may inquire into the administration of a regulated  
7 debtor’s estate either on its own initiative or on the application of  
8 the regulated debtor, the trustee, the Inspector-General or another  
9 person with a financial interest (such as a creditor of the estate).

10 The Court has wide powers to make orders, including orders  
11 replacing the trustee or dealing with losses resulting from a breach  
12 of duty by the trustee.

13 *Review by the Inspector-General*

14 The Inspector-General may review a decision of the trustee of a  
15 regulated debtor’s estate to withdraw funds from the estate for  
16 payment for the trustee’s remuneration.

17 The Insolvency Practice Rules may set the powers and duties of the  
18 Inspector-General in conducting such a review and may deal with  
19 issues relating to the review process.

20 *Removal of trustee by creditors*

21 The creditors of a regulated debtor’s estate may remove the trustee  
22 of the estate and appoint another. However, the trustee may apply  
23 to the Court to be reappointed.

# EXPOSURE DRAFT

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

Part 1 Insolvency Practice Schedule (Bankruptcy)

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

2 **90-2 Subdivision applies to the Official Trustee**

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

5 **90-5 Court may inquire on own initiative**

6 (1) The Court may, on its own initiative during proceedings before the  
7 Court, inquire into the administration of a regulated debtor's estate.

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

- 11 (a) give information; or  
12 (b) provide a report; or  
13 (c) produce a document;

14 to the Court in relation to the administration of the estate.

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

17 **90-10 Court may inquire on application of creditors etc.**

18 (1) The Court may, on the application of a person mentioned in  
19 subsection (2), inquire into the administration of a regulated  
20 debtor's estate.

21 (2) Each of the following persons may make an application for an  
22 inquiry:

- 23 (a) a creditor, on his or her own behalf;  
24 (b) if the committee of inspection (if any) so resolves—a  
25 creditor, on behalf of the committee;  
26 (c) the regulated debtor;  
27 (d) the trustee of the regulated debtor's estate;  
28 (e) any other person with a financial interest in the  
29 administration of the regulated debtor's estate;  
30 (f) the Inspector-General.



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- 1 (3) The Court may, for the purposes of such an inquiry, require a  
2 person who is or has at any time been the trustee of the regulated  
3 debtor's estate to:  
4 (a) give information; or  
5 (b) provide a report; or  
6 (c) produce a document;  
7 to the Court in relation to the administration of the estate.
- 8 (4) If an application is made by a person referred to in  
9 paragraph (2)(b), the reasonable expenses associated with the  
10 application are to be taken to be expenses of the administration of  
11 the estate.
- 12 (5) This section does not limit the Court's powers under any other  
13 provision of this Act, or under any other law.

## 14 **90-15 Court may make orders in relation to estate administration**

### 15 *Court may make orders*

- 16 (1) The Court may make such orders as it thinks fit in relation to the  
17 administration of a regulated debtor's estate.

### 18 *Orders on own initiative or on application*

- 19 (2) The Court may exercise the power under subsection (1):  
20 (a) on its own initiative, during proceedings before the Court; or  
21 (b) on application under section 90-20.

### 22 *Examples of orders that may be made*

- 23 (3) Without limiting subsection (1), those orders may include any one  
24 or more of the following:  
25 (a) an order determining any question arising in the  
26 administration of the estate;  
27 (b) an order that a person cease to be the trustee of the estate;  
28 (c) an order that another person be appointed as the trustee of the  
29 estate;

# EXPOSURE DRAFT

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

### Part 1 Insolvency Practice Schedule (Bankruptcy)

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- 1 (d) an order in relation to the costs of an action (including court  
2 action) taken by the trustee of the estate or another person in  
3 relation to the administration of the estate;  
4 (e) an order in relation to any loss that the estate has sustained  
5 because of a breach of duty by the trustee;  
6 (f) an order in relation to remuneration, including an order  
7 requiring a person to repay to the estate of a regulated debtor,  
8 or the creditors of a regulated debtor, remuneration paid to  
9 the person as trustee.

#### 10 *Matters that may be taken into account*

- 11 (4) Without limiting the matters which the Court may take into  
12 account when making orders, the Court may take into account:  
13 (a) whether the trustee has faithfully performed, or is faithfully  
14 performing, the trustee's duties; and  
15 (b) whether an action or failure to act by the trustee is in  
16 compliance with this Act and the Insolvency Practice Rules;  
17 and  
18 (c) whether an action or failure to act by the trustee is in  
19 compliance with an order of the Court; and  
20 (d) whether the regulated debtor's estate or any person has  
21 suffered, or is likely to suffer, loss or damage because of an  
22 action or failure to act by the trustee; and  
23 (e) the seriousness of the consequences of any action or failure  
24 to act by the trustee, including the effect of that action or  
25 failure to act on public confidence in registered trustees as a  
26 group.

#### 27 *Costs orders*

- 28 (5) Without limiting subsection (1), an order mentioned in  
29 paragraph (3)(d) in relation to the costs of an action may include an  
30 order that:  
31 (a) the trustee or another person is personally liable for some or  
32 all of those costs; and  
33 (b) the trustee or another person is not entitled to be reimbursed  
34 by the regulated debtor's estate or creditors in relation to  
35 some or all of those costs.

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1 *Orders to make good loss sustained because of a breach of duty*

- 2 (6) Without limiting subsection (1), an order mentioned in  
3 paragraph (3)(e) in relation to a loss may include an order that:  
4 (a) the trustee is personally liable to make good some or all of  
5 the loss; and  
6 (b) the trustee is not entitled to be reimbursed by the regulated  
7 debtor's estate or creditors in relation to the amount made  
8 good.

9 *Section does not limit Court's powers*

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

## 12 **90-20 Application for Court order**

- 13 (1) Each of the following persons may apply for an order under  
14 section 90-15:  
15 (a) a creditor, on his or her own behalf;  
16 (b) if the committee of inspection (if any) so resolves—a  
17 creditor, on behalf of the committee;  
18 (c) the regulated debtor;  
19 (d) the trustee of the regulated debtor's estate;  
20 (e) any other person with a financial interest in the  
21 administration of the regulated debtor's estate;  
22 (f) the Inspector-General.
- 23 (2) If an application is made by a person referred to in  
24 paragraph (1)(b), the reasonable expenses associated with the  
25 application are to be taken to be expenses of the administration of  
26 the estate.

## 27 **Subdivision C—Review by Inspector-General**

### 28 **90-21 Review by Inspector-General**

- 29 (1) The Inspector-General may carry out a review of the remuneration  
30 received by the trustee of a regulated debtor's estate for services

# EXPOSURE DRAFT

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

### Part 1 Insolvency Practice Schedule (Bankruptcy)

---

- 1 performed by the trustee in relation to the administration of the  
2 estate.
- 3 (2) The Inspector-General may carry out a review under this  
4 Subdivision:  
5 (a) on his or her own initiative; or  
6 (b) on application by the regulated debtor or a creditor.
- 7 (3) The trustee, the regulated debtor or a creditor of the regulated  
8 debtor may apply to the Court for an order in relation to a decision  
9 of the Inspector-General in relation to the review.

#### 10 **90-22 Rules about reviews**

- 11 (1) The Insolvency Practice Rules may provide for and in relation to  
12 reviews under this Subdivision.
- 13 (2) Without limiting subsection (1), the Insolvency Practice Rules may  
14 provide for and in relation to any or all of the following matters:  
15 (a) the giving of notice to the trustee before beginning a review,  
16 or making an application for a review, under this  
17 Subdivision;  
18 (b) the powers and duties of the Inspector-General in carrying  
19 out a review;  
20 (c) the decisions that may be made by the Inspector-General in  
21 relation to the review;  
22 (d) the repayment of remuneration by the trustee as a  
23 consequence of a review under this Subdivision.

#### 24 **Subdivision D—Removal by creditors**

#### 25 **90-30 Subdivision applies to the Official Trustee**

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

#### 28 **90-35 Removal by creditors**

29 *Creditors may remove trustee and appoint another*

- 30 (1) The creditors may:
-

# EXPOSURE DRAFT

- 1 (a) by resolution at a meeting, remove the trustee of a regulated  
2 debtor's estate; and  
3 (b) by resolution at the same or a subsequent meeting, appoint  
4 another person as trustee of the regulated debtor's estate.
- 5 (2) However, the creditors may not do so unless at least 5 business  
6 days' notice of the meeting is given to all persons who are entitled  
7 to receive notice of creditors' meetings.
- 8 *Former trustee may apply to Court to be reappointed*
- 9 (3) A person (the *former trustee*) who has been removed as trustee of  
10 the regulated debtor's estate by resolution of the creditors may  
11 apply to the Court to be reappointed as trustee of the regulated  
12 debtor's estate.
- 13 (4) If the former trustee makes such an application, the former trustee  
14 must:  
15 (a) record all costs incurred by the former trustee and the  
16 debtor's estate in relation to the application; and  
17 (b) do so in a way that separates those costs from the costs  
18 incurred by the former trustee and the regulated debtor's  
19 estate in relation to other matters.
- 20 (5) The Court may order that the former trustee be reappointed as  
21 trustee of the regulated debtor's estate if the Court is satisfied that  
22 the removal of the former trustee was an improper use of the  
23 powers of one or more creditors.
- 24 (6) The Court may make such other orders in relation to the  
25 application as it thinks fit.

## Part 4—Other matters

### Division 95—Introduction

#### 95-1 Simplified outline of this Part

This Part deals with a variety of matters:

# EXPOSURE DRAFT

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

**Part 1** Insolvency Practice Schedule (Bankruptcy)

---

1  
2  
3  
4

- The trustee of a regulated debtor's estate may assign a right to sue.
- The Minister has power to make rules to be called the Insolvency Practice Rules.

5

## **Division 96—Administrative review**

6

### **96-1 Review by the Administrative Appeals Tribunal**

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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.

26

## **Division 100—Other matters**

27

### **100-1 Division applies to the Official Trustee**

28  
29

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

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## 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; 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) In this section:

*this Act* does not include the regulations or rules made under this section.

# EXPOSURE DRAFT

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

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

---

1 **Part 2—Amendments consequential on the**  
2 **introduction of the Insolvency Practice**  
3 **Schedule (Bankruptcy)**

4 ***Bankruptcy Act 1966***

5 **3 Subsection 5(1) (definition of *approved form*)**

6 Repeal the definition, substitute:

7 *approved form*: a document is in the *approved form* if it is in  
8 accordance with section 6D.

9 **4 Subsection 5(1)**

10 Insert:

11 *bank* means an ADI or any other bank.

12 **5 Subsection 5(1)**

13 Insert:

14 *business day* means a day that is not a Saturday, a Sunday or a  
15 public holiday or bank holiday in the place concerned.

16 **6 Subsection 5(1)**

17 Insert:

18 *Insolvency Practice Rules* means the rules made by the Minister  
19 under section 105-1 of Schedule 2.

20 **7 Subsection 5(1) (definition of *registered trustee*)**

21 Repeal the definition, substitute:

22 *registered trustee* has the same meaning as in section 5-5 of  
23 Schedule 2.

24 **8 Subsection 5(1)**

25 Insert:

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# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Bankruptcy) **Schedule 1**  
Amendments consequential on the introduction of the Insolvency Practice Schedule  
(Bankruptcy) **Part 2**

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1                    *Register of Trustees* has the same meaning as in section 15-1 of  
2                    Schedule 2.

## 3                    **9 Subsection 5(1) (definition of *resolution*)**

4                    Repeal the definition, substitute:

5                    *resolution*: a *resolution* is passed by creditors of a regulated  
6                    debtor’s estate:

- 7                    (a) in a meeting—in the circumstances prescribed under  
8                    paragraph 75-50(2)(k) of Schedule 2; or  
9                    (b) without a meeting—in the circumstances prescribed under  
10                    paragraph 75-40(5)(b) of Schedule 2.

## 11                    **10 Subsection 5(1) (definition of *special resolution*)**

12                    Repeal the definition, substitute:

13                    *special resolution*: a *special resolution* is passed by creditors of a  
14                    regulated debtor’s estate:

- 15                    (a) in a meeting—in the circumstances prescribed under  
16                    paragraph 75-50(2)(k) of Schedule 2; or  
17                    (b) without a meeting—in the circumstances prescribed under  
18                    paragraph 75-40(5)(b) of Schedule 2.

## 19                    **11 Subsection 5(1) (at the end of the definition of *this Act*)**

20                    Add “and the Insolvency Practice Rules”.

## 21                    **12 At the end of Part IA**

22                    Add:

## 23                    **6D Approved forms**

- 24                    (1) A document that this Act requires to be in an approved form must:  
25                    (a) be in the form approved by the Inspector-General for the  
26                    document; and  
27                    (b) include the information, statements, explanations or other  
28                    matters required by the form; and  
29                    (c) be accompanied by any other material required by the form.

# EXPOSURE DRAFT

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

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

---

- 1 (2) A reference in this Act to a document in the approved form,  
2 includes a reference to any other material included with or  
3 accompanying the document as required by the relevant form.
- 4 (3) If:  
5 (a) this Act requires a document to be in an approved form; and  
6 (b) a provision of this Act specifies, or provides for the  
7 Insolvency Practice Rules to specify, information, statements,  
8 explanations or other matters that must be included in the  
9 document, or other material that must accompany the  
10 document;  
11 that other provision is not taken to exclude or limit the operation of  
12 subsection (1) in relation to the approved form (and so the  
13 approved form may also require information etc. to be included in  
14 the form or material to accompany the form).
- 15 (4) The Insolvency Practice Rules may make provision for and in  
16 relation to:  
17 (a) methods of verifying any information required by or in  
18 approved forms; and  
19 (b) the manner in which, the persons by whom, and the  
20 directions or requirements in accordance with which,  
21 approved forms are required or permitted to be signed,  
22 prepared, or completed.

## 23 **13 Subsection 12(4)**

24 Repeal the subsection.

## 25 **14 At the end of section 12**

26 Add:

- 27 (5) The Inspector-General may disclose information obtained by the  
28 Inspector-General in the course of exercising powers or performing  
29 functions under this Act to any of the following bodies, if the  
30 Inspector-General is satisfied that the information will enable or  
31 assist the body to exercise any of its powers or perform any of its  
32 functions:  
33 (a) a Commonwealth entity (within the meaning of the *Public*  
34 *Governance, Performance and Accountability Act 2013*);  
35 (b) a prescribed professional disciplinary body.
-

# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Bankruptcy) **Schedule 1**  
Amendments consequential on the introduction of the Insolvency Practice Schedule  
(Bankruptcy) **Part 2**

---

1 **15 Paragraph 19(1)(d)**

2 Repeal the paragraph.

3 **16 At the end of subsection 19(1)**

4 Add:

5 ; (l) the duties imposed on the trustee under Schedule 2.

6 **17 At the end of Division 1 of Part II**

7 Add:

8 **19B Trustee to give Official Receiver information etc.**

9 (1) The trustee of the estate of a bankrupt must give the Official  
10 Receiver such information, access to and facilities for inspecting  
11 the bankrupt's books and generally such assistance as is necessary  
12 for enabling the Official Receiver to perform his or her duties.

13 (2) This section does not apply to the Official Trustee.

14 **18 Paragraph 40(1)(f)**

15 Omit "resolution of a majority of the creditors present at the meeting  
16 either in person or by attorney", substitute "resolution of the creditors".

17 **19 Paragraph 43(2)(b)**

18 Omit "74(5)", substitute "74(1)".

19 **20 Subsection 54(1) (penalty)**

20 Omit "25 penalty units", substitute "50 penalty units".

21 **21 Subsection 54(2) (penalty)**

22 Omit "5 penalty units", substitute "50 penalty units".

23 **22 Paragraphs 55(8)(b) and 56E(3)(b)**

24 Omit "74(5)", substitute "74(1)".

25 **23 Subsection 56F(1) (penalty)**

26 Omit "25 penalty units", substitute "50 penalty units".

# EXPOSURE DRAFT

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

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

---

1 **24 Paragraph 57(10)(b)**

2 Omit “74(5)”, substitute “74(1)”.

3 **25 Divisions 5 and 5A of Part IV**

4 Repeal the Divisions.

5 **26 Subsection 73(1A)**

6 Omit “working days”, substitute “business days”.

7 **27 Subsection 73(1B)**

8 Repeal the subsection.

9 **28 Subsections 73(2) to (5)**

10 Repeal the subsections.

11 **29 Section 73A**

12 Repeal the section.

13 **30 Subsection 73B(4)**

14 Repeal the subsection.

15 **31 Section 73C**

16 Repeal the section.

17 **32 Subsection 74(5)**

18 Repeal the subsection, substitute:

19 (1) If the proposal is accepted by a special resolution of creditors at a  
20 meeting held in accordance with the Insolvency Practice Rules, the  
21 bankruptcy is annulled, by force of this subsection, on the day the  
22 special resolution was passed.

23 **33 Subsection 74A(4)**

24 Omit “would be entitled under section 64A (as that section applies in  
25 accordance with section 76A)”, substitute “are entitled”.

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# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Bankruptcy) **Schedule 1**  
Amendments consequential on the introduction of the Insolvency Practice Schedule  
(Bankruptcy) **Part 2**

---

1 **34 Section 76 (heading)**

2 Repeal the heading, substitute:

3 **76 Application of Part VIII and Schedule 2 to trustee of a**  
4 **composition or arrangement**

5 **35 Subsection 76(1)**

6 Omit “Part VIII applies”, substitute “Part VIII and Schedule 2 apply”.

7 **36 Subsection 76(2)**

8 After “Part VIII”, insert “or Schedule 2”.

9 **37 Section 76A**

10 Repeal the section.

11 **38 Paragraph 109(1)(a)**

12 Omit “section 175”, substitute “section 70-15 or 70-20 of Schedule 2”.

13 **39 Subsections 109(7) to (7B)**

14 Repeal the subsections.

15 **40 Subsection 125(3) (definition of *bank*)**

16 Repeal the definition.

17 **41 Subsection 134(4)**

18 Repeal the subsection (including the note).

19 **42 Section 139ZIB (definition of *working day*)**

20 Repeal the definition.

21 **43 Subparagraph 139ZIE(1)(a)(i)**

22 Omit “working days”, substitute “business days”.

23 **44 Subsection 139ZIE(5)**

24 Omit “working days”, substitute “business days”.

# EXPOSURE DRAFT

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

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

---

1 **45 Paragraph 139ZIF(1)(a)**

2 Omit “working days”, substitute “business days”.

3 **46 Subsection 139ZIO(2)**

4 Omit “The”, substitute “Subject to subsection (2A), the”.

5 **47 After subsection 139ZIO(2)**

6 Insert:

7 *Interaction with Insolvency Practice Rules*

8 (2A) The Inspector-General may refuse to review a reviewable decision  
9 if the Court is exercising powers, under section 45-1, 90-5, 90-10  
10 or 90-15 of Schedule 2, in relation to the decision.

11 (2B) If:

- 12 (a) the Inspector-General is reviewing a reviewable decision; and  
13 (b) the Court begins to exercise powers, under section 45-1,  
14 90-5, 90-10 or 90-15 of Schedule 2, in relation to the  
15 decision;

16 the period referred to in subsection (5) of this section is extended  
17 by one day for each day during the period:

- 18 (c) beginning when the Court begins to exercise powers as  
19 referred to in paragraph (b); and  
20 (d) ending when the Court ceases to exercise those powers.

21 **48 Sections 154A to 155K**

22 Repeal the sections.

23 **49 Subsections 156A(4) to (7)**

24 Repeal the subsections.

25 **50 Subsections 157(6) to (9)**

26 Repeal the subsections.

27 **51 Section 161A**

28 Repeal the section.

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# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Bankruptcy) **Schedule 1**  
Amendments consequential on the introduction of the Insolvency Practice Schedule  
(Bankruptcy) **Part 2**

---

1 **52 Division 2 of Part VIII (heading)**

2 Repeal the heading, substitute:

3 **Division 2—Remuneration and costs of the Official Trustee**  
4 **and Official Receiver**

5 **53 Sections 161B and 162**

6 Repeal the sections.

7 **54 Sections 164 to 167**

8 Repeal the sections.

9 **55 Divisions 3 and 4 of Part VIII**

10 Repeal the Divisions.

11 **56 Section 181**

12 Repeal the section.

13 **57 Subsection 181A(2)**

14 Omit “would be entitled under section 64A”, substitute “are entitled”.

15 **58 Section 182**

16 Repeal the section.

17 **59 Section 185 (definition of *bank*)**

18 Repeal the definition.

19 **60 Section 185**

20 Insert:

21 *Chapter 5 body corporate* has the same meaning as in the  
22 *Corporations Act 2001*.

23 **61 Section 185 (definition of *externally-administered body***  
24 ***corporate*)**

25 Repeal the definition.

---

# EXPOSURE DRAFT

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

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

---

1 **62 Section 185 (definition of *working day*)**

2 Repeal the definition.

3 **63 Subsections 185LB(1), 185LC(1) and 185N(5)**

4 Omit “working days”, substitute “business days”.

5 **64 Paragraph 186A(1)(d)**

6 Omit “subsection 1292(2) or (3) of the *Corporations Act 2001*”,  
7 substitute “the *Corporations Act 2001* (other than in response to a  
8 written request by the individual to have the registration cancelled)”.

9 **65 Paragraph 186A(1)(e)**

10 Omit “ceased under section 155I for a reason specified in  
11 paragraph 155H(1)(a), (aa), (b), (e), (f), (fa) or (g)”, substitute “was  
12 cancelled (other than in response to a written request by the individual  
13 to have the registration cancelled)”.

14 **66 Paragraph 186A(3)(a)**

15 Omit “an externally-administered body corporate”, substitute “a  
16 Chapter 5 body corporate”.

17 **67 Subparagraph 186LA(1)(b)(ii)**

18 Omit “155H(1)”, substitute “40-40(1) of Schedule 2”.

19 **68 Paragraph 186LA(1)(c)**

20 Omit “155H(1)(fa)”, substitute “40-40(1)(m) of Schedule 2”.

21 **69 Subparagraph 186LB(1)(b)(ii)**

22 Omit “155H(1)”, substitute “40-40(1) of Schedule 2”.

23 **70 Paragraph 186LB(1)(c)**

24 Omit “155H(1)(fa)”, substitute “40-40(1)(m) of Schedule 2”.

25 **71 Subsection 188(5)**

26 Omit “working days”, substitute “business days”.

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# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Bankruptcy) **Schedule 1**  
Amendments consequential on the introduction of the Insolvency Practice Schedule  
(Bankruptcy) **Part 2**

---

1 **72 Subsection 188(5A)**

2 Repeal the subsection.

3 **73 Subsections 190(4A) and (4B)**

4 Repeal the subsections.

5 **74 Subsection 190A(1)**

6 Omit “(1)”.

7 **75 Paragraph 190A(1)(b)**

8 Repeal the paragraph.

9 **76 At the end of subsection 190A(1)**

10 Add:  
11 ; (j) the duties imposed on the controlling trustee under  
12 Schedule 2.

13 **77 Sections 194 to 196**

14 Repeal the sections.

15 **78 Subsection 217(1)**

16 Omit “, in accordance with the regulations,”.

17 **79 At the end of subsection 220(1)**

18 Add “The meeting may be called by any creditor or the debtor.”.

19 **80 Subsection 221A(3)**

20 Omit “would be entitled under section 64A (as that section applies in  
21 accordance with section 223A)”, substitute “are entitled”.

22 **81 Paragraph 222(5)(f)**

23 Omit “subsection 194A(3)”, substitute “Division 75 of Schedule 2  
24 (including rules made under that Division)”.

25 **82 Paragraph 222(5)(h)**

26 Omit “subsection 194A(5)”, substitute “Division 75 of Schedule 2  
27 (including rules made under that Division)”.

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# EXPOSURE DRAFT

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

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

---

1 **83 Subsection 222A(2)**

2 Omit “would be entitled under section 64A (as that section applies in  
3 accordance with section 223A)”, substitute “are entitled”.

4 **84 Sections 223 and 223A**

5 Repeal the sections.

6 **85 Subsection 224A(5)**

7 Omit “working days”, substitute “business days”.

8 **86 Subsection 224A(6)**

9 Repeal the subsection.

10 **87 Subsection 231(3)**

11 Omit “70, 71, 72,”.

12 **88 Subsection 248(1)**

13 Omit “Division 5 of Part IV, sections 70 to 76”, substitute “sections 73  
14 to 76”.

15 **89 Subsection 263C(2) (definition of *voting document*)**

16 Repeal the definition, substitute:

17 ***voting document*** means:

18 (a) a statement:

19 (i) relating to the amount in respect of which the creditor  
20 claims that the bankrupt is indebted to the creditor, the  
21 value of the consideration that the creditor gave for any  
22 assignment of a debt the bankrupt owes to the creditor,  
23 or whether the creditor holds a security interest in  
24 respect of the debt; and

25 (ii) that is given to the trustee at or before a meeting called  
26 for the purposes of Part IV, X or XI or Schedule 2; or

27 (b) a form:

28 (i) relating to the appointment of a person to represent the  
29 creditor at a meeting as the creditor’s proxy; and

30 (ii) that is given to the trustee at or before a meeting called  
31 for the purposes of Part IV, X or XI or Schedule 2.

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# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Bankruptcy) **Schedule 1**  
Amendments consequential on the introduction of the Insolvency Practice Schedule  
(Bankruptcy) **Part 2**

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1 **90 Subsection 277B(2) (table items 6 to 11)**

2 Repeal the items.

3 **91 Subsection 277B(2) (at the end of the table)**

4 Add:

29	subsection 30-1(5) of Schedule 2	1 penalty unit
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30	subsection 35-5(2) of Schedule 2	1 penalty unit
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31	subsection 65-40(3) of Schedule 2	1 penalty unit
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32	subsection 70-10(4) of Schedule 2	1 penalty unit
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33	subsection 70-11(2) of Schedule 2	1 penalty unit
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34	subsection 70-25(4) of Schedule 2	1 penalty unit
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5 **92 Subsection 280(5) (definition of *trustee account*)**

6 Repeal the definition, substitute:

7 *trustee account* means an account referred to in section 65-5 of  
8 Schedule 2.

9 **93 Subsection 306B(1)**

10 Omit “155A(6), 155F(2) or 155I(4) or section 189A”, substitute  
11 “section 189A or section 20-25, 20-60, 40-60 or 70-40 of Schedule 2”.

12 **94 Section 312**

13 Repeal the section.

14 **95 Paragraph 315(2)(i)**

15 Repeal the paragraph.

16 **96 Subparagraphs 315(2)(j)(ii) and (iii)**

17 After “Index”, insert “or the Register of Trustees”.

# EXPOSURE DRAFT

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

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

---

1 **97 Paragraph 315(2)(k)**

2 Omit “10 penalty units”, substitute “50 penalty units”.

3 **98 Paragraph 316(1)(a)**

4 Omit “paragraphs 154A(3)(b), 155C(1)(b) and 155D(1)(b) and”.

5 **99 Paragraph 316(1)(a)**

6 Omit “(4) and 246(5)”, substitute “(4), 246(5), and subsection 20-5(3),  
7 paragraph 20-30(1)(c) and subsection 20-70(3) of Schedule 2”.

8 ***Bankruptcy (Estate Charges) Act 1997***

9 **100 Subsection 5(1)**

10 Omit “169(1B) or 185LD(3)”, substitute “185LD(3) or 65-31(1) of  
11 Schedule 2”.

12 **101 Subsection 5(2)**

13 Repeal the subsection.

# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Bankruptcy) **Schedule 1**  
Transition to the Insolvency Practice Schedule (Bankruptcy) **Part 3**

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1 **Part 3—Transition to the Insolvency Practice**  
2 **Schedule (Bankruptcy)**

3 **Division 1—Introduction**

4 **102 Simplified outline of this Part**

5 This Part deals with the way the *Bankruptcy Act 1966* will apply  
6 when the provisions of this Act begin to operate.

7 *Application of Part 2 of the Insolvency Practice Schedule*  
8 *(Bankruptcy)*

9 A person registered as a trustee before the commencement of this  
10 Act will continue to be registered and must comply with the  
11 requirements and duties under Part 2 of the Insolvency Practice  
12 Schedule (Bankruptcy).

13 *Application of Part 3 of the Insolvency Practice Schedule*  
14 *(Bankruptcy)*

15 The Insolvency Practice Schedule (Bankruptcy) will apply to an  
16 administration of an estate that starts on or after the  
17 commencement of this Act and to most ongoing administrations  
18 (but generally only in relation to new events).

19 *Proceedings before the Court or the Administrative Appeals*  
20 *Tribunal*

21 Proceeding already begun in the Court or the Administrative  
22 Appeals Tribunal before the commencement of the amendments  
23 made by this Act will continue under the old Act. Orders of the  
24 Court under the old Act continue to have effect.

25 *Regulations*

26 Regulations may be made to deal with other transitional matters.

# EXPOSURE DRAFT

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

Part 3 Transition to the Insolvency Practice Schedule (Bankruptcy)

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## 103 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 106(3).

*old Act registration day*, in relation to a person, has the meaning given by subitem 108(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 104(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

## 104 Applications for registration under the old Act

(1) If, before the commencement day:

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# EXPOSURE DRAFT

- 1 (a) a person has applied for registration as a trustee under  
2 section 154A of the old Act; and  
3 (b) the person's application has not been refused; and  
4 (c) the person is not registered as a trustee;  
5 the application is taken never to have been made and the  
6 Inspector-General must, on behalf of the Commonwealth, refund to the  
7 person an amount equal to the fee paid in relation to the application.
- 8 (2) A person is *registered* as a trustee at a particular time if the person is  
9 registered as a trustee under the National Personal Insolvency Index at  
10 that time.

## 11 **105 Applications for extension of registration under the old** 12 **Act**

- 13 (1) This item applies if, before the commencement day:  
14 (a) a person has applied for his or her registration as a trustee to  
15 be extended under section 155D of the old Act; and  
16 (b) the person's application has not been refused; and  
17 (c) the person's registration as a trustee has not been extended.
- 18 (2) Section 155D of the old Act continues to apply in relation to the  
19 application as if that section had not been repealed by this Schedule.
- 20 (3) However, instead of extending the person's registration under the old  
21 Act, the Inspector-General must renew the registration of the person as  
22 a trustee under the Insolvency Practice Schedule (Bankruptcy).

## 23 **106 Persons registered under the old Act continue to be** 24 **registered under the Insolvency Practice Schedule** 25 **(Bankruptcy)**

26 *Person registered under the old Act immediately before the*  
27 *commencement day*

- 28 (1) If a person is registered as a trustee immediately before the  
29 commencement day, on the commencement day the person is taken to  
30 be registered as a trustee under Subdivision B of Division 20 of the  
31 Insolvency Practice Schedule (Bankruptcy).

# EXPOSURE DRAFT

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

**Part 3** Transition to the Insolvency Practice Schedule (Bankruptcy)

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- 1 (2) Despite subitem (1), a person mentioned in that subitem is not taken to  
2 be registered as a trustee under Subdivision B of Division 20 of the  
3 Insolvency Practice Schedule (Bankruptcy) on the commencement day  
4 if, at the beginning of that day:  
5 (a) the person is an insolvent under administration; or  
6 (b) the person is dead.

7 *Meaning of old Act registrant*

- 8 (3) A person who is taken to be registered under Subdivision B of  
9 Division 20 of the Insolvency Practice Schedule (Bankruptcy) because  
10 of this item is referred to as an *old Act registrant*.

## 11 **107 Old Act registrant's details**

- 12 (1) The Inspector-General must enter on the Register of Trustees, in  
13 relation to each old Act registrant, the details prescribed under  
14 subsection 15-1(3) of the Insolvency Practice Schedule (Bankruptcy)  
15 that relate to that old Act registrant.  
16 (2) If the Inspector-General holds information in relation to an old Act  
17 registrant before the commencement day, the Inspector-General may  
18 use and disclose the information for the purposes of establishing and  
19 maintaining the Register of Trustees.

## 20 **108 Period of old Act registrant's registration under the** 21 **Insolvency Practice Schedule (Bankruptcy)**

- 22 (1) The registration of an old Act registrant under the Insolvency Practice  
23 Schedule (Bankruptcy) is for a period ending 3 years after the old Act  
24 registration day for that person.  
25 (2) The *old Act registration day* in relation to a person who was registered  
26 as a trustee immediately before the commencement day is the day on  
27 which:  
28 (a) that registration began; or  
29 (b) the most recent extension of that registration began;  
30 whichever is the later.



# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Bankruptcy) **Schedule 1**  
Transition to the Insolvency Practice Schedule (Bankruptcy) **Part 3**

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- 1 (3) To avoid doubt, the registration of an old Act registrant under the  
2 Insolvency Practice Schedule (Bankruptcy) may be renewed in  
3 accordance with that Schedule.

## 4 **109 Conditions for old Act registrants—conditions under the** 5 **Insolvency Practice Schedule (Bankruptcy)**

6 To avoid doubt, a condition may be imposed on an old Act registrant (or  
7 on a class that includes an old Act registrant) under the Insolvency  
8 Practice Schedule (Bankruptcy) in accordance with that Schedule.

## 9 **110 Current conditions for old Act registrants—conditions** 10 **under the old Act**

11 *Conditions under the old Act*

- 12 (1) If:  
13 (a) a condition applies to an old Act registrant’s practice as a  
14 registered trustee under section 155E, 155F or 155I of the old  
15 Act; and  
16 (b) that condition is still in force immediately before the  
17 commencement day;  
18 that condition (including any modifications under section 155F or 155I  
19 of the old Act) is a *current condition* imposed on the old Act registrant.

20 *Varying etc. conditions of registration*

- 21 (2) Subdivision C of Division 20 of the Insolvency Practice Schedule  
22 (Bankruptcy) applies to a condition imposed under subitem (1) in the  
23 same way as it applies to a condition imposed by a committee under  
24 that Schedule.

## 25 **111 Applications for change of conditions under the old Act**

- 26 If:  
27 (a) a condition applies to an old Act registrant’s practice as a  
28 registered trustee under section 155A, 155F or 155I of the old  
29 Act; and  
30 (b) the old Act registrant has applied for the condition to be  
31 changed or removed under section 155E of the old Act before  
32 the commencement day; and
-

# EXPOSURE DRAFT

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

**Part 3** Transition to the Insolvency Practice Schedule (Bankruptcy)

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- 1 (c) a decision on the application has not been made before the  
2 commencement day under section 155F of the old Act;  
3 the application is taken never to have been made and the  
4 Inspector-General must, on behalf of the Commonwealth, refund to the  
5 person an amount equal to the fee paid in relation to the application.

6 Note: The trustee could then apply under section 20-40 of the Insolvency Practice Schedule  
7 (Bankruptcy) for the condition to be varied or removed.

## 8 **112 Decisions about change of conditions under the old Act** 9 **before the commencement day**

- 10 (1) This item applies if:  
11 (a) an old Act registrant has applied for a condition to be  
12 changed or removed under section 155E of the old Act before  
13 the commencement day; and  
14 (b) before the commencement day, a committee has made a  
15 decision on the application under section 155F.
- 16 (2) The old Act continues to apply in relation to the decision.
- 17 (3) The same matter may not be dealt with under Division 20 of the  
18 Insolvency Practice Schedule (Bankruptcy).

## 19 **113 Old Act registrant chooses not to renew**

20 *Application of this item*

- 21 (1) This item applies if an old Act registrant does not apply for renewal of  
22 his or her registration under the Insolvency Practice Schedule  
23 (Bankruptcy) before his or her period of registration under  
24 subitem 108(1) ends (the *expiry day*).

25 *Old Act registrant may not accept further appointments after*  
26 *registration expires*

- 27 (2) The old Act registrant is taken to be registered as a trustee under  
28 Subdivision B of Division 20 of the Insolvency Practice Schedule  
29 (Bankruptcy) after the expiry day, subject to a condition that he or she  
30 must not accept any further appointments as trustee of an estate.
- 31 (3) That condition is a *current condition* imposed on the old Act registrant.
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# EXPOSURE DRAFT

- 1                    *Registration cancelled once current administrations completed*
- 2            (4)    On the day immediately after the end of the administration of all estates  
3                    for which the old Act registrant is appointed as trustee:
- 4                    (a)    the old Act registrant is taken to have lodged a request in the  
5                                approved form in accordance with paragraph 40-30(1)(g) of  
6                                the Insolvency Practice Schedule (Bankruptcy) to have his or  
7                                her registration as a trustee cancelled; and
- 8                    (b)    the Inspector-General is taken to have cancelled the  
9                                registration under subsection 40-30(1) of the Insolvency  
10                                Practice Schedule (Bankruptcy).

## 11            **Subdivision B—Annual returns and statements**

### 12            **114 Application of obligation to lodge annual trustee returns**

#### 13                    *Application of the Insolvency Practice Schedule (Bankruptcy)*

- 14            (1)    Section 30-1 of the Insolvency Practice Schedule (Bankruptcy) applies  
15                    in relation to return years that begin on or after the commencement day.

#### 16                    *Meaning of **return year***

- 17            (2)    In working out the return year for an old Act registrant under  
18                    subsection 30-1(2) of the Insolvency Practice Schedule (Bankruptcy),  
19                    “the day on which that registration first began”, means “the old Act  
20                    registration day for that person (as defined for the purpose of Part 3 of  
21                    Schedule 1 of the *Insolvency Law Reform Act 2014*)”.

## 22            **Subdivision C—Notice requirements**

### 23            **115 Notice of significant events**

- 24            (1)    If:
- 25                    (a)    within 2 years before the commencement day, an event of a  
26                                kind mentioned in subsection 35-1(1) of the Insolvency  
27                                Practice Schedule (Bankruptcy) occurs in relation to an old  
28                                Act registrant; and
- 29                    (b)    the old Act registrant has not already informed the  
30                                Inspector-General of the event before the commencement  
31                                day;

# EXPOSURE DRAFT

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

**Part 3** Transition to the Insolvency Practice Schedule (Bankruptcy)

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1 the old Act registrant must lodge with the Inspector-General a notice, in  
2 the approved form, relating to the event.

3 (2) The notice must be lodged:

4 (a) if the old Act registrant is or could reasonably be expected to  
5 be aware of the event on or before the commencement day—  
6 within one month after the commencement day; or

7 (b) if paragraph (a) is not satisfied, but the old Act registrant is or  
8 could reasonably be expected to be aware of the event after  
9 the commencement day—within one month after the first day  
10 on which the old Act registrant is or could reasonably be  
11 expected to be aware of the event.

12 (3) A person commits an offence if:

13 (a) the person is subject to a requirement under subitem (1)  
14 within the period specified in subitem (2); and

15 (b) the person intentionally or recklessly fails to comply with the  
16 requirement within that period.

17 Penalty: 100 penalty units.

## 18 **Subdivision D—Cancellation by the Inspector-General under** 19 **the old Act**

### 20 **116 Request for cancellation made before the** 21 **commencement day**

22 (1) This item applies if:

23 (a) before the commencement day, a person gives the  
24 Inspector-General under section 155G of the old Act a  
25 written request that the person cease to be registered as a  
26 trustee; and

27 (b) no decision by the Inspector-General to accept the request  
28 has come into effect before the commencement day.

29 (2) The Inspector-General may not accept the request under section 155G  
30 of the old Act.

31 (3) However, for the purposes of paragraph 40-30(1)(g) of the Insolvency  
32 Practice Schedule (Bankruptcy), the person is taken to have lodged a

# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Bankruptcy) **Schedule 1**  
Transition to the Insolvency Practice Schedule (Bankruptcy) **Part 3**

---

1 request with the Inspector-General in the approved form to have the  
2 person's registration as a trustee under that Schedule cancelled.

3 (4) The repeal of section 155G of the old Act by this Schedule applies in  
4 relation to requests made to the Inspector-General under section 155G  
5 on or after the commencement day.

## 6 **Subdivision E—Disciplinary proceedings before a committee**

### 7 **117 Request for explanation made before the commencement** 8 **day**

9 (1) If, before the commencement day:

- 10 (a) the Inspector-General believes a matter mentioned in  
11 paragraphs 155H(1)(a) to (g) of the old Act in relation to an  
12 old Act registrant; and  
13 (b) the Inspector-General asks the old Act registrant under  
14 section 155H of the old Act to give a written explanation why  
15 the old Act registrant should continue to be registered; and  
16 (c) the Inspector-General has not received an explanation within  
17 a reasonable time or is not satisfied by the explanation; and  
18 (d) the Inspector-General has not convened a committee under  
19 subsection 155H(2) to consider if the old Act registrant  
20 should continue to be registered;

21 the request mentioned in paragraph (b) is taken never to have been  
22 made.

23 (2) The fact that the request is taken never to have been made does not  
24 preclude the Inspector-General from giving a notice to the old Act  
25 registrant under section 40-40 of the Insolvency Practice Schedule  
26 (Bankruptcy) (show-cause notice) in relation to the same matter, or any  
27 aspect of the same matter.

28 Note: In relation to the application of section 40-40 of the Insolvency Practice Schedule  
29 (Bankruptcy), see item 123.

30 (3) This section does not apply for the purposes of sections 186LA and  
31 186LB.

# EXPOSURE DRAFT

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

**Part 3** Transition to the Insolvency Practice Schedule (Bankruptcy)

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1 **118 Decision to cancel registration made before the**  
2 **commencement day**

- 3 (1) This item applies if:  
4 (a) before the commencement day, a decision is made by a  
5 committee under section 155I of the old Act that the trustee  
6 should cease to be registered; and  
7 (b) the Inspector-General has not given effect to the committee's  
8 decision before the commencement day.

9 Note: In the case of a decision by the committee under paragraph 155I(2)(b) that the trustee  
10 should continue to be registered subject to specified conditions, see item 110.

- 11 (2) On the commencement day, the committee is taken to have made a  
12 decision under section 40-55 of the Insolvency Practice Schedule  
13 (Bankruptcy) to cancel the registration of the person as a trustee.  
14 (3) Section 40-65 of the Insolvency Practice Schedule (Bankruptcy) applies  
15 in relation to the decision as if the decision were made on the  
16 commencement day.  
17 (4) To avoid doubt, nothing in this item affects any right or obligation that  
18 any person has before the commencement day, including any right to  
19 review, in relation to the consideration of the matter by the committee.

20 **119 Matters not dealt with by a committee before the**  
21 **commencement day**

- 22 (1) If:  
23 (a) the Inspector-General convened a committee under  
24 section 155H of the old Act to consider whether the trustee  
25 should continue to be registered before the commencement  
26 day; and  
27 (b) the committee has not made a decision in relation to the  
28 trustee under section 155I of the old Act before the  
29 commencement day;

30 the committee must cease its consideration of the matter on the  
31 commencement day without making such a decision.

- 32 (2) The fact that the committee has ceased to consider the matter does not  
33 preclude the matter, or any aspect of the matter, from being dealt with  
34 under Division 40 of the Insolvency Practice Schedule (Bankruptcy).
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# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Bankruptcy) **Schedule 1**  
Transition to the Insolvency Practice Schedule (Bankruptcy) **Part 3**

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- 1 (3) To avoid doubt, nothing in this item affects any right or obligation that  
2 any person has before the commencement day, including any right to  
3 review, in relation to the consideration of the matter by the committee.

4 **Subdivision F—Suspension, cancellation and disciplinary**  
5 **action under the Insolvency Practice Schedule**  
6 **(Bankruptcy)**

7 **120 Direction to comply with requirement to lodge**  
8 **documents etc.**

9 Subdivision B of Division 40 of the Insolvency Practice Schedule  
10 (Bankruptcy) applies whether or not a requirement mentioned in that  
11 Subdivision to lodge a document or give information or a document  
12 arises before, on or after the commencement day.

13 **121 Suspension by the Inspector-General under the**  
14 **Insolvency Practice Schedule (Bankruptcy)**

- 15 (1) Section 40-25 of the Insolvency Practice Schedule (Bankruptcy) applies  
16 whether or not an event mentioned in subsection 40-25(1) occurs  
17 before, on or after the commencement day.
- 18 (2) However, paragraph 40-25(1)(c) of the Insolvency Practice Schedule  
19 (Bankruptcy) does not apply in relation to the cancellation or  
20 suspension of the registration of a person as a liquidator under the  
21 *Corporations Act 2001*, as in force at any time before the  
22 commencement day.

23 **122 Cancellation by the Inspector-General under the**  
24 **Insolvency Practice Schedule (Bankruptcy)**

- 25 (1) Section 40-30 of the Insolvency Practice Schedule (Bankruptcy) applies  
26 whether or not an event mentioned in subsection 40-30(1) occurs  
27 before, on or after the commencement day.
- 28 (2) However, paragraph 40-30(1)(c) of the Insolvency Practice Schedule  
29 (Bankruptcy) does not apply in relation to the cancellation of the  
30 registration of a person as a liquidator under the *Corporations Act 2001*,  
31 as in force at any time before the commencement day.

# EXPOSURE DRAFT

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

**Part 3** Transition to the Insolvency Practice Schedule (Bankruptcy)

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1     **123 Show-cause notice under the Insolvency Practice**  
2             **Schedule (Bankruptcy)**

3     (1)     Subdivision E of Division 40 of the Insolvency Practice Schedule  
4             (Bankruptcy) applies whether or not an event mentioned in  
5             subsection 40-40(1) of the Schedule occurs before, on or after the  
6             commencement day.

7     (2)     However, in relation to an event that occurs before the commencement  
8             day, paragraph 40-40(1)(p) of the Insolvency Practice Schedule  
9             (Bankruptcy) has effect as if the reference in that paragraph to “a  
10            standard prescribed for the purposes of subsection (4)” was a reference  
11            instead to “a standard prescribed by regulations made for the purpose of  
12            subsection 155H(5) of the old Act”.

13     **124 Action initiated by industry bodies**

14             Section 40-100 of the Insolvency Practice Schedule (Bankruptcy)  
15             applies, whether or not the grounds to which a notice under that section  
16             relates arise because of an action, a failure to act or circumstance that  
17             occurs before, on or after the commencement day.

18     **Subdivision G—Powers of the Court and other bodies**

19     **125 Application of Court powers under section 45-1 of the**  
20             **Insolvency Practice Schedule (Bankruptcy)**

21             The Court may exercise its powers to make an order under section 45-1  
22             of the Insolvency Practice Schedule (Bankruptcy), whether or not the  
23             action or failure to act in relation to which, or because of which, the  
24             order is made occurs before, on or after the commencement day.

25     **126 Powers to deal with registration under the old Act on or**  
26             **after the commencement day**

27     (1)     This item applies if, as a result of the continued application of the old  
28             Act on or after the commencement day, a relevant body may decide to  
29             register a person or cancel the registration of a person, as a trustee under  
30             the old Act or to impose conditions on a person’s registration as a  
31             trustee under the old Act.

32     (2)     A relevant body may instead:

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# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Bankruptcy) **Schedule 1**  
Transition to the Insolvency Practice Schedule (Bankruptcy) **Part 3**

---

- 1 (a) register the person or cancel the registration of the person, as  
2 a trustee under the Insolvency Practice Schedule  
3 (Bankruptcy) or impose conditions on a person's registration  
4 as a trustee under that Schedule; and  
5 (b) by order, modify the application of this Part or the Insolvency  
6 Practice Schedule (Bankruptcy) in relation to the registration,  
7 or the cancellation of the registration, of the person as a  
8 trustee under the Insolvency Practice Schedule (Bankruptcy)  
9 or in relation to the conditions imposed on a person's  
10 registration as a trustee under that Schedule.

11 (3) In this section:

12 *relevant body* means the Inspector-General, the Administrative Appeals  
13 Tribunal, the Court or any other body.

14 **Division 3—Application of Part 3 of the Insolvency**  
15 **Practice Schedule (Bankruptcy) and related**  
16 **consequential amendments**

17 **Subdivision A—Introduction**

18 **127 Simplified outline of this Division**

19 This Division deals with the way the *Bankruptcy Act 1966* will  
20 apply to the administration of a regulated debtor's estate when the  
21 provisions of the Insolvency Practice Schedule (Bankruptcy) begin  
22 to operate.

23 *New administrations*

24 The Insolvency Practice Schedule (Bankruptcy) applies to an  
25 administration of a regulated debtor's estate that starts on or after  
26 the commencement of this Act (called new administrations).

27 *Ongoing administrations*

28 For an administration of a regulated debtor's estate that starts  
29 before that day but is still ongoing (called ongoing  
30 administrations), the Insolvency Practice Schedule (Bankruptcy)  
31 applies in accordance with this Division but usually only in relation

# EXPOSURE DRAFT

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

**Part 3** Transition to the Insolvency Practice Schedule (Bankruptcy)

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1 to new events. Generally, the old Act continues to apply to old  
2 events and processes that are incomplete. There are some  
3 exceptions.

4 *Old administrations*

5 For old administrations that have ended but that may have ongoing  
6 obligations or processes, in most cases the old Act continues to  
7 apply.

## 8 **Subdivision B—General rules for Part 3**

### 9 **128 Application of Part 3 of the Insolvency Practice Schedule** 10 **(Bankruptcy)—general rules**

11 *New administrations*

12 (1) Part 3 of the Insolvency Practice Schedule (Bankruptcy) applies in  
13 relation to a new administration of a regulated debtor's estate.

14 *Ongoing administrations*

15 (2) Part 3 of the Insolvency Practice Schedule (Bankruptcy) applies in  
16 relation to an ongoing administration of a regulated debtor's estate in  
17 accordance with this Division.

## 18 **Subdivision C—Remuneration and other benefits received by** 19 **trustees**

### 20 **129 Application of Division 22 of the Insolvency Practice** 21 **Schedule (Bankruptcy)—general rule**

22 Subdivision B of Division 60 of the Insolvency Practice Schedule  
23 (Bankruptcy) applies in relation to a trustee of a regulated debtor's  
24 estate under ongoing administration who is appointed, or who consents  
25 to act, on or after the commencement day.

# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Bankruptcy) **Schedule 1**  
Transition to the Insolvency Practice Schedule (Bankruptcy) **Part 3**

---

1 **130 Old Act continues to apply in relation to remuneration for**  
2 **trustees already appointed**

3 Despite the repeal of sections 161B and 162 of the old Act by this  
4 Schedule, those sections (other than subsections 162(5A), (6) and (6A))  
5 continue to apply in relation to the remuneration of a trustee of an estate  
6 of a bankrupt who is appointed, or who consents to act, before the  
7 commencement day.

8 Note: Remuneration of these trustees may be varied from time to time under section 162.

9 **131 Duties of trustees relating to remuneration and other**  
10 **benefits**

11 *Application of the Insolvency Practice Schedule (Bankruptcy)*

12 (1) Sections 60-20 and 60-25 of the Insolvency Practice Schedule  
13 (Bankruptcy) apply in relation to a trustee of a regulated debtor's estate  
14 under ongoing administration whether or not the trustee is appointed, or  
15 consents to act, before, on or after the commencement day.

16 (2) However, those sections do not apply in relation to arrangements made  
17 before the commencement day.

18 *Old Act continues to apply to arrangements made before*  
19 *commencement day*

20 (3) Despite the repeal of section 165 of the old Act by this Schedule, that  
21 section continues to apply in relation to arrangements made before the  
22 commencement day.

23 **132 Payment for performance by third parties**

24 *Application of the Insolvency Practice Schedule (Bankruptcy)*

25 (1) Section 60-26 of the Insolvency Practice Schedule (Bankruptcy) applies  
26 in relation to a trustee of a regulated debtor's estate under ongoing  
27 administration whether or not the trustee is appointed, or consents to  
28 act, before, on or after the commencement day.

29 (2) However, that section does not apply in relation to payments received  
30 before the commencement day.

# EXPOSURE DRAFT

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

**Part 3** Transition to the Insolvency Practice Schedule (Bankruptcy)

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1                    *Old Act continues to apply to payments received before*  
2                    *commencement day*

3            (3)        Despite the repeal of section 162 of the old Act by this Schedule,  
4                    subsection 162(6) continues to apply in relation to payments received  
5                    before the commencement day.

## 6            **133 Remuneration of former trustees**

7                    *Insolvency Practice Schedule (Bankruptcy) applies where both*  
8                    *trustees are appointed after commencement*

9            (1)        Section 60-30 of the Insolvency Practice Schedule (Bankruptcy) applies  
10                    in relation to a trustee of a regulated debtor's estate if both the former  
11                    and the new trustee mentioned in that section are appointed, or consent  
12                    to act, on or after the commencement day.

13                    *Old Act continues to apply where both trustees appointed before*  
14                    *commencement*

15            (2)        If:

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

20                    then, despite the repeal of section 164 of the old Act by this Schedule,  
21                    that section continues to apply in relation to the remuneration of those  
22                    trustees to the extent that the section would have applied in relation to  
23                    those trustees if it had not been repealed.

24                    *Modified operation of the Insolvency Practice Schedule*  
25                    *(Bankruptcy) where one trustee is appointed before*  
26                    *commencement and one after*

27            (3)        If:

- 28                    (a) a person (the *former trustee*) ceases to be the trustee of a  
29                    regulated debtor's estate and another person (the *new trustee*)  
30                    becomes the new trustee of the estate; and  
31                    (b) the former trustee was appointed, or consented to act, as  
32                    trustee of the estate before the commencement day; and
-

# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Bankruptcy) **Schedule 1**  
Transition to the Insolvency Practice Schedule (Bankruptcy) **Part 3**

---

1 (c) the new trustee was appointed, or consented to act, as trustee  
2 of the estate on or after the commencement day;  
3 then subsection 60-30(3) of the Insolvency Practice Schedule  
4 (Bankruptcy) applies but the creditors are taken to have made a  
5 resolution under section 162 of the old Act (instead of a determination  
6 under section 60-10 of the Insolvency Practice Schedule (Bankruptcy))  
7 fixing the agreed remuneration as the remuneration that the former  
8 trustee is entitled to receive for the work.

## 9 **134 Expenses of former trustees**

10 Section 60-35 of the Insolvency Practice Schedule (Bankruptcy) applies  
11 in relation to a trustee of a regulated debtor's estate under ongoing  
12 administration whether or not the trustee is appointed, or consents to  
13 act, before, on or after the commencement day.

## 14 **Subdivision D—Funds handling**

### 15 **135 Application of Division 65 of the Insolvency Practice** 16 **Schedule (Bankruptcy)—general rule**

17 Division 65 of the Insolvency Practice Schedule (Bankruptcy) applies in  
18 relation to an ongoing administration of a regulated debtor's estate.

### 19 **136 Administration account**

20 If, immediately before the commencement day, a person has an account  
21 that complies with the requirements (if any) specified in the old  
22 regulations in relation to the administration of:

- 23 (a) an estate of a bankrupt; or  
24 (b) more than one estate of a bankrupt or bankrupts;

25 the account is taken on and after the commencement day to be the  
26 administration account for the relevant estate for the purposes of  
27 section 65-5 of the Insolvency Practice Schedule (Bankruptcy) and  
28 subsection 280(5) of the *Bankruptcy Act 1966*.

# EXPOSURE DRAFT

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

**Part 3** Transition to the Insolvency Practice Schedule (Bankruptcy)

---

1     **137 Paying money into administration account**

2             *Application of the Insolvency Practice Schedule (Bankruptcy)*

3     (1)     Sections 65-10 and 65-15 of the Insolvency Practice Schedule  
4             (Bankruptcy) do not apply in relation to money received before the  
5             commencement day.

6             *Old Act continues to apply to money received before  
7             commencement*

8     (2)     Despite its repeal by this Schedule, subsection 169(2) of the old Act  
9             continues to apply in relation to money received before the  
10            commencement day.

11    **138 Paying money out of administration account**

12            Section 65-25 of the Insolvency Practice Schedule (Bankruptcy) does  
13            not apply in relation to money paid out of an administration account  
14            before the commencement day.

15    **139 Reconciliation of administration account**

16            Section 65-32 of the Insolvency Practice Schedule (Bankruptcy) does  
17            not apply in relation to money received, or payments made, in relation  
18            to a regulated debtor's estate before the commencement day.

19    **140 Receipts**

20            *Application of the Insolvency Practice Schedule (Bankruptcy)*

21     (1)     Section 65-35 of the Insolvency Practice Schedule (Bankruptcy) does  
22             not apply in relation to money paid into or out of an administration  
23             account for a regulated debtor's estate before the commencement day.

24             *Old Act continues to apply to payments made before  
25             commencement day*

26     (2)     Despite its repeal by this Schedule, section 171 of the old Act continues  
27             to apply in relation to payments into, or made out of, an estate of a  
28             bankrupt before the commencement day.

# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Bankruptcy) **Schedule 1**  
Transition to the Insolvency Practice Schedule (Bankruptcy) **Part 3**

---

1 **141 Handling of securities**

2 Section 65-40 of the Insolvency Practice Schedule (Bankruptcy) does  
3 not apply in relation to negotiable instruments and other securities  
4 received before the commencement day.

5 **142 Review of payments to third parties**

6 *Application of the Insolvency Practice Schedule (Bankruptcy)*

7 (1) A review of a bill of costs for services in relation to the administration  
8 of a regulated debtor's estate may be carried out in accordance with  
9 rules made for the purposes of section 65-46 of the Insolvency Practice  
10 Schedule (Bankruptcy) whether or not the service was provided before,  
11 on or after the commencement day.

12 *Old Act continues to apply in relation to ongoing reviews*

13 (2) Subitems (3) and (4) apply if a review in accordance with regulations  
14 made for the purposes of subsection 167(2) of the old Act is started  
15 before the commencement day.

16 (3) Nothing in this Act affects:

- 17 (a) the review; or  
18 (b) the powers of the Inspector-General in relation to the review;  
19 or  
20 (c) any decisions made by the Inspector-General in relation to  
21 the review; or  
22 (d) any appeal or review in relation to the review.

23 (4) The old Act continues to apply on and after the commencement day in  
24 relation to the review despite the amendments and repeals made by this  
25 Act.

26 **Subdivision E—Information**

27 **143 Application of Division 70 of the Insolvency Practice**  
28 **Schedule (Bankruptcy)—general rule**

29 Division 70 of the Insolvency Practice Schedule (Bankruptcy) applies in  
30 relation to an ongoing administration of a regulated debtor's estate.

# EXPOSURE DRAFT

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

**Part 3** Transition to the Insolvency Practice Schedule (Bankruptcy)

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1     **144 Accounts and administration returns**

2             *Administration returns for 2016-17 and later years*

- 3     (1)     Section 70-5 of the Insolvency Practice Schedule (Bankruptcy) applies  
4             in relation to the financial year starting on 1 July 2016 and later  
5             financial years.

6             *Accounts under old Act*

- 7     (2)     The repeal of section 170A by this Schedule applies in relation to the  
8             financial year starting on 1 July 2016 and later financial years.

9     **145 Administration books**

10            *Application of the Insolvency Practice Schedule (Bankruptcy)*

- 11     (1)     Section 70-10 of the Insolvency Practice Schedule (Bankruptcy) does  
12             not apply in relation to events:

- 13                 (a) that occur before the commencement day; and  
14                 (b) in respect of which, or because of which, entries or minutes  
15                 are to be made.

16            *Old Act continues to apply to events etc. before commencement*  
17            *day*

- 18     (2)     Despite the repeal of section 173 of the old Act by this Schedule, that  
19             section continues to apply in relation to events:

- 20                 (a) that occur before the commencement day; and  
21                 (b) in respect of which, or because of which, accounts and  
22                 records must be kept.

23     **146 Books when trading**

24            *Application of the Insolvency Practice Schedule (Bankruptcy)*

- 25     (1)     Section 70-11 of the Insolvency Practice Schedule (Bankruptcy) does  
26             not apply in relation to events:

- 27                 (a) that occur before the commencement day; and  
28                 (b) in respect of which, or because of which, entries in books are  
29                 to be made.
-



# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Bankruptcy) **Schedule 1**  
Transition to the Insolvency Practice Schedule (Bankruptcy) **Part 3**

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1                    *Old Act continues to apply to events etc. before commencement*  
2                    *day*

- 3            (2)        Despite the repeal of section 174 of the old Act by this Schedule, that  
4                    section continues to apply in relation to events:  
5                                (a) that occur before the commencement day; and  
6                                (b) in respect of which, or because of which, accounts and  
7                                        records must be kept.

## 8            **147 Audit of administration books**

9                    *Application of the Insolvency Practice Schedule (Bankruptcy)*

- 10            (1)        Sections 70-15 to 70-25 of the Insolvency Practice Schedule  
11                    (Bankruptcy) apply to books relating to an ongoing administration of a  
12                    regulated debtor's estate whether or not the books are kept under a  
13                    provision of the old Act or of the Insolvency Practice Schedule  
14                    (Bankruptcy).

15                    *Continuation of audits under old Act*

- 16            (2)        Despite the repeal of section 175 of the old Act by this Schedule, audits  
17                    may be continued under that section in relation to accounts under  
18                    section 173 as if the old Act continued to apply.

19                    *Priority payments*

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

## 24            **148 Transfer of administration books**

25                    Section 70-30 of the Insolvency Practice Schedule (Bankruptcy) applies  
26                    in relation to a person who ceases to be the trustee of a regulated  
27                    debtor's estate on or after the commencement day.

# EXPOSURE DRAFT

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

**Part 3** Transition to the Insolvency Practice Schedule (Bankruptcy)

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## 149 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.

## 150 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.

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# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Bankruptcy) **Schedule 1**  
Transition to the Insolvency Practice Schedule (Bankruptcy) **Part 3**

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## 151 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.

## 152 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.

## 153 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

### 154 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.

# EXPOSURE DRAFT

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

**Part 3** Transition to the Insolvency Practice Schedule (Bankruptcy)

---

1 **155 Trustee must convene meetings in certain circumstances**

2 Section 75-15 of the Insolvency Practice Schedule (Bankruptcy) does  
3 not apply in relation to:

- 4 (a) requests made before the commencement day; or  
5 (b) directions given before the commencement day; or  
6 (c) resolutions passed before the commencement day.

7 **156 Old Act continues to apply in relation to certain meetings**

8 If:

- 9 (a) a trustee is required to convene, or has already called, a  
10 meeting of creditors under the old Act; and  
11 (b) as at the commencement day, the meeting has not been held;  
12 then the old Act continues to apply on and after the commencement day  
13 (despite the repeals and amendments made by this Schedule) in relation  
14 to the meeting.

15 **Subdivision G—Committees of inspection**

16 **157 Application of Division 80 of the Insolvency Practice**  
17 **Schedule (Bankruptcy)—general rules**

- 18 (1) Division 80 of the Insolvency Practice Schedule (Bankruptcy) applies in  
19 relation to a committee of inspection for an ongoing administration of a  
20 regulated debtor's estate:  
21 (a) that is appointed under that Division on or after the  
22 commencement day; or  
23 (b) that is appointed under a provision of the old Act but is taken  
24 to be a committee of inspection under subitem 158(1).  
25 (2) However, Division 80 of the Insolvency Practice Schedule  
26 (Bankruptcy) does not apply in relation to meetings of, or related to, the  
27 committee of inspection convened or held before the commencement  
28 day.

# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Bankruptcy) **Schedule 1**  
Transition to the Insolvency Practice Schedule (Bankruptcy) **Part 3**

---

## 158 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 156.

## 159 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:

# EXPOSURE DRAFT

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

**Part 3** Transition to the Insolvency Practice Schedule (Bankruptcy)

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- 1 (a) sections 80-15 to 80-25 of the Insolvency Practice Schedule  
2 (Bankruptcy);  
3 (b) Insolvency Practice Rules made under section 80-30 of the  
4 Insolvency Practice Schedule (Bankruptcy) that relate to  
5 membership of a committee of inspection.

6 Note: However, the committee could dissolve and the members could form a new committee  
7 to which these provisions would then apply.

## 8 **160 Directions by creditors and committees of inspection**

9 Sections 80-35 and 85-5 of the Insolvency Practice Schedule  
10 (Bankruptcy) apply whether or not the direction is given before, on or  
11 after the commencement day.

## 12 **161 Committee of inspection may request information**

13 Section 80-40 of the Insolvency Practice Schedule (Bankruptcy) applies  
14 whether or not the information, report or document referred to in  
15 subsection 80-40(1):

- 16 (a) was obtained or generated; or  
17 (b) was made or prepared; or  
18 (c) is in respect of actions or events that occurred;  
19 before, on or after the commencement day.

## 20 **162 Duties of members of committee of inspection and 21 creditors relating to profits and advantages etc.**

22 Sections 80-55 and 80-60 of the Insolvency Practice Schedule  
23 (Bankruptcy) apply to arrangements made on or after the  
24 commencement day.

## 25 **Subdivision H—Review of the administration of a regulated 26 debtor’s estate**

## 27 **163 Application of Division 90 of the Insolvency Practice 28 Schedule (Bankruptcy)—general rule**

29 Division 90 of the Insolvency Practice Schedule (Bankruptcy) applies in  
30 relation to an ongoing administration of a regulated debtor’s estate  
31 whether or not the matter to be reviewed occurred before, on or after the  
32 commencement day.

# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Bankruptcy) **Schedule 1**  
Transition to the Insolvency Practice Schedule (Bankruptcy) **Part 3**

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1     **164 Review of remuneration**

2             *Application of the Insolvency Practice Schedule (Bankruptcy)*

- 3     (1)     Reviews under Subdivision C of Division 90 of the Insolvency Practice  
4             Schedule (Bankruptcy) may be carried out whether or not:  
5                 (a) the remuneration is paid or payable; or  
6                 (b) the cost or expense is incurred or paid; or  
7                 (c) the funds were withdrawn or proposed to be withdrawn;  
8             before, on or after the commencement day.

9             *Old Act continues to apply in relation to ongoing reviews*

- 10    (2)     Subitems (3) and (4) apply if a review in accordance with regulations  
11             made for the purposes of subsection 167(1) of the old Act is started  
12             before the commencement day.
- 13    (3)     Nothing in this Act affects:  
14                 (a) the review; or  
15                 (b) the powers of the Inspector-General in relation to the review;  
16                     or  
17                 (c) any decisions made by the Inspector-General in relation to  
18                     the review; or  
19                 (d) any requirement for a trustee to repay an amount of  
20                     remuneration; or  
21                 (e) any appeal or review in relation to the review.
- 22    (4)     The old Act continues to apply on and after the commencement day in  
23             relation to the review despite the amendments and repeals made by this  
24             Act.

25     **165 Application of the Insolvency Practice Schedule**  
26             **(Bankruptcy) provisions that conflict with old Act Court**  
27             **orders—general rules**

- 28    (1)     This item applies if a court makes an order in relation to a person or the  
29             administration of an estate of a bankrupt under the old Act (the *old Act*  
30             *order*).

# EXPOSURE DRAFT

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

**Part 3** Transition to the Insolvency Practice Schedule (Bankruptcy)

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- 1 (2) The old Act order does not cease to have effect because a provision of  
2 the old Act under which it was made has been amended or repealed by  
3 this Act.
- 4 (3) If the old Act order is inconsistent with:  
5 (a) a provision of the *Bankruptcy Act 1966* that is amended or  
6 inserted by this Act; or  
7 (b) a provision dealing with matters of an application, saving or  
8 transitional nature relating to amendments made by this Act;  
9 then, subject to this Part, the provision does not apply to the extent that  
10 it is inconsistent with the old Act order.

## 11 **166 Old Act continues to apply in relation to ongoing** 12 **proceedings before a court—general rules**

- 13 (1) This item applies if proceedings are brought under the old Act in a court  
14 (on application or on the initiative of the court) in relation to the  
15 administration of a regulated debtor's estate either:  
16 (a) before the commencement day; or  
17 (b) on or after the commencement day (in accordance with a  
18 provision of this Division).
- 19 (2) Subject to this Part, nothing in this Act affects:  
20 (a) the proceedings; or  
21 (b) the power of the court to make orders in relation to the  
22 proceedings; or  
23 (c) any orders made by the court in relation to the proceedings;  
24 or  
25 (d) any enforcement in relation to, or as a result of, the  
26 proceedings (including giving effect to any court orders); or  
27 (e) any appeal or review in relation to the proceedings.
- 28 (3) Subject to this Part, the old Act continues to apply on and after the  
29 commencement day in relation to the proceedings despite the  
30 amendments and repeals made by this Act.
- 31 (4) In this item:  
32 *proceedings* include civil and criminal proceedings, inquiries by the  
33 court, enforcement processes and any other processes.



# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Bankruptcy) **Schedule 1**  
Transition to the Insolvency Practice Schedule (Bankruptcy) **Part 3**

---

## 167 Court powers to inquire into and make orders

- 1 (1) Subitems (2) to (4) are for the avoidance of doubt.
- 2
- 3 (2) Sections 90-5 and 90-10 of the Insolvency Practice Schedule  
4 (Bankruptcy) apply whether or not the information, report or document  
5 mentioned in subsections 90-5(2) and 90-10(3) was prepared before, on  
6 or after the commencement day.
- 7 (3) Paragraph 90-15(3)(f) of the Insolvency Practice Schedule (Bankruptcy)  
8 applies whether or not the remuneration is paid or payable before, on or  
9 after the commencement day.
- 10 (4) Subsection 90-15(4) of the Insolvency Practice Schedule (Bankruptcy)  
11 applies whether or not the action or failure to act occurred before, on or  
12 after the commencement day.

## 168 Removal by creditors

13 For the avoidance of doubt, section 90-35 of the Insolvency Practice  
14 Schedule (Bankruptcy) applies whether or not the trustee was appointed  
15 before, on or after the commencement day.  
16

## 17 Division 4—Administrative review

### 18 169 Administrative Appeals Tribunal proceedings

- 19 (1) This item applies if an application is made to the Administrative  
20 Appeals Tribunal under a reviewable provision for review of a decision  
21 (the *reviewable decision*) under that provision either:
  - 22 (a) before the commencement day; or
  - 23 (b) on or after the commencement day (in accordance with a  
24 provision of this Part).
- 25 (2) Subject to this Part, nothing in this Act affects:
  - 26 (a) any proceedings before the Administrative Appeals Tribunal  
27 in relation to the reviewable decision; or
  - 28 (b) the powers of the Administrative Appeals Tribunal in relation  
29 to the reviewable decision; or
  - 30 (c) any enforcement in relation to, or as a result of, a decision of  
31 the Administrative Appeals Tribunal in relation to the  
32 reviewable decision; or

# EXPOSURE DRAFT

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

**Part 3** Transition to the Insolvency Practice Schedule (Bankruptcy)

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1 (d) any appeal or review in relation to a decision of the  
2 Administrative Appeals Tribunal in relation to the reviewable  
3 decision.

4 (3) Subject to this Part, the old Act continues to apply on and after the  
5 commencement day in relation to the proceedings despite the  
6 amendments and repeals made by this Act.

7 *Applications for review made after the commencement day*

8 (4) Despite the repeal of a reviewable provision by this Schedule,  
9 applications may be made to the Administrative Appeals Tribunal under  
10 the reviewable provision.

11 (5) In this item:  
12 *reviewable provision* means section 155A, 155F or 155I of the old Act.

## 13 **Division 5—Application of other consequential** 14 **amendments**

### 15 **170 Resolutions and special resolutions**

16 The repeal and substitution of the definitions of *resolution* and *special*  
17 *resolution* in subsection 5(1) of the *Bankruptcy Act 1966* by this  
18 Schedule apply in relation to:

- 19 (a) in the case of proposals put to creditors in a meeting—  
20 proposals put at a meeting where the requirement to hold the  
21 meeting arises on or after the commencement day; and  
22 (b) in the case of proposals without meetings—proposals put to  
23 creditors on or after the commencement day.

### 24 **171 Requirements for approved forms**

25 Section 6D of the *Bankruptcy Act 1966* as inserted by this Schedule  
26 applies to documents made, given or lodged on or after the  
27 commencement day.

### 28 **172 Disclosure of information**

29 Subsection 12(5) of the *Bankruptcy Act 1966* as inserted by this  
30 Schedule applies whether or not the information was obtained, or is in  
31 relation to events that occurred, before, on or after the commencement  
32 day.

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# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Bankruptcy) **Schedule 1**  
Transition to the Insolvency Practice Schedule (Bankruptcy) **Part 3**

---

1 **173 Giving information to the Official Receiver**

2 Section 19B of the *Bankruptcy Act 1966* as inserted by this Schedule  
3 applies whether or not the books were made before, on or after the  
4 commencement day.

5 **174 Penalty units for offences**

6 The amendments of subsections 54(1), 54(2) and 56F(1) of the  
7 *Bankruptcy Act 1966* made by this Schedule apply in relation to  
8 offences committed on or after the commencement day.

9 **175 Purchases of property of the bankrupt by a member of**  
10 **the committee of inspection**

11 The repeal of section 72 of the *Bankruptcy Act 1966* by this Schedule  
12 applies in relation to property purchased before the commencement day.

13 **176 Time for doing something—business days**

14 (1) This item applies in relation to the amendments made by this Schedule  
15 to each of the following provisions (the *relevant provision*):

- 16 (a) subsection 73(1A);  
17 (b) subparagraph 139ZIE(1)(a)(i);  
18 (c) subsection 139ZIE(5);  
19 (d) paragraph 139ZIF(1)(a).

20 (2) If a person is required to do something within a period of time after a  
21 particular event, the amendment to the relevant provision applies if the  
22 event occurs on or after the commencement day.

23 **177 Information about accounts and account-freezing**

24 (1) This item applies if, before the commencement day, the  
25 Inspector-General has asked a person under subsection 155H(1) of the  
26 *Bankruptcy Act 1966* to give a written explanation why the person  
27 should continue to be registered as a trustee.

28 (2) Sections 186LA and 186LB of the old Act continue to apply on and  
29 after the commencement day in relation to the bank with which the  
30 person holds or held an account as if the amendments to those sections  
31 made by this Schedule had not been made.

# EXPOSURE DRAFT

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

**Part 3** Transition to the Insolvency Practice Schedule (Bankruptcy)

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1     **178 Infringement notices**

2             Despite the repeal of table items 6 to 11 in subsection 277B(2) of the  
3             *Bankruptcy Act 1966* by this Schedule, those items continue to apply in  
4             relation to offences committed before the commencement day.

5     **179 Protection in respect of reports**

6             Despite the amendments and repeals made by this Schedule,  
7             subsection 306B(1) of the *Bankruptcy Act 1966* continues to apply in  
8             relation to reports given under subsection 155A(6), 155F(2) or 155I(4)  
9             of that Act.

10    **Division 6—Regulations**

11    **180 Regulations**

- 12    (1)     The Governor-General may make regulations prescribing matters of a  
13             transitional nature (including prescribing any saving or application  
14             provisions) relating to the amendments and repeals made by this  
15             Schedule.
- 16    (2)     The regulations may provide that certain provisions of this Schedule are  
17             taken to be modified as set out in the regulations. Those provisions then  
18             have effect as if they were so modified.
- 19    (3)     The provisions of this Schedule that provide for regulations to deal with  
20             matters do not limit each other.

# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
Insolvency Practice Schedule (Corporations) **Part 1**

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

4 **Part 1—Insolvency Practice Schedule (Corporations)**

5 *Corporations Act 2001*

6 **1 At the end of Part 5.9**

7 Add:

8 **Division 4—Insolvency Practice Schedule (Corporations)**

9 **600K Insolvency Practice Schedule (Corporations)**

10 Schedule 2 has effect.

11 **2 Before Schedule 3**

12 Insert:

13 **Schedule 2—Insolvency Practice Schedule**  
14 **(Corporations)**

15 Note: See section 600K.

16 **Part 1—Introduction**

17 **Division 1—Introduction**

18 **1-1 Object of this Schedule**

19 (1) The object of this Schedule is to ensure that any person registered  
20 as a liquidator:

21 (a) has an appropriate level of expertise; and

22 (b) behaves ethically; and

23 (c) maintains sufficient insurance to cover his or her liabilities in  
24 practising as a registered liquidator.

# EXPOSURE DRAFT

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

**Part 1** Insolvency Practice Schedule (Corporations)

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- 1 (2) The object of this Schedule is also:  
2 (a) to regulate the external administration of companies  
3 consistently, unless there is a clear reason to treat a matter  
4 that arises in relation to a particular kind of external  
5 administration differently; and  
6 (b) to regulate the external administration of companies to give  
7 greater control to creditors.

8 **1-5 Simplified outline of this Schedule**

9 *Registering liquidators*

10 Under this Act, only a registered liquidator can perform certain  
11 roles, such as that of the receiver of the property of a corporation,  
12 the administrator of a company or of a deed of company  
13 arrangement, or the liquidator or provisional liquidator of a  
14 company.

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

17 *Consistently regulating the external administration of companies*

18 Part 3 of this Schedule sets out provisions to regulate the external  
19 administration of companies consistently.

20 A company is under external administration if the company is  
21 under administration, is the subject of a deed of company  
22 arrangement or has had a liquidator or provisional liquidator  
23 appointed in relation to it. A company is not under external  
24 administration merely because a receiver of property of the  
25 company has been appointed.

26 *Other provisions*

27 There are other matters relevant to the external administration of a  
28 company regulated in Chapter 5.

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

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# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
Insolvency Practice Schedule (Corporations) **Part 1**

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1 Many of the terms in this Schedule are defined. The Dictionary in  
2 section 5-5 contains a list of every term that is defined in this  
3 Schedule. Other terms are defined in section 9 of this Act.

## 4 **Division 5—Definitions**

### 5 **Subdivision A—Introduction**

#### 6 **5-1 Simplified outline of this Division**

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

10 Some of the key terms, the meaning of which is explained in this  
11 Division, are external administration of a company and external  
12 administrator of a company.

### 13 **Subdivision B—The Dictionary**

#### 14 **5-5 The Dictionary**

15 In this Schedule:

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

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

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

21 *annual administration return* means the return required to be  
22 lodged under subsection 70-5(3).

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

25 *approved form*: a document is lodged in the *approved form* if it is  
26 lodged in accordance with section 100-6.

# EXPOSURE DRAFT

## Schedule 2 Amendments relating to the Insolvency Practice Schedule (Corporations)

### Part 1 Insolvency Practice Schedule (Corporations)

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***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 the company is deregistered.

***external administration*** of a company: see section 5-15.

***external administrator*** of a company: see section 5-20.

***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.

***maximum default amount*** for an external administrator of a company: see section 60-15.

***member of a pooled group***: see section 5-27.



# EXPOSURE DRAFT

1                    *pooled group*: see section 5-27.

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

3                    *property* has a meaning affected by section 5-26.

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

6                    *Register of Liquidators* means the register established and  
7 maintained by ASIC under section 15-1.

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

10                   *remuneration determination*, for an external administrator of a  
11 company, means a determination made in accordance with  
12 section 60-10 in relation to the external administrator.

13                   *resolution*: a *resolution* is passed by creditors or contributories of a  
14 company:

15                   (a) in a meeting—in the circumstances prescribed under  
16 paragraph 75-50(2)(k); or

17                   (b) without a meeting—in the circumstances prescribed under  
18 paragraph 75-40(5)(b).

19                   *reviewing liquidator* means a registered liquidator who has been  
20 appointed under section 90-23 or 90-24 to conduct a review.

21                   *special resolution*: a *special resolution* is passed by creditors or  
22 contributories of a company:

23                   (a) in a meeting—in the circumstances prescribed under  
24 paragraph 75-50(2)(k); or

25                   (b) without a meeting—in the circumstances prescribed under  
26 paragraph 75-40(5)(b).

27                   *start of an external administration* of a company means:

28                   (a) in relation to a company under administration—the day an  
29 administrator of the company is appointed under  
30 section 436A, 436B or 436C; and

31                   (b) in relation to a company that is subject to a deed of company  
32 arrangement—the day the deed is executed; and

# EXPOSURE DRAFT

Schedule 2 Amendments relating to the Insolvency Practice Schedule (Corporations)

Part 1 Insolvency Practice Schedule (Corporations)

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- 1 (c) in the case of a winding up of a company—the day the  
2 winding up of the company is taken to have begun under  
3 section 513A or 513B; and  
4 (d) in relation to a company for which a provisional liquidator  
5 has been appointed—the day the provisional liquidator is  
6 appointed.

7 *this Schedule* includes the Insolvency Practice Rules.

## 8 Subdivision C—Other definitions

### 9 5-10 Meaning of *current conditions*

- 10 (1) Each of the following is a *current condition* imposed on a  
11 registered liquidator:  
12 (a) a condition that a committee decides that the registered  
13 liquidator is to be subject to under subsection 20-20(5) or (6),  
14 subject to any variation that a committee has decided should  
15 be made to the condition under section 20-55;  
16 (b) a condition that a committee decides that the registered  
17 liquidator is to be subject to under paragraph 40-55(1)(f) or  
18 (g), subject to any variation that a committee has decided  
19 should be made to the condition under section 20-55;  
20 (c) a condition imposed under subsection 40-15(2) (direction not  
21 to accept further appointments);  
22 (d) a condition imposed on all registered liquidators, or on  
23 registered liquidators of the liquidator's class, under  
24 section 20-35;  
25 (e) a condition imposed on the registered liquidator by the Court  
26 under section 45-1.
- 27 (2) However, the *current conditions* imposed on a registered  
28 liquidator do not include:  
29 (a) a condition that a committee has decided to remove under  
30 section 20-55; or  
31 (b) a condition that is removed under subsection 40-15(4)  
32 (condition removed because a direction not to accept further  
33 appointments has been withdrawn); or  
34 (c) a condition that the Court has ordered be removed under  
35 section 45-1.
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# EXPOSURE DRAFT

1 **5-15 Meaning of *external administration* of a company**

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

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

9 Note: A company is not under *external administration* for the purposes of  
10 this Schedule merely because a receiver, receiver and manager, or  
11 other controller has been appointed in relation to property of the  
12 company.

13 **5-20 Meaning of *external administrator* of a company**

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

- 16 (a) the administrator of the company; or  
17 (b) the administrator under a deed of company arrangement that  
18 has been entered into in relation to the company; or  
19 (c) the liquidator of the company; or  
20 (d) the provisional liquidator of the company.

21 Note: A person is not an *external administrator* of a company for the  
22 purposes of this Schedule merely because the person has been  
23 appointed as a receiver, receiver and manager, or controller in relation  
24 to property of the company.

25 **5-25 References to the external administrator of a company**

26 If 2 or more persons have been appointed as external  
27 administrators of a company, a reference in this Schedule to the  
28 external administrator of the company is to be read as a reference  
29 to whichever one or more of those external administrators as the  
30 case requires.

31 **5-26 Property of a company**

32 The *property* of a company includes any PPSA retention of title  
33 property of the company.

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# EXPOSURE DRAFT

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

**Part 1** Insolvency Practice Schedule (Corporations)

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

## 3 **5-27 Meaning of *pooled group***

4 If:

5 (a) a pooling determination is in force in relation to a group of 2  
6 or more companies; or

7 (b) a pooling order is in force in relation to a group of 2 or more  
8 companies;

9 then:

10 (c) the companies are together a *pooled group*; and

11 (d) each of the companies is a *member of the pooled group*.

## 12 **Part 2—Registering and disciplining practitioners**

### 13 **Division 10—Introduction**

#### 14 **10-1 Simplified outline of this Part**

##### 15 *Registering liquidators*

16 An individual may apply to ASIC to be registered as a liquidator.  
17 ASIC will refer the application to a committee who will consider  
18 the applicant's qualifications, conduct and fitness and whether the  
19 applicant will take out appropriate insurance. Registration may be  
20 subject to conditions, is for 3 years and may be renewed.

21 A registered liquidator must:

- 22 • lodge an annual return with ASIC that includes proof that the  
23 liquidator has appropriate insurance; and
- 24 • give ASIC notice if the liquidator's circumstances change or if  
25 certain other events happen.

##### 26 *Disciplining registered liquidators*

# EXPOSURE DRAFT

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If a registered liquidator fails 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.

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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.

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Industry bodies may notify ASIC where they suspect there are grounds for such disciplinary action.

12

### *Court powers*

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

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## **10-5 Working cooperatively with the Inspector-General in Bankruptcy**

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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.

23

## **Division 15—Register of liquidators**

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### **15-1 Register of Liquidators**

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- (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.

# EXPOSURE DRAFT

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

**Part 1** Insolvency Practice Schedule (Corporations)

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- 1 (4) Without limiting subsection (3), the Insolvency Practice Rules may  
2 provide for and in relation to:  
3 (a) the details to be entered on the Register of Liquidators; and  
4 (b) the parts of the Register that are to be made available to the  
5 public.
- 6 (5) Without limiting paragraph (4)(a), those details may include:  
7 (a) details of any disciplinary action decided by a committee  
8 under section 40-55; and  
9 (b) details of persons who have had their registration as a  
10 liquidator under this Act suspended or cancelled.

## 11 **Division 20—Registering liquidators**

### 12 **Subdivision A—Introduction**

#### 13 **20-1 Simplified outline of this Division**

14 An individual may apply to ASIC to be registered as a liquidator.  
15 The application will be referred to a committee, which will assess  
16 the application against specified criteria (the applicant's  
17 qualifications, conduct and fitness and whether the applicant will  
18 take out appropriate insurance). The committee will report its  
19 decision to ASIC and, if the committee decides that the applicant  
20 should be registered, ASIC will register the applicant as a  
21 liquidator.

22 A registration may be subject to conditions. Conditions may be  
23 imposed on a particular registered liquidator by the committee, or  
24 on all registered liquidators or a class of registered liquidators by  
25 the Insolvency Practice Rules. A registered liquidator may apply to  
26 ASIC to have a condition imposed by a committee removed or  
27 varied. That application will be referred to a committee.

28 Registration is for 3 years, but may be renewed. An application for  
29 renewal may be made to ASIC within specified time periods.

# EXPOSURE DRAFT

1 A decision of a committee about an application for registration or  
2 about a condition of registration is reviewable by the  
3 Administrative Appeals Tribunal (see Part 9.4A of this Act).

## 4 **Subdivision B—Registration**

### 5 **20-5 Application for registration**

6 (1) An individual may apply to ASIC to be registered as a liquidator.

7 (2) The application must be lodged with ASIC in the approved form.

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

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

### 12 **20-10 ASIC may convene a committee to consider**

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

15 (2) The committee must consist of:

16 (a) ASIC; and

17 (b) a registered liquidator chosen by a prescribed body; and

18 (c) a person appointed by the Minister.

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

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

### 24 **20-15 ASIC must refer applications to a committee**

25 (1) ASIC must refer an application for registration as a liquidator that  
26 is properly made to a committee convened under section 20-10 for  
27 consideration.

28 (2) ASIC must do so within 3 months after receiving the application.

# EXPOSURE DRAFT

Schedule 2 Amendments relating to the Insolvency Practice Schedule (Corporations)

Part 1 Insolvency Practice Schedule (Corporations)

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1       **20-20 Committee to consider applications**

2                               *Committee must consider referred applications*

- 3               (1) If an application for registration as a liquidator is referred to a  
4               committee, the committee must consider the application.
- 5               (2) For the purposes of considering the application, the committee:  
6                       (a) must interview the applicant; and  
7                       (b) may require the applicant to sit for an exam.

8                               *Decision of committee*

- 9               (3) Within 45 business days after interviewing the applicant, the  
10              committee must decide whether the applicant should be registered  
11              as a liquidator or not.
- 12              (4) The committee must decide that the applicant should be registered  
13              as a liquidator if it is satisfied that the applicant:  
14                      (a) has the qualifications, experience, knowledge and abilities  
15                      prescribed; and  
16                      (b) will take out:  
17                              (i) adequate and appropriate professional indemnity  
18                              insurance; and  
19                              (ii) adequate and appropriate fidelity insurance;  
20                      against the liabilities that the applicant may incur working as  
21                      a registered liquidator; and  
22                      (c) has not been convicted, within 10 years before making the  
23                      application, of an offence involving fraud or dishonesty; and  
24                      (d) is not, and has not been within 10 years before making the  
25                      application, an insolvent under administration; and  
26                      (e) has not had his or her registration as a liquidator under this  
27                      Act cancelled within 10 years before making the application,  
28                      other than in response to a written request by the applicant to  
29                      have the registration cancelled; and  
30                      (f) has not had his or her registration as a trustee under the  
31                      *Bankruptcy Act 1966* cancelled within 10 years before  
32                      making the application, other than in response to a written  
33                      request by the applicant to have the registration cancelled;  
34                      and
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# EXPOSURE DRAFT

- 1 (g) is not disqualified from managing corporations under  
2 Part 2D.6 of this Act, or under a law of an external Territory  
3 or a law of a foreign country; and  
4 (h) is otherwise a fit and proper person; and  
5 (i) is resident in Australia.

- 6 (5) The committee may decide that the applicant should be registered  
7 even if the committee is not satisfied of a matter mentioned in  
8 paragraph (4)(a) or (i), provided the committee is satisfied that the  
9 applicant would be suitable to be registered as a liquidator if the  
10 applicant complied with conditions specified by the committee.

11 *Registration may be subject to conditions*

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

14 *Spent convictions*

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

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

## 21 **20-25 Committee to report**

22 The committee must give the applicant and ASIC a report setting  
23 out:

- 24 (a) the committee's decision on the application; and  
25 (b) the committee's reasons for that decision; and  
26 (c) if the committee decides under subsection 20-20(5) or (6)  
27 that the applicant should be registered subject to a condition:  
28 (i) the condition; and  
29 (ii) the committee's reasons for imposing the condition.

# EXPOSURE DRAFT

Schedule 2 Amendments relating to the Insolvency Practice Schedule (Corporations)

Part 1 Insolvency Practice Schedule (Corporations)

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1     **20-30 Registration**

2                     *Registration as liquidator*

- 3             (1) ASIC must register the applicant as a liquidator if:
- 4                     (a) the committee has decided that the applicant should be
- 5                             registered; and
- 6                     (b) the applicant has produced evidence in writing to ASIC that
- 7                             the applicant has taken out:
- 8                                 (i) adequate and appropriate professional indemnity
- 9                                     insurance; and
- 10                                 (ii) adequate and appropriate fidelity insurance;
- 11                             against the liabilities that the applicant may incur working as
- 12                             a registered liquidator.

13                     Note:         Fees may be imposed under the *Corporations (Fees) Act 2001* for the

14                             doing of an act by ASIC.

- 15             (2) ASIC registers an applicant by entering on the Register of
- 16                     Liquidators the details relating to the applicant prescribed for the
- 17                     purposes of subsection 15-1(3).

18                     *Registration subject to current conditions*

- 19             (3) The registration is subject to the current conditions imposed on the
- 20                     registered liquidator.

21                     *Certificate of registration*

- 22             (4) After registering a person as a liquidator, ASIC must give the
- 23                     person a certificate of registration.
- 24             (5) The certificate may be given electronically.

25                     *Period of registration*

- 26             (6) The registration has effect for 3 years.

# EXPOSURE DRAFT

1 **20-35 Conditions imposed on all registered liquidators or a class of**  
2 **registered liquidators**

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

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

9 **20-40 Application to vary etc. conditions of registration**

- 10 (1) If a committee has decided under this Schedule that a person's  
11 registration as a liquidator is to be subject to a condition, the  
12 person may apply to ASIC for the condition to be varied or  
13 removed.
- 14 (2) However, an application cannot be made:  
15 (a) if the person's registration as a liquidator is suspended; or  
16 (b) if the condition is of a prescribed kind; or  
17 (c) in prescribed circumstances.
- 18 (3) The application must be lodged with ASIC in the approved form.
- 19 (4) The application is properly made if:  
20 (a) an application can be made; and  
21 (b) subsection (3) is complied with.
- 22 (5) A single application by a registered liquidator may deal with more  
23 than one condition.

24 **20-45 ASIC may convene a committee to consider applications**

- 25 (1) ASIC may convene a committee for the purposes of considering an  
26 application, or applications, made under section 20-40.
- 27 (2) The committee must consist of:  
28 (a) ASIC; and  
29 (b) a registered liquidator chosen by a prescribed body; and

# EXPOSURE DRAFT

## Schedule 2 Amendments relating to the Insolvency Practice Schedule (Corporations)

### Part 1 Insolvency Practice Schedule (Corporations)

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1 (c) a person appointed by the Minister.

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

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

#### 7 **20-50 ASIC must refer applications to a committee**

8 (1) ASIC must refer an application that is properly made under  
9 section 20-40 to a committee convened under section 20-45 for  
10 consideration.

11 (2) ASIC must do so within 3 months after receiving the application.

#### 12 **20-55 Committee to consider applications**

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

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

18 (3) The committee must, within 20 business days after interviewing  
19 the applicant or obtaining the agreement of the applicant as  
20 referred to in subsection (2):

21 (a) decide whether the condition to which the application relates  
22 should be varied or removed; and

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

#### 25 **20-60 Committee to report**

26 The committee must give the applicant and ASIC a report setting  
27 out:

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

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

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

# EXPOSURE DRAFT

1 **20-65 Committee’s decision given effect**

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

5 **Subdivision D—Renewal**

6 **20-70 Application for renewal**

- 7 (1) An individual may apply to ASIC to have the individual’s  
8 registration as a liquidator renewed.
- 9 (2) The application must be lodged with ASIC in the approved form:  
10 (a) if the Court makes an order under subsection (3)—on or  
11 before the time specified in the order; or  
12 (b) otherwise—before the applicant’s registration as a liquidator  
13 ceases to have effect.

14 Note: Fees for lodging documents and late lodgement fees may be imposed  
15 under the *Corporations (Fees) Act 2001*.

- 16 (3) The Court may, on application, extend the time within which the  
17 individual may apply to ASIC to have the individual’s registration  
18 as a liquidator renewed.
- 19 (4) The application for renewal is properly made if subsection (2) is  
20 complied with.

21 **20-75 Renewal**

22 *Renewal of registration*

- 23 (1) On application under section 20-70, ASIC must renew the  
24 registration of the applicant as a liquidator if:  
25 (a) the application is properly made; and  
26 (b) the applicant has produced evidence in writing to ASIC that  
27 the applicant maintains:  
28 (i) adequate and appropriate professional indemnity  
29 insurance; and  
30 (ii) adequate and appropriate fidelity insurance;

# EXPOSURE DRAFT

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

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1 against the liabilities that the applicant may incur working as  
2 a registered liquidator; and

3 (c) the applicant has complied with any condition dealing with  
4 continuing professional education to which the applicant is  
5 subject during the applicant's current registration.

6 (2) ASIC renews the registration of the applicant by entering, or  
7 maintaining, on the Register of Liquidators the details relating to  
8 the applicant prescribed for the purposes of subsection 15-1(3).

9 *Registration subject to current conditions*

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

12 *Certificate of registration*

13 (4) After renewing the registration of a person as a liquidator, ASIC  
14 must give the person a certificate of registration.

15 (5) The certificate may be given electronically.

16 *Period of registration*

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

## 20 **Subdivision E—Offences relating to registration**

### 21 **20-80 False representation that person is a registered liquidator**

22 A person commits an offence if:

- 23 (a) the person makes a representation; and  
24 (b) the representation is that the person is a registered liquidator;  
25 and  
26 (c) the representation is false.

27 Penalty: 30 penalty units.

# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
Insolvency Practice Schedule (Corporations) **Part 1**

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## 1 **Division 25—Insurance**

### 2 **25-1 Registered liquidators to maintain insurance**

3 *Registered liquidator must maintain insurance*

- 4 (1) A registered liquidator must maintain:  
5 (a) adequate and appropriate professional indemnity insurance;  
6 and  
7 (b) adequate and appropriate fidelity insurance;  
8 against the liabilities that the liquidator may incur working as a  
9 registered liquidator.

- 10 (2) ASIC may, by legislative instrument, determine what constitutes  
11 adequate and appropriate professional indemnity insurance, and  
12 adequate and appropriate fidelity insurance, in relation to either or  
13 both of the following:  
14 (a) specified circumstances;  
15 (b) one or more specified classes of registered liquidators.

16 *Offence*

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

22 Penalty: 1,000 penalty units.

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

27 Penalty: 60 penalty units.

# EXPOSURE DRAFT

Schedule 2 Amendments relating to the Insolvency Practice Schedule (Corporations)

Part 1 Insolvency Practice Schedule (Corporations)

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1 **Division 30—Annual liquidator returns**

2 **30-1 Annual liquidator returns**

3 *Registered liquidator must lodge annual return*

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

7 (2) Each of the following is a *return year* for a person who is or was  
8 registered as a liquidator under section 20-30:

9 (a) the period of 12 months beginning on the day on which that  
10 registration first began;

11 (b) each subsequent period of 12 months.

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

13 (a) be in the approved form; and

14 (b) include evidence that the person has, during the whole of any  
15 period of the year during which the person was registered as  
16 a liquidator, maintained:

17 (i) adequate and appropriate professional indemnity  
18 insurance; and

19 (ii) adequate and appropriate fidelity insurance;  
20 against the liabilities that the person may incur working as a  
21 registered liquidator.

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

25 *Offence*

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

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

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

30 Penalty: 5 penalty units.



# EXPOSURE DRAFT

1 **Division 35—Notice requirements**

2 **35-1 Notice of significant events**

3 *Registered liquidator must lodge notice*

- 4 (1) A registered liquidator must lodge with ASIC a notice, in the  
5 approved form, if any of the following events occur:
- 6 (a) the liquidator becomes an insolvent under administration;
  - 7 (b) a bankruptcy notice is issued under the *Bankruptcy Act 1966*  
8 in relation to the liquidator as debtor, or a corresponding  
9 notice is issued in relation to the liquidator as debtor under a  
10 law of an external Territory or a law of a foreign country;
  - 11 (c) the liquidator is convicted of an offence involving fraud or  
12 dishonesty;
  - 13 (d) the liquidator is disqualified from managing corporations  
14 under Part 2D.6 of this Act, or under a law of an external  
15 Territory or a law of a foreign country;
  - 16 (e) the liquidator ceases to have:
    - 17 (i) adequate and appropriate professional indemnity  
18 insurance; or
    - 19 (ii) adequate and appropriate fidelity insurance;  
20 against the liabilities that the liquidator may incur working as  
21 a registered liquidator;
  - 22 (f) the liquidator is issued with a notice under section 40-40 of  
23 Schedule 2 to the *Bankruptcy Act 1966* (a show-cause notice)  
24 in relation to the liquidator's registration as a trustee under  
25 that Act;
  - 26 (g) the liquidator's registration as a trustee under the *Bankruptcy*  
27 *Act 1966* is suspended or cancelled;
  - 28 (h) any other event prescribed.

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

32 *Offence*

- 33 (2) A person commits an offence if:
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# EXPOSURE DRAFT

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

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

5 Penalty: 100 penalty units.

## 6 **35-5 Notice of other events**

7 *Registered liquidator must lodge notice*

- 8 (1) A registered liquidator must lodge with ASIC a notice, in the  
9 approved form, if any of the following events occur:  
10 (a) information included in an annual liquidator return, an annual  
11 administration return or an end of administration return,  
12 prepared by or on behalf of the liquidator, is or becomes  
13 inaccurate in a material particular;  
14 (b) any other event prescribed.

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

18 *Offence*

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

24 Penalty: 5 penalty units.

## 25 **Division 40—Disciplinary and other action**

### 26 **Subdivision A—Introduction**

#### 27 **40-1 Simplified outline of this Division**

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

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# EXPOSURE DRAFT

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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.

### *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).

# EXPOSURE DRAFT

**Schedule 2** Amendments relating to the Insolvency Practice Schedule (Corporations)  
**Part 1** Insolvency Practice Schedule (Corporations)

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1 **Subdivision B—Direction to comply**

2 **40-5 Registered liquidator to remedy failure to lodge documents or**  
3 **give information or documents**

4 *Application of this section*

5 (1) This section applies if a registered liquidator fails to comply with a  
6 requirement to lodge any document, or give any information or  
7 document, that the liquidator is required under this Act to lodge  
8 with or give to ASIC.

9 *ASIC may give direction to comply*

10 (2) ASIC may, in writing, direct the liquidator to comply with the  
11 requirement within 10 business days after the direction is given.

12 (3) ASIC may, on the application of a registered liquidator made  
13 before the end of the period referred to in subsection (2), extend, or  
14 further extend, that period.

15 *Consequences for failing to comply*

16 (4) If the liquidator does not comply within the period, ASIC may do  
17 either or both of the following:

- 18 (a) give a direction under subsection 40-15(1) (direction not to  
19 accept further appointments);  
20 (b) apply to the Court for an order, under subsection 1274(11)  
21 (registers), section 45-1 of this Schedule or any other  
22 provision that is relevant, directing the liquidator to comply  
23 with the requirement within such time as is specified in the  
24 order.

25 *Direction is not a legislative instrument*

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

27 *Relationship with other laws*

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

# EXPOSURE DRAFT

1                    comply with a requirement to lodge a document with, or give  
2                    information or a document to, ASIC.

## 3                    **40-10 Registered liquidator to correct inaccuracies etc.**

### 4                    *Application of this section*

5                    (1) This section applies if ASIC reasonably suspects that any  
6                    information that a registered liquidator is required under this Act to  
7                    give to ASIC (whether in a document lodged or given to ASIC or  
8                    otherwise) is incomplete or incorrect in any particular.

### 9                    *ASIC may give direction to correct information etc.*

10                    (2) ASIC may, in writing, direct the liquidator to do one or more of the  
11                    following within a period of 10 business days after the direction is  
12                    given:

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

17                    (3) ASIC may, on the application of a registered liquidator made  
18                    before the end of the period referred to in subsection (2), extend, or  
19                    further extend, that period.

### 20                    *Consequences for failing to comply*

21                    (4) If the liquidator does not comply within the period, ASIC may do  
22                    either or both of the following:

- 23                    (a) give a direction under subsection 40-15(1) (direction not to  
24                    accept further appointments);
- 25                    (b) apply to the Court for an order, under subsection 1274(11)  
26                    (registers), section 45-1 of this Schedule or any other  
27                    provision that is relevant, directing the liquidator to comply  
28                    with the requirement within such time as is specified in the  
29                    order.

### 30                    *Direction is not a legislative instrument*

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

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# EXPOSURE DRAFT

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

**Part 1** Insolvency Practice Schedule (Corporations)

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1                                    *Relationship with other laws*

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

5                                    **40-15 Direction not to accept further appointments**

6                                    *ASIC may give direction not to accept further appointments*

- 7                                    (1) ASIC may, in writing, direct a registered liquidator not to accept  
8                                    any further appointments under Chapter 5 (external  
9                                    administration), or not to accept any further appointments under  
10                                    Chapter 5 during a period specified in the direction, if:  
11                                    (a) the liquidator has failed to comply with a direction given to  
12                                    the liquidator under section 40-5 (direction to remedy failure  
13                                    to lodge documents, or give information or documents); or  
14                                    (b) the liquidator has failed to comply with a direction given to  
15                                    the liquidator under section 40-10 (direction to correct  
16                                    inaccuracies); or  
17                                    (c) a committee has decided under paragraph 40-55(1)(d) that  
18                                    ASIC should give the direction referred to in that paragraph;  
19                                    or  
20                                    (d) the liquidator has failed to comply with a direction given to  
21                                    the liquidator under section 70-70 (direction to give relevant  
22                                    material).

23                                    *Condition of registration to comply with direction*

- 24                                    (2) If ASIC gives a direction to a registered liquidator under  
25                                    subsection (1), it is a condition of the liquidator's registration that  
26                                    the liquidator must comply with the direction.

27                                    *Withdrawal of direction*

- 28                                    (3) ASIC may withdraw a direction given under subsection (1).  
29                                    (4) The condition is removed from the liquidator's registration if ASIC  
30                                    withdraws the direction.

# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
Insolvency Practice Schedule (Corporations) **Part 1**

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1 *Direction is not a legislative instrument*

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

3 *Relationship with other laws*

4 (6) Nothing in this section limits the operation of any other provision  
5 of this Act, or any other law, in relation to:

6 (a) a person who fails to comply with a requirement to lodge a  
7 document with, or give information or a document to, ASIC;  
8 or

9 (b) a person giving incomplete or incorrect information; or

10 (c) any matter in relation to which a committee makes a decision  
11 under subsection 40-55(1).

12 (7) Nothing in this section limits ASIC's power to apply to the Court  
13 under subsection 70-90(2) for an order that the external  
14 administrator of a company comply with a direction given under  
15 section 70-70 (direction to give relevant material).

## 16 **Subdivision C—Automatic cancellation**

### 17 **40-20 Automatic cancellation**

18 (1) The registration of a person as a liquidator is cancelled if:

19 (a) the person becomes an insolvent under administration; or  
20 (b) the person dies.

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

## 23 **Subdivision D—ASIC may suspend or cancel registration**

### 24 **40-25 ASIC may suspend registration**

25 (1) ASIC may suspend the registration of a person as a liquidator if:

26 (a) the person is disqualified from managing corporations under  
27 Part 2D.6 of this Act, or under a law of an external Territory  
28 or a law of a foreign country; or

29 (b) the person ceases to have:

# EXPOSURE DRAFT

## Schedule 2 Amendments relating to the Insolvency Practice Schedule (Corporations)

### Part 1 Insolvency Practice Schedule (Corporations)

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- 1 (i) adequate and appropriate professional indemnity  
2 insurance; or  
3 (ii) adequate and appropriate fidelity insurance;  
4 against the liabilities that the person may incur working as a  
5 registered liquidator; or  
6 (c) the person's registration as a trustee under the *Bankruptcy*  
7 *Act 1966* has been cancelled or suspended, other than in  
8 compliance with a written request by the person to cancel or  
9 suspend the registration; or  
10 (d) if the Court has made an order under section 90-15 that the  
11 person repay remuneration—the person has failed to repay  
12 the remuneration; or  
13 (e) the person has been convicted of an offence involving fraud  
14 or dishonesty; or  
15 (f) the person lodges a request with ASIC in the approved form  
16 to have the registration suspended.
- 17 (2) Nothing in this section affects the operation of Part VIIC of the  
18 *Crimes Act 1914*.
- 19 Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain  
20 circumstances, relieve persons from the requirement to disclose spent  
21 convictions and require persons aware of such convictions to disregard  
22 them.

#### 23 **40-30 ASIC may cancel registration**

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

- 1 (d) if the Court has made an order under section 90-15 that the  
2 person repay remuneration—the person has failed to repay  
3 the remuneration; or  
4 (e) the person has been convicted of an offence involving fraud  
5 or dishonesty; or  
6 (f) the person lodges a request with ASIC in the approved form  
7 to have the registration cancelled.

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

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

## 14 **40-35 Notice of suspension or cancellation**

### 15 *Application of this section*

- 16 (1) This section applies if ASIC decides under section 40-25 or 40-30  
17 to suspend or cancel the registration of a person as a liquidator.

### 18 *ASIC must give notice of decision*

- 19 (2) ASIC must, within 10 business days after making the decision,  
20 give the person a written notice setting out the decision, and the  
21 reasons for the decision.

### 22 *When decision comes into effect*

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

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

- 26 (4) A failure by ASIC to give the notice under subsection (2) within 10  
27 business days does not affect the validity of the decision.

# EXPOSURE DRAFT

Schedule 2 Amendments relating to the Insolvency Practice Schedule (Corporations)

Part 1 Insolvency Practice Schedule (Corporations)

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

2 **40-40 ASIC may give a show-cause notice**

- 3 (1) ASIC may give a registered liquidator notice in writing asking the  
4 liquidator to give ASIC a written explanation why the liquidator  
5 should continue to be registered, if ASIC believes that:
- 6 (a) the liquidator no longer has the qualifications, experience,  
7 knowledge and abilities prescribed under  
8 paragraph 20-20(4)(a); or
  - 9 (b) the liquidator has committed an act of bankruptcy, within the  
10 meaning of the *Bankruptcy Act 1966* or a corresponding law  
11 of an external Territory or a foreign country; or
  - 12 (c) the liquidator is disqualified from managing corporations  
13 under Part 2D.6 of this Act, or under a law of an external  
14 Territory or a law of a foreign country; or
  - 15 (d) the liquidator has ceased to have:
    - 16 (i) adequate and appropriate professional indemnity  
17 insurance; or
    - 18 (ii) adequate and appropriate fidelity insurance;  
19 against the liabilities that the person may incur working as a  
20 registered liquidator; or
  - 21 (e) the liquidator has breached a current condition imposed on  
22 the liquidator; or
  - 23 (f) the liquidator has contravened a provision of this Act; or
  - 24 (g) the liquidator has been appointed to act as a reviewing  
25 liquidator under Subdivision C of Division 90 of this  
26 Schedule, and has failed to properly exercise the powers or  
27 perform the duties of a reviewing liquidator; or
  - 28 (h) the liquidator's registration as a trustee under the *Bankruptcy*  
29 *Act 1966* has been cancelled or suspended, other than in  
30 compliance with a written request by the liquidator to cancel  
31 or suspend the registration; or
  - 32 (i) if the Court has made an order under section 90-15 that the  
33 liquidator repay remuneration—the liquidator has failed to  
34 repay the remuneration; or
  - 35 (j) the liquidator has been convicted of an offence involving  
36 fraud or dishonesty; or
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- 1 (k) the liquidator is permanently or temporarily unable to  
2 perform the functions and duties of a liquidator because of  
3 physical or mental incapacity; or  
4 (l) the liquidator has failed to carry out adequately and properly  
5 (whether in Australia or in an external Territory or in a  
6 foreign country):  
7 (i) the duties of a liquidator; or  
8 (ii) any other duties or functions that a registered liquidator  
9 is required to carry out under a law of the  
10 Commonwealth or of a State or Territory, or the general  
11 law; or  
12 (m) the liquidator is not a fit and proper person; or  
13 (n) the liquidator is not resident in Australia.
- 14 (2) A notice under subsection (1) is not a legislative instrument.
- 15 (3) Nothing in this section affects the operation of Part VIIC of the  
16 *Crimes Act 1914*.
- 17 Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain  
18 circumstances, relieve persons from the requirement to disclose spent  
19 convictions and require persons aware of such convictions to disregard  
20 them.

## 21 **40-45 ASIC may convene a committee**

- 22 (1) ASIC may convene a committee to make a decision of a kind  
23 mentioned in section 40-55 in relation to a registered liquidator, or  
24 registered liquidators.
- 25 (2) The committee must consist of:  
26 (a) ASIC; and  
27 (b) a registered liquidator chosen by a prescribed body; and  
28 (c) a person appointed by the Minister.
- 29 Note 1: Section 50-5 sets out the knowledge and experience that a prescribed  
30 body must be satisfied a person has before making an appointment  
31 under paragraph (2)(b).
- 32 Note 2: Section 50-10 sets out the matters of which the Minister must be  
33 satisfied before making an appointment under paragraph (2)(c).

# EXPOSURE DRAFT

Schedule 2 Amendments relating to the Insolvency Practice Schedule (Corporations)

Part 1 Insolvency Practice Schedule (Corporations)

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1 **40-50 ASIC may refer matters to the committee**

2 ASIC may refer a registered liquidator to a committee convened  
3 under section 40-45 if ASIC:

- 4 (a) gives the liquidator a notice under section 40-40 (a  
5 show-cause notice); and  
6 (b) either:  
7 (i) does not receive an explanation within 20 business days  
8 after the notice is given; or  
9 (ii) is not satisfied by the explanation.

10 **40-55 Decision of the committee**

- 11 (1) If a registered liquidator is referred to a committee under  
12 section 40-50, the committee must decide one or more of the  
13 following:  
14 (a) that the liquidator should continue to be registered;  
15 (b) that the liquidator's registration should be suspended for a  
16 period, or until the occurrence of an event, specified in the  
17 decision;  
18 (c) that the liquidator's registration should be cancelled;  
19 (d) that ASIC should direct the liquidator not to accept any  
20 further appointments as liquidator, or not to accept any  
21 further appointments as liquidator during the period specified  
22 in the decision;  
23 (e) that the liquidator should be publicly admonished or  
24 reprimanded;  
25 (f) that a condition specified in the decision should be imposed  
26 on the liquidator;  
27 (g) that a condition should be imposed on all other registered  
28 liquidators that they must not allow the liquidator to carry out  
29 any of the functions or duties, or exercise any of the powers,  
30 of a registered liquidator on their behalf (whether as  
31 employee, agent, consultant or otherwise) for a period  
32 specified in the decision of no more than 10 years;  
33 (h) that ASIC should publish specified information in relation to  
34 the committee's decision and the reasons for that decision.

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- 1 (2) Without limiting paragraph (1)(f), conditions imposed under that  
2 paragraph may include one or more of the following:  
3 (a) a condition that the liquidator engage in, or refrain from  
4 engaging in, specified conduct;  
5 (b) a condition that the liquidator engage in, or refrain from  
6 engaging in, specified conduct except in specified  
7 circumstances;  
8 (c) a condition that the liquidator publish specified information;  
9 (d) a condition that the liquidator notify a specified person or  
10 class of persons of specified information;  
11 (e) a condition that the liquidator publish a specified statement;  
12 (f) a condition that the liquidator make a specified statement to a  
13 specified person or class of persons.
- 14 (3) In making its decision, the committee may have regard to:  
15 (a) any information provided to the committee by ASIC; and  
16 (b) any explanation given by the liquidator; and  
17 (c) any other information given by the liquidator to the  
18 committee; and  
19 (d) if the liquidator is or was also a registered trustee under the  
20 *Bankruptcy Act 1966*—any information in relation to the  
21 liquidator given to the committee by the Inspector-General in  
22 Bankruptcy or a committee convened under the Insolvency  
23 Practice Schedule (Bankruptcy); and  
24 (e) any other matter that the committee considers relevant.

## 25 **40-60 Committee to report**

- 26 The committee must give the registered liquidator and ASIC a  
27 report setting out:  
28 (a) the committee's decision in relation to the liquidator; and  
29 (b) the committee's reasons for that decision; and  
30 (c) if the committee decides under paragraph 40-55(1)(f) that the  
31 liquidator should be registered subject to a condition:  
32 (i) the condition; and  
33 (ii) the committee's reasons for imposing the condition; and

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

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- 1 (d) if the committee decides under paragraph 40-55(1)(g) that a  
2 condition should be imposed on all other registered  
3 liquidators in relation to the liquidator:  
4 (i) the condition; and  
5 (ii) the committee's reasons for imposing the condition.

6 **40-65 ASIC must give effect to the committee's decision**

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

8 **Subdivision F—Lifting or shortening suspension**

9 **40-70 Application to lift or shorten suspension**

10 *Application of this section*

- 11 (1) This section applies if a person's registration as a liquidator has  
12 been suspended.

13 *Suspended liquidator may apply to ASIC*

- 14 (2) The person may apply to ASIC:  
15 (a) for the suspension to be lifted; or  
16 (b) for the period of the suspension to be shortened.  
17 (3) The application must be lodged with ASIC in the approved form.  
18 (4) The application is properly made if subsection (3) is complied  
19 with.

20 **40-75 ASIC may convene a committee to consider applications**

- 21 (1) ASIC may convene a committee for the purposes of considering an  
22 application, or applications, made under section 40-70.  
23 (2) The committee must consist of:  
24 (a) ASIC; and  
25 (b) a registered liquidator chosen by a prescribed body; and  
26 (c) a person appointed by the Minister.

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- 1 Note 1: Section 50-5 sets out the knowledge and experience that a prescribed  
2 body must be satisfied a person has before making an appointment  
3 under paragraph (2)(b).
- 4 Note 2: Section 50-10 sets out the matters of which the Minister must be  
5 satisfied before making an appointment under paragraph (2)(c).

## 6 **40-80 ASIC must refer applications to a committee**

- 7 (1) ASIC must refer an application that is properly made under  
8 section 40-70 to a committee convened under section 40-75 for  
9 consideration.
- 10 (2) ASIC must do so within 3 months after receiving the application.

## 11 **40-85 Committee to consider applications**

- 12 (1) If an application is referred to a committee, the committee must  
13 consider the application.
- 14 (2) Unless the applicant otherwise agrees, the committee must  
15 interview the applicant for the purposes of considering the  
16 application.
- 17 (3) Within 10 business days after interviewing the applicant or  
18 obtaining the agreement of the applicant as referred to in  
19 subsection (2), the committee must:
- 20 (a) decide whether the suspension should be lifted, or the period  
21 of the suspension shortened; and
- 22 (b) if the period of the suspension is to be shortened—specify  
23 when the suspension is to end.

## 24 **40-90 Committee to report**

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

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1 **40-95 Committee's decision given effect**

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

5 **Subdivision G—Action initiated by industry body**

6 **40-100 Notice by industry bodies of possible grounds for disciplinary  
7 action**

8 *Industry body may lodge notice*

- 9 (1) An industry body may lodge with ASIC a notice in the approved  
10 form (an *industry notice*):
- 11 (a) stating that the body reasonably suspects that there are  
12 grounds for ASIC:
- 13 (i) to suspend the registration of a registered liquidator  
14 under section 40-25; or
- 15 (ii) to cancel the registration of a registered liquidator under  
16 section 40-30; or
- 17 (iii) to give a registered liquidator a notice under  
18 section 40-40 (a show-cause notice); or
- 19 (iv) to impose a condition on a registered liquidator under  
20 another provision of this Schedule; and
- 21 (b) identifying the registered liquidator; and
- 22 (c) including the information and copies of any documents upon  
23 which the suspicion is founded.

24 *ASIC must consider information and documents*

- 25 (2) ASIC must consider the information and the copies of any  
26 documents included with the industry notice.

27 *ASIC must give notice if no action to be taken*

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



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1                                    *45 business days to consider and decide*

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

7                                    *ASIC not precluded from taking action*

8                    (5) ASIC is not precluded from:  
9                                    (a) suspending the registration of a registered liquidator under  
10                                    section 40-25; or  
11                                    (b) cancelling the registration of a registered liquidator under  
12                                    section 40-30; or  
13                                    (c) giving a registered liquidator a notice under section 40-40 (a  
14                                    show-cause notice); or  
15                                    (d) imposing a condition on a registered liquidator under another  
16                                    provision of this Schedule; and  
17                                    wholly or partly on the basis of information or a copy of a  
18                                    document included with the industry notice, merely because ASIC  
19                                    has given a notice under subsection (3) in relation to the matters  
20                                    raised by the industry notice.

21                                    *Notice to industry body if ASIC takes action*

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

26                                    *Notices are not legislative instruments*

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

## 28                    **40-105 No liability for notice given in good faith etc.**

29                    (1) An industry body is not liable civilly, criminally or under any  
30                                    administrative process for giving a notice under  
31                                    subsection 40-100(1) if:  
32                                    (a) the body acted in good faith in giving the notice; and

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- 1 (b) the suspicion that is the subject of the notice is a reasonable  
2 suspicion.
- 3 (2) A person who, in good faith, makes a decision as a result of which  
4 the industry body gives a notice under subsection 40-100(1) is not  
5 liable civilly, criminally or under any administrative process for  
6 making the decision.
- 7 (3) A person who, in good faith, gives information or a document to an  
8 industry body that is included, or a copy of which is included, in a  
9 notice under subsection 40-100(1) is not liable civilly, criminally  
10 or under any administrative process for giving the information or  
11 document.

## 12 **40-110 Meaning of *industry bodies***

13 The Insolvency Practice Rules may prescribe *industry bodies* for  
14 the purposes of this section.

## 15 **Subdivision H—Consequences of certain disciplinary and other 16 action**

### 17 **40-111 Appointment of another liquidator if liquidator’s 18 registration is suspended or cancelled**

- 19 (1) If:
- 20 (a) the registration of a liquidator is suspended or cancelled  
21 under this Division; and
- 22 (b) the liquidator is conducting the external administration of a  
23 company at the time the registration is suspended or  
24 cancelled;
- 25 ASIC must, in writing, appoint another registered liquidator to  
26 conduct the external administration of the company.
- 27 (2) Subsection (1) does not apply to:
- 28 (a) a liquidator appointed by the Court; or  
29 (b) a winding up ordered by ASIC under section 489EA; or  
30 (c) a members’ voluntary winding up.



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

3 **45-5 Court may make orders about costs**

- 4 (1) Without limiting section 45-1, the Court may make orders in  
5 relation to a registered liquidator that deal with the costs of a  
6 matter considered by the Court.
- 7 (2) Those orders may include an order that:  
8 (a) the registered liquidator is personally liable for some or all of  
9 those costs; and  
10 (b) the registered liquidator is not entitled to be reimbursed by a  
11 company or its creditors in relation to some or all of those  
12 costs.
- 13 (3) This section does not limit the Court's powers under any other  
14 provision of this Act, or under any other law.

15 **Division 50—Committees under this Part**

16 **50-1 Simplified outline of this Division**

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

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

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

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

3 **50-5 Prescribed body appointing a person to a committee**

4 *Application of this section*

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

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

- 9 (2) The prescribed body is to appoint a person as a member of the  
10 committee only if the prescribed body is satisfied that the person  
11 has:  
12 (a) if any knowledge or experience is prescribed in relation to  
13 appointments of the kind to be made—that knowledge or  
14 experience; or  
15 (b) if no knowledge or experience is prescribed in relation to  
16 appointments of the kind to be made—the knowledge and  
17 experience necessary to carry out the person’s functions as a  
18 member of the committee if appointed.

19 **50-10 Minister appointing a person to a committee**

20 *Application of this section*

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

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

- 24 (2) The Minister is to appoint a person as a member of the committee  
25 only if the Minister is satisfied that the person is qualified for  
26 appointment by virtue of his or her knowledge of, or experience in,  
27 one or more of the following fields:  
28 (a) business;  
29 (b) law, including the law relating to corporate insolvency;  
30 (c) economics;
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## Schedule 2 Amendments relating to the Insolvency Practice Schedule (Corporations)

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- 1 (d) accounting;  
2 (e) public policy relating to corporate insolvency;  
3 (f) administration of companies, including insolvent companies.

#### 4 *Delegation of power to appoint*

- 5 (3) The Minister may, in writing, delegate the Minister's powers to  
6 appoint a person to a committee under this Part to:  
7 (a) ASIC; or  
8 (b) a member of ASIC (within the meaning of section 9 of the  
9 *Australian Securities and Investments Commission Act*  
10 *2001*); or  
11 (c) a staff member of ASIC who:  
12 (i) is an SES employee or acting SES employee; or  
13 (ii) is an APS employee who holds, or is acting in, an  
14 Executive Level 2 position; or  
15 (iii) holds, or is acting in, an office or position that is  
16 equivalent to an SES employee, or an Executive Level  
17 2.  
18 (4) In exercising powers under a delegation, the delegate must comply  
19 with any directions of the Minister.

#### 20 **50-15 Single committee may consider more than one matter**

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

- 23 (a) a matter or matters relating to one applicant for registration  
24 as a liquidator;  
25 (b) a matter or matters relating to more than one applicant for  
26 registration as a liquidator;  
27 (c) a matter or matters relating to one registered liquidator;  
28 (d) a matter or matters relating to more than one registered  
29 liquidator.

#### 30 **50-20 Ongoing consideration of matters by committee**

31 If a committee is convened under this Part to consider a matter:

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- 1 (a) the committee's powers, functions and duties in relation to  
2 the matter are not affected by a change in the membership of  
3 the committee; and  
4 (b) the committee may adjourn its consideration of the matter,  
5 and may do so more than once; and  
6 (c) the matter may be transferred to another committee with  
7 powers, functions and duties under this Part in relation to  
8 matters of that kind.

## 9 **50-25 Procedure and other rules relating to committees**

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

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

## 23 **50-30 Remuneration of committee members**

- 24 (1) A member of a committee convened under this Part is entitled to  
25 receive the remuneration that is determined by the Remuneration  
26 Tribunal. If no determination of that remuneration by the Tribunal  
27 is in operation, the member is entitled to receive such remuneration  
28 as the Minister determines in writing.
- 29 (2) A member is entitled to receive such allowances as the Minister  
30 determines in writing.
- 31 (3) This section has effect subject to the *Remuneration Tribunal Act*  
32 *1973*.

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1 **50-35 Committee must only use information etc. for purposes for**  
2 **which disclosed**

3 *Offence*

- 4 (1) A person commits an offence if:  
5 (a) the person is or was a member of a committee convened  
6 under this Part; and  
7 (b) information or a document is or was disclosed to the person  
8 for the purposes of exercising powers or performing  
9 functions as a member of the committee; and  
10 (c) the person uses or discloses the information or document for  
11 any other purpose.

12 Penalty: 50 penalty units.

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

- 15 (2) Subsection (1) does not apply if the information is disclosed:  
16 (a) to the Inspector-General in Bankruptcy to assist the  
17 Inspector-General to exercise his or her powers or perform  
18 his or her functions under the *Bankruptcy Act 1966*; or  
19 (b) to a committee convened under Part 2 of the Insolvency  
20 Practice Schedule (Bankruptcy) to assist the committee to  
21 exercise its powers or perform its functions under that Part;  
22 or  
23 (c) to another committee convened under this Part to assist the  
24 committee to exercise its powers or perform its functions  
25 under this Part; or  
26 (d) to enable or assist a body prescribed for the purposes of this  
27 paragraph to perform its disciplinary function in relation to  
28 its members; or  
29 (e) in order to enable or assist an authority or person in:  
30 (i) a State or Territory; or  
31 (ii) a foreign country;  
32 to perform or exercise a function or power that corresponds,  
33 or is analogous, to any of the committee's or ASIC's  
34 functions and powers; or
-



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Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
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1 (f) to a court or tribunal in relation to proceedings before the  
2 court or tribunal.

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

## 5 **Part 3—General rules relating to external** 6 **administrations**

### 7 **Division 55—Introduction**

#### 8 **55-1 Simplified outline of this Part**

9 This Part sets out requirements for conducting the external  
10 administration of a company.

11 The main provisions deal with:

- 12 • the remuneration of the external administrator;
- 13 • the duties of the external administrator in handling the money  
14 and other property of the company;
- 15 • conflicts of interest;
- 16 • the duties of the external administrator to keep appropriate  
17 records, to report to ASIC and to give information, documents  
18 and reports to creditors, members of the company and others;
- 19 • creditor and company meetings;
- 20 • the creation and conduct of a committee to monitor the  
21 external administration (called a committee of inspection);
- 22 • the rights of creditors to review the external administration;
- 23 • the rights of creditors to remove the external administrator and  
24 appoint another; and
- 25 • the review of the external administration by the Court.

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1 There are additional rules that apply to companies under external  
2 administration in Chapter 5 (for example, about appointment of  
3 external administrators) of this Act.

4 Companies in receivership are not covered in this Part (see  
5 generally Part 5.2 of this Act).

## 6 **Division 60—Remuneration and other benefits received by** 7 **external administrators**

### 8 **Subdivision A—Introduction**

#### 9 **60-1 Simplified outline of this Division**

##### 10 *Remuneration*

11 The external administrator of a company is entitled to receive  
12 remuneration for the necessary and proper work performed by the  
13 external administrator in relation to the external administration.

14 The amount of remuneration will usually be set under a  
15 remuneration determination. Remuneration determinations are  
16 made by:

- 17 • in a members voluntary winding up—the members;
- 18 • in most other cases—the creditors or the committee of  
19 inspection (if there is one).

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

24 The remuneration of provisional liquidators is determined by the  
25 Court.

26 The Court may review the remuneration of the external  
27 administrator of a company and may also make orders under

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Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
Insolvency Practice Schedule (Corporations) **Part 1**

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1 Division 90 about remuneration (including ordering repayment of  
2 remuneration).

3 The external administrator of a company must not give up  
4 remuneration to another person.

5 *Other benefits*

6 The external administrator of a company must not:

7 • employ a related entity without the creditors' consent;

8 • purchase any assets of the company; or

9 • get any other benefits or profits from the administration.

## 10 **Subdivision B—Remuneration of external administrators—** 11 **general rules**

### 12 **60-2 Application of this Subdivision**

13 This Subdivision applies in relation to an external administrator of  
14 a company other than:

- 15 (a) a provisional liquidator; or  
16 (b) a liquidator appointed by ASIC under section 489EC  
17 (winding up by ASIC).

18 Note: For the remuneration of provisional liquidators, see Subdivision C of  
19 this Division. For the remuneration of liquidators appointed by ASIC  
20 under section 489EC, see Subdivision D of this Division.

### 21 **60-5 External administrator's remuneration**

22 *Remuneration in accordance with remuneration determinations*

- 23 (1) An external administrator of a company is entitled to receive  
24 remuneration for the necessary and proper work performed by the  
25 external administrator in relation to the external administration, in  
26 accordance with the remuneration determinations (if any) for the  
27 external administrator (see section 60-10).

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

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1                    *Remuneration for external administrators if no remuneration*  
2                    *determination made*

3                    (2) If no remuneration determination is made in relation to the  
4                    necessary and proper work performed by the external administrator  
5                    of a company in relation to the external administration, the  
6                    administrator is entitled to receive reasonable remuneration for the  
7                    work. However, that remuneration must not exceed the maximum  
8                    default amount.

9                    **60-10 Remuneration determinations**

10                    *Remuneration determinations*

11                    (1) A determination, specifying remuneration that an external  
12                    administrator of a company (other than an external administrator in  
13                    a members' voluntary winding up) is entitled to receive for  
14                    necessary and proper work performed by the external administrator  
15                    in relation to the external administration, may be made:

- 16                    (a) by resolution of the creditors; or  
17                    (b) if there is a committee of inspection and a determination is  
18                    not made under paragraph (a)—by the committee of  
19                    inspection; or  
20                    (c) if a determination is not made under paragraph (a) or (b)—by  
21                    the Court.

22                    Note:            For determinations made by the Court, see also section 60-12 (matters  
23                    to which the Court must have regard).

24                    (2) A determination, specifying remuneration that an external  
25                    administrator of a company in a members' voluntary winding up is  
26                    entitled to receive for necessary and proper work performed by the  
27                    external administrator in relation to the external administration,  
28                    may be made:

- 29                    (a) by resolution of the company at a general meeting; or  
30                    (b) if a determination is not made under paragraph (a)—by the  
31                    Court.

32                    Note:            For determinations made by the Court, see also section 60-12 (matters  
33                    to which the Court must have regard).

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- 1 (3) A determination under this section may specify remuneration that  
2 the external administrator is entitled to receive in either or both of  
3 the following ways:  
4 (a) by specifying an amount of remuneration;  
5 (b) by specifying a method for working out an amount of  
6 remuneration.

7 *Remuneration on a time-cost basis*

- 8 (4) If a determination under this section specifies that the external  
9 administrator is entitled to receive remuneration worked out wholly  
10 or partly on a time-cost basis, the determination must include a cap  
11 on the amount of remuneration worked out on a time-cost basis  
12 that the external administrator is entitled to receive.

13 *More than one remuneration determination may be made*

- 14 (5) To avoid doubt, more than one determination under this section  
15 may be made in relation to a particular external administrator of a  
16 company and a particular external administration of a company.

17 **60-11 Review of remuneration determinations**

18 *Review on application*

- 19 (1) Any of the following may apply to the Court for a review of a  
20 remuneration determination for an external administrator of a  
21 company:  
22 (a) ASIC;  
23 (b) the external administrator;  
24 (c) a person with a financial interest in the external  
25 administration;  
26 (d) if the company is under administration—an officer of the  
27 company.

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

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

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

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## Schedule 2 Amendments relating to the Insolvency Practice Schedule (Corporations)

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1 Note: See also section 60-12 (matters to which the Court must have regard).

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

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

- 4 (a) affirm the remuneration determination; or  
5 (b) vary the remuneration determination; or  
6 (c) set aside the remuneration determination and substitute  
7 another remuneration determination.

8 *Exception*

9 (5) Subsection (1) does not apply to a remuneration determination  
10 made by the Court.

### 11 **60-12 Matters to which the Court must have regard**

12 In making a remuneration determination under  
13 paragraph 60-10(1)(c) or (2)(b), or reviewing a remuneration  
14 determination under section 60-11, the Court must have regard to  
15 whether the remuneration is reasonable, taking into account any or  
16 all of the following matters:

- 17 (a) the extent to which the work performed by the external  
18 administrator was necessary and proper;  
19 (b) the extent to which the work likely to be performed by the  
20 external administrator is likely to be necessary and proper;  
21 (c) the period during which the work was, or is likely to be,  
22 performed by the external administrator;  
23 (d) the quality of the work performed, or likely to be performed,  
24 by the external administrator;  
25 (e) the complexity (or otherwise) of the work performed, or  
26 likely to be performed, by the external administrator;  
27 (f) the extent (if any) to which the external administrator was, or  
28 is likely to be, required to deal with extraordinary issues;  
29 (g) the extent (if any) to which the external administrator was, or  
30 is likely to be, required to accept a higher level of risk or  
31 responsibility than is usually the case;  
32 (h) the value and nature of any property dealt with, or likely to  
33 be dealt with, by the external administrator;

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- 1 (i) the number, attributes and conduct, or the likely number,  
2 attributes and conduct, of the creditors;
- 3 (j) if the remuneration is worked out wholly or partly on a  
4 time-cost basis—the time properly taken, or likely to be  
5 properly taken, by the external administrator in performing  
6 the work;
- 7 (k) whether the external administrator was, or is likely to be,  
8 required to deal with:
- 9 (i) one or more receivers; or  
10 (ii) one or more receivers and managers;
- 11 (l) if:
- 12 (i) a review has been carried out under Subdivision C of  
13 Division 90 (review by another registered liquidator)  
14 into a matter that relates to the external administration;  
15 and  
16 (ii) the matter is, or includes, remuneration of the external  
17 administrator;
- 18 the contents of the report on the review that relate to that  
19 matter;
- 20 (m) any other relevant matters.

## 21 **60-15 Maximum default amount**

### 22 *Maximum default amount*

- 23 (1) The **maximum default amount** for an external administrator of a  
24 company is an amount (exclusive of GST) worked out as follows:
- 25 (a) if the external administrator is appointed in relation to the  
26 external administration of the company during the financial  
27 year beginning on 1 July 2015—\$5,000;
- 28 (b) if the external administrator is appointed in relation to the  
29 external administration of the company during a financial  
30 year beginning on or after 1 July 2016—the greater of:
- 31 (i) the amount worked out by multiplying the indexation  
32 factor for the financial year (worked out under  
33 subsections (3) and (4)) by the maximum default  
34 amount for an external administrator appointed during  
35 the previous financial year; and

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

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- 1 (ii) the amount (if any) prescribed for the purposes of this  
2 subparagraph.

3 *Rounding*

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

6 *Indexation factor*

- 7 (3) Subject to subsection (4), the *indexation factor* for a financial year  
8 is the number worked out by dividing the index number for the  
9 March quarter immediately preceding that financial year by the  
10 index number for the March quarter immediately preceding that  
11 first-mentioned March quarter.
- 12 (4) If an indexation factor worked out under subsection (3) would be  
13 less than 1, the indexation factor is to be increased to 1.

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

- 16 (5) In working out the indexation factor:  
17 (a) use only the index numbers published in terms of the most  
18 recently published index reference period for the Consumer  
19 Price Index; and  
20 (b) disregard index numbers published in substitution for  
21 previously published index numbers (except where the  
22 substituted numbers are published to take account of changes  
23 in the index reference period).

24 *Definition—index number*

- 25 (6) In this section:

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



# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
Insolvency Practice Schedule (Corporations) **Part 1**

---

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

2 **60-16 Remuneration of provisional liquidators**

- 3 (1) A provisional liquidator is entitled to receive such remuneration,  
4 by way of percentage or otherwise, as is:  
5 (a) determined by the Court; or  
6 (b) if:  
7 (i) no determination by the Court is in force; and  
8 (ii) there is a committee of inspection;  
9 determined by agreement between the liquidator and the  
10 committee of inspection; or  
11 (c) if:  
12 (i) no determination by the Court is in force; and  
13 (ii) there is no committee of inspection or the liquidator and  
14 the committee of inspection fail to agree;  
15 determined by resolution of the creditors.
- 16 (2) Sections 60-11 and 60-12 (Court review) apply in relation to a  
17 determination mentioned in this section in the same way as they  
18 apply to a remuneration determination made under section 60-10.

19 **Subdivision D—Remuneration of liquidators in winding up by**  
20 **ASIC**

21 **60-17 Remuneration of liquidators in winding up by ASIC**

22 If ASIC orders under section 489EA that a company be wound up,  
23 ASIC may determine the remuneration that the liquidator is  
24 entitled to receive.

# EXPOSURE DRAFT

**Schedule 2** Amendments relating to the Insolvency Practice Schedule (Corporations)  
**Part 1** Insolvency Practice Schedule (Corporations)

---

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

3 **60-20 External administrator must not derive profit or advantage**  
4 **from the administration of the company**

5 *Deriving profit or advantage from the company*

- 6 (1) An external administrator of a company must not directly or  
7 indirectly derive any profit or advantage from the external  
8 administration of the company.

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

- 10 (2) To avoid doubt, an external administrator of a company is taken to  
11 derive a profit or advantage from the external administration of the  
12 company if:  
13 (a) the external administrator directly or indirectly derives a  
14 profit or advantage from a transaction (including a sale or  
15 purchase) entered into for or on account of the company; or  
16 (b) the external administrator directly or indirectly derives a  
17 profit or advantage from a creditor or member of the  
18 company; or  
19 (c) a related entity of the external administrator directly or  
20 indirectly derives a profit or advantage from the external  
21 administration of the company.

22 *Exceptions*

- 23 (3) Subsection (1) does not apply to the extent that:  
24 (a) another provision of this Act, or of another law, requires or  
25 permits the external administrator to derive the profit or  
26 advantage; or  
27 (b) the Court gives leave to the external administrator to derive  
28 the profit or advantage.

29 Note: Subsection (1) would not, for example, prevent the external  
30 administrator from recovering remuneration for the necessary and  
31 proper work performed by the external administrator in relation to the  
32 external administration of the company, as the external administrator  
33 is permitted to do so under other provisions of this Act.

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- 1 (4) Despite paragraph (2)(c), subsection (1) does not apply to the  
2 extent that:
- 3 (a) the profit or advantage arises because the external  
4 administrator employs or engages a person to provide  
5 services in connection with the external administration of the  
6 company; and
- 7 (b) the person is a related entity of the external administrator;  
8 and
- 9 (c) either:
- 10 (i) the external administrator does not know, and could not  
11 reasonably be expected to know, that the person  
12 employed or engaged is a related entity of the external  
13 administrator; or
- 14 (ii) the creditors consent to the related entity being  
15 employed or engaged.

- 16 (5) Subsection (1) does not apply to the extent that the profit or  
17 advantage is a payment that:
- 18 (a) is made to the external administrator by or on behalf of the  
19 Commonwealth or an agency or authority of the  
20 Commonwealth; and
- 21 (b) is of a kind prescribed.

## 22 *Offence*

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

27 **Penalty:** 50 penalty units.

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

## 31 *Effect of contravention of this section*

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

# EXPOSURE DRAFT

Schedule 2 Amendments relating to the Insolvency Practice Schedule (Corporations)

Part 1 Insolvency Practice Schedule (Corporations)

---

## 60-25 External administrator must not give up remuneration

*External administrator must not give up remuneration*

- (1) A person who is, or has been, the external administrator of a company must not:
- (a) make an arrangement for giving up; or
  - (b) give up;
- to any other person, any or all of the remuneration which the external administrator is entitled to receive under this Act in relation to the external administration of the company.

*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.

## Subdivision F—Remuneration and expenses for former external administrators

### 60-30 Remuneration for former external administrators

*Application of subsection (2)*

- (1) Subsection (2) applies if a person (the *former administrator*) ceases to be the external administrator of a company and another person (the *new administrator*) becomes the external administrator of the company.

*Former administrator may agree remuneration for work performed*

- (2) If:
- (a) the former administrator and the new administrator agree on the remuneration that the former administrator is entitled to receive for necessary and proper work performed by the former administrator in relation to the external administration of the company; and

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1 (b) the creditors, by resolution, endorse that agreement;  
2 the creditors are taken to have made a determination under  
3 section 60-10 specifying the agreed remuneration as the  
4 remuneration that the former administrator is entitled to receive for  
5 the work.

6 *Exception to section 60-25—former administrator does not give up*  
7 *remuneration by agreeing*

8 (3) For the purposes of section 60-25, the former administrator does  
9 not give up remuneration in relation to the external administration  
10 of the company even if the remuneration agreed and endorsed as  
11 mentioned in subsection (2) is less than the remuneration to which  
12 the former administrator might otherwise be entitled.

13 Note 1: Under section 60-25, the external administrator of a company must not  
14 give up remuneration.

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

17 *Application of subsection (5)*

18 (4) Subsection (5) applies if a person ceases to be a particular kind of  
19 external administrator of a company and becomes another kind of  
20 external administrator of the company.

21 Note: For example, a person may cease to be the administrator of a company  
22 because creditors resolve under paragraph 439C(c) that the company  
23 be wound up and instead become the liquidator of the company under  
24 section 446A.

25 *Remuneration may be determined after role changes*

26 (5) The fact that the person has ceased to be a particular kind of  
27 external administrator of the company does not limit the power of  
28 the creditors by resolution under section 60-10 to determine the  
29 remuneration that the person is entitled to receive for necessary and  
30 proper work performed by the person as that kind of external  
31 administrator of the company.

# EXPOSURE DRAFT

Schedule 2 Amendments relating to the Insolvency Practice Schedule (Corporations)

Part 1 Insolvency Practice Schedule (Corporations)

---

1     **60-35 Expenses of former external administrators**

2                     *Application of this section*

3             (1) This section applies if a person (the *former administrator*) ceases  
4             to be the external administrator of a company and another person  
5             (the *new administrator*) becomes the external administrator of the  
6             company.

7                     *Former administrator may agree expenses*

8             (2) If:

9                     (a) the former administrator and the new administrator agree on  
10                     the expenses properly incurred by the former administrator in  
11                     preserving, realising or getting in property of the company, or  
12                     in carrying on the company's business; and

13                     (b) the creditors, by resolution, endorse that agreement;  
14             then, for the purposes of paragraph 556(1)(a) (priority payments),  
15             those expenses are taken to be expenses properly incurred by the  
16             former administrator in preserving, realising or getting in property  
17             of the company, or in carrying on the company's business.

18     **Division 65—Funds handling**

19     **65-1 Simplified outline of this Division**

20  
21  
22  
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28

The external administrator of a company has duties to:

- promptly pay all company money into an account (called an administration account);
- promptly deposit instruments such as securities with the bank at which the account is held;
- keep the account separate and not pay any money that is not company money into the account; and
- only pay money out of the account if it is for a legitimate purpose.

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1 The external administrator of a company may keep a single  
2 account for a group of related companies (called a pooled group).

3 People with a financial interest in the external administration of a  
4 company (such as creditors) may ask the Court to give directions to  
5 the external administrator about the way money and other property  
6 of the company is to be handled.

7 If the external administrator of a company does not comply with  
8 this Division, the external administrator may have to pay penalties,  
9 be paid less remuneration or be removed as external administrator.

## 10 **65-5 The administration account**

11 *External administrator must maintain an administration account*

- 12 (1) The external administrator of a company must maintain a bank  
13 account in relation to administration of the company.
- 14 (2) The external administrator must ensure that the bank account  
15 complies with the requirements (if any) prescribed.
- 16 (3) A bank account maintained in relation to the external  
17 administration of a company that complies with the requirements  
18 (if any) prescribed is the **administration account** for the company.

19 *Qualification—pooled groups*

- 20 (4) The external administrator of a company is taken to comply with  
21 the requirements in subsection (1) and (2) in relation to the  
22 administration of a company if:
- 23 (a) the external administrator maintains a bank account, that  
24 complies with the requirements (if any) prescribed, in  
25 relation to a pooled group; and
- 26 (b) the company is a member of the pooled group.
- 27 In that case, that account is the **administration account** for the  
28 company.

# EXPOSURE DRAFT

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

**Part 1** Insolvency Practice Schedule (Corporations)

---

1                                    *Otherwise, one administration account for each company under*  
2                                    *external administration*

3                    (5) The external administrator of a company does not comply with the  
4                    requirements in subsection (1) and (2) in relation to the external  
5                    administration of a company if the external administrator maintains  
6                    the same bank account in relation to the company and one or more  
7                    other persons in circumstances not covered by subsection (4).

8                                    *Exception*

9                    (6) If the Court gives a direction that is inconsistent with  
10                    subsection (1), (2) or (4), the relevant subsection does not apply to  
11                    the extent of the inconsistency.

12                                    *Offence*

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

17                    Penalty: 50 penalty units.

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

## 20        **65-10 External administrator must pay all money into the** 21        **administration account**

22                                    *External administrator must pay money into the administration*  
23                                    *account*

24                    (1) The external administrator of a company must pay all money  
25                    received by the external administrator on behalf of, or in relation  
26                    to, the company into the administration account for the company  
27                    within 5 days after receipt.

28                                    *Exception*

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

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# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
Insolvency Practice Schedule (Corporations) **Part 1**

---

1                    *Offence*

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

6                    Penalty: 50 penalty units.

7                    Note:            A defendant bears an evidential burden in relation to the matter in

8                                 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

9                    **65-15 External administrator must not pay other money into the**

10                    **administration account**

11                    *External administrator must not pay other money into the*

12                    *administration account*

- 13                    (1) The external administrator of a company must not pay any money
- 14                         into the administration account for the company if it is not received
- 15                         by the external administrator on behalf of, or in relation to:
- 16                                 (a) the company; or
- 17                                 (b) if the company is a member of a pooled group—another
- 18                                         member of the pooled group.

19                    *Exception*

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

23                    *Offence*

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

28                    Penalty: 50 penalty units.

29                    Note:            A defendant bears an evidential burden in relation to the matter in

30                                 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

# EXPOSURE DRAFT

**Schedule 2** Amendments relating to the Insolvency Practice Schedule (Corporations)  
**Part 1** Insolvency Practice Schedule (Corporations)

---

1 **65-20 Consequences for failure to pay money into administration**  
2 **account**

3 *Application of this section*

- 4 (1) This section applies if:  
5 (a) an external administrator of a company:  
6 (i) is subject to a requirement under subsection 65-10(1)  
7 (paying money into administration account); and  
8 (ii) fails to comply with the requirement in relation to an  
9 amount of money; and  
10 (b) the amount exceeds:  
11 (i) \$50; or  
12 (ii) if another amount is prescribed—that other amount.

13 *Exception*

- 14 (2) Subsection (1) does not apply if, on the application of the external  
15 administrator of the company, the Court is satisfied that the  
16 external administrator had sufficient reason for failing to comply  
17 with the requirement in relation to the amount.

18 *External administrator must pay penalty on excess*

- 19 (3) The external administrator must, as a penalty, pay interest to the  
20 Commonwealth on the excess, worked out:  
21 (a) at the rate of 20% per year; or  
22 (b) if another rate is prescribed—at that other rate;  
23 for the period during which the external administrator fails to  
24 comply with the requirement.
- 25 (4) The external administrator is personally liable for, and is not  
26 entitled to be reimbursed out of the property of the company in  
27 relation to, the payment of that interest.

# EXPOSURE DRAFT

1     **65-25 Paying money out of administration account**

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

- 4             (1) An external administrator of a company must not pay any money  
5             out of the administration account for the company otherwise than:  
6                 (a) for purposes related to the external administration of the  
7                 company; or  
8                 (b) in accordance with this Act; or  
9                 (c) in accordance with a direction of the Court.

10                    *Offence*

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

15                    Penalty: 50 penalty units.

16     **65-30 Payments by cheque or electronic transfer**

- 17             (1) A payment out of the administration account for a company may  
18             be made by cheque or by electronic funds transfer.
- 19             (2) A cheque referred to in subsection (1) must:  
20                 (a) have the name of the company written on it; and  
21                 (b) be signed by the external administrator of the company.

22     **65-35 Receipts for payments into and out of the administration**  
23             **account**

- 24             (1) An external administrator of a company must issue a receipt for a  
25             payment into the administration account for the company if asked  
26             to do so by the person making the payment.
- 27             (2) An external administrator of a company must, wherever  
28             practicable, obtain a receipt for a payment made out of the  
29             administration account for the company.

# EXPOSURE DRAFT

Schedule 2 Amendments relating to the Insolvency Practice Schedule (Corporations)

Part 1 Insolvency Practice Schedule (Corporations)

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1       **65-40 Handling securities**

2                       *Securities must be deposited with administration account bank*

- 3               (1) An external administrator of a company must deposit in the bank  
4               with which the administration account for the company is held:  
5               (a) the negotiable instruments; and  
6               (b) any other securities;  
7               payable to the company or the external administrator as soon as  
8               practicable after they are received by the external administrator.

9                       *Exception*

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

13                      *Offence*

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

18                      Penalty: 5 penalty units.

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

21                      *Delivery of securities*

- 22              (3) The negotiable instruments or other security must be delivered out  
23              on the signed request of the external administrator.

24       **65-45 Handling of money and securities—Court directions**

- 25              (1) The Court may, on application, give directions regarding the  
26              payment, deposit or custody of:  
27              (a) money; and  
28              (b) negotiable instruments and other securities;  
29              that are payable to, or held by, an external administrator of a  
30              company.
-

# EXPOSURE DRAFT

- 1 (2) The Court may, on application, give directions authorising the  
2 external administrator of a company to make payments into and out  
3 of a special bank account.
- 4 (3) Without limiting subsection (2), the Court may:  
5 (a) authorise the payments for the time and on the terms it thinks  
6 fit; and  
7 (b) if the Court thinks the account is no longer required—at any  
8 time order it to be closed.
- 9 (4) A copy of an order under paragraph (3)(b) must be served by the  
10 external administrator on the bank with which the special bank  
11 account was opened.
- 12 (5) An application under this section may be made by:  
13 (a) a creditor; or  
14 (b) the company; or  
15 (c) the external administrator; or  
16 (d) any other person with a financial interest in the external  
17 administration of the company.

## 18 **65-50 Rules in relation to consequences for failure to comply with** 19 **this Division**

- 20 The Insolvency Practice Rules may provide for and in relation to:  
21 (a) the payment by an external administrator of a company of  
22 interest at such rate, on such amount and in respect of such  
23 period as is prescribed; and  
24 (b) disallowance of all or of such part as is prescribed of the  
25 remuneration of an external administrator of a company; and  
26 (c) the removal from office of an external administrator of a  
27 company by the Court; and  
28 (d) the payment by an external administrator of a company of  
29 any expenses occasioned by reason of his or her default;  
30 in cases where an external administrator contravenes or fails to  
31 comply with this Division (including Insolvency Practice Rules  
32 made under this Division).

# EXPOSURE DRAFT

Schedule 2 Amendments relating to the Insolvency Practice Schedule (Corporations)

Part 1 Insolvency Practice Schedule (Corporations)

---

1 **Division 70—Information**

2 **Subdivision A—Introduction**

3 **70-1 Simplified outline of this Division**

4

The external administrator of a company must:

5

• give annual reports of the administration (called annual administrative returns) to ASIC;

6

7

• give a report of the administration to ASIC when the administration ends;

8

9

• keep books of meetings and other company affairs;

10

• allow those books to be audited if required to do so;

11

• allow access to those books by creditors; and

12

• give creditors, members and others requested information, documents and reports relating to the administration.

13

14

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

15

16

17

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.

18

19

20

21

22

# EXPOSURE DRAFT

1 **Subdivision B—Administration returns**

2 **70-5 Annual administration return**

3 *Application of this section*

- 4 (1) This section applies if a person is the external administrator of a  
5 company during all or part of a financial year.
- 6 (2) However, this section does not apply if:
- 7 (a) the external administration of the company ends during the  
8 financial year; and
- 9 (b) the person is the external administrator of the company when  
10 the external administration of the company ends.

11 Note: If a person is the external administrator of a company when the  
12 external administration of the company ends, the person must instead  
13 lodge a return under section 70-6.

14 *Annual administration return to be lodged*

- 15 (3) The person must lodge a return in relation to the external  
16 administration of the company by the person during the year or  
17 part of the year (as the case requires).
- 18 (4) The return must:
- 19 (a) be in the approved form; and
- 20 (b) be lodged with ASIC within 3 months after the end of the  
21 financial year.

22 Note: Fees for lodging documents and late lodgement fees may be imposed  
23 under the *Corporations (Fees) Act 2001*.

24 *Notice of lodgement to be given*

- 25 (5) The person must give notice that the return has been lodged:
- 26 (a) in a members' voluntary winding up—to the members of the  
27 company; and
- 28 (b) in a creditors' voluntary winding up—to the creditors and  
29 contributories; and
- 30 (c) in a court-ordered winding up—to the creditors and  
31 contributories; and

# EXPOSURE DRAFT

## Schedule 2 Amendments relating to the Insolvency Practice Schedule (Corporations)

### Part 1 Insolvency Practice Schedule (Corporations)

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- 1 (d) if the external administrator is appointed as a provisional  
2 liquidator—to the Court; and  
3 (e) if the company is under administration or has executed a  
4 deed of company arrangement—to the company;  
5 when next forwarding any report, notice of meeting, notice of call  
6 or dividend.

7 Note: For notification, see section 600G.

#### 8 *Returns for pooled groups*

- 9 (6) If 2 or more companies are members of a pooled group, then the  
10 returns under subsection (3) for those companies may be set out in  
11 the same document.

### 12 **70-6 End of administration return**

#### 13 *Application of this section*

- 14 (1) This section applies if the external administration of a company  
15 ends during a financial year.

#### 16 *End of administration return to be lodged*

- 17 (2) The person who is the external administrator of the company when  
18 the external administration of the company ends (the ***last external***  
19 ***administrator***) must lodge a return in relation to the external  
20 administration of the company.

- 21 (3) The return must:

- 22 (a) be in the approved form; and  
23 (b) be lodged with ASIC within 1 month after the end of the  
24 financial year.

25 Note: Fees for lodging documents and late lodgement fees may be imposed  
26 under the *Corporations (Fees) Act 2001*.

#### 27 *Notice of lodgement to be given*

- 28 (5) The last external administrator must give notice that the return has  
29 been lodged to a person mentioned in subsection (6), if that person  
30 requests in writing that the last external administrator give the  
31 person such a notice.
-



# EXPOSURE DRAFT

1 Note: For notification, see section 600G.

- 2 (6) The persons who may request such a notice are:
- 3 (a) in a members' voluntary winding up—the members of the  
4 company; and
- 5 (b) in a creditors' voluntary winding up—the creditors and  
6 contributories; and
- 7 (c) in a court-ordered winding up—the creditors and  
8 contributories; and
- 9 (d) if the external administrator is appointed as a provisional  
10 liquidator—the Court; and
- 11 (e) if the company is under administration or has executed a  
12 deed of company arrangement—the company.

13 Note: For notification, see section 600G.

## 14 *Returns for pooled groups*

- 15 (7) If 2 or more companies are members of a pooled group, then the  
16 returns under subsection (2) for those companies may be set out in  
17 the same document.

## 18 **Subdivision C—Record-keeping**

### 19 **70-10 Administration books**

#### 20 *External administrator must keep proper books*

- 21 (1) An external administrator of a company must keep proper books in  
22 which the external administrator must cause to be made:
- 23 (a) entries or minutes of proceedings at meetings relating to the  
24 external administration of the company; and
- 25 (b) such other entries as are necessary to give a complete and  
26 correct record of the external administrator's administration  
27 of the company's affairs.
- 28 (2) The external administrator must:
- 29 (a) ensure that the books are available at the external  
30 administrator's office for inspection; and

# EXPOSURE DRAFT

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

**Part 1** Insolvency Practice Schedule (Corporations)

---

- 1 (b) permit a creditor or contributory, or another person acting on  
2 the creditor's or contributory's behalf, to inspect the books at  
3 all reasonable times.

4 *Exception*

- 5 (3) Subsections (1) and (2) do not apply if the external administrator  
6 has a reasonable excuse.

7 *Offence*

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

12 Penalty: 5 penalty units.

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

## 15 **70-15 Audit of administration books—ASIC**

16 *ASIC may cause books to be audited*

- 17 (1) ASIC may cause the books referred to in section 70-5 (annual  
18 administration return), 70-6 (end of administration return) or 70-10  
19 (administration books) to be audited by a registered company  
20 auditor.

21 *Audit on the ASIC's initiative or on request*

- 22 (2) The audit may be conducted:  
23 (a) on ASIC's own initiative; or  
24 (b) at the request of the company; or  
25 (c) at the request of a creditor or contributory.

26 *Auditor must prepare a report*

- 27 (3) The auditor must prepare a report on the audit.

# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
Insolvency Practice Schedule (Corporations) **Part 1**

---

1

*ASIC must give a copy of the report*

2

(4) If ASIC causes books to be audited under subsection (1):

3

(a) ASIC must give a copy of the report prepared by the auditor  
to:

4

5

(i) the external administrator of the company; and

6

(ii) the person who requested the report (if any); and

7

(b) subsection 1289(5) applies in relation to the report prepared  
by the auditor as if it were a document required to be lodged.

8

9

*Costs of an audit*

10

(5) The costs of an audit under this section must be determined by

11

ASIC and form part of the expenses of the external administration  
of the company.

12

13

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

14

(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.

15

16

17

18

(2) The order may be made on application of any person with a  
financial interest in the external administration of the company.

19

20

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

21

22

(a) the preparation and provision of a report on the audit; and

23

(b) orders as to the costs of the audit.

24

## **70-25 External administrator to comply with auditor requirements**

25

*Application of this section*

26

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

27

# EXPOSURE DRAFT

## Schedule 2 Amendments relating to the Insolvency Practice Schedule (Corporations)

### Part 1 Insolvency Practice Schedule (Corporations)

---

1                                    *External administrator must give assistance etc.*

2                                    (2) The external administrator must give the auditor such books,  
3                                    information and assistance as the auditor reasonably requires.

4                                    *Exception*

5                                    (3) Subsection (2) does not apply if the external administrator has a  
6                                    reasonable excuse.

7                                    *Offence*

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

12                                    Penalty: 5 penalty units.

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

### 15        **70-30 Transfer of books to new administrator**

16                                    *Application of this section*

17                                    (1) This section applies if:  
18    (a) a person (the *former administrator*) ceases to be the external  
19    administrator of a company; and  
20    (b) ASIC has not issued a notice to the former administrator  
21    under section 70-31; and  
22    (c) a registered liquidator (the *new administrator*) is appointed  
23    as external administrator of the company instead.

24                                    *Transfer of books to new administrator*

25                                    (2) The former administrator must transfer to the new administrator,  
26                                    within 5 business days after the new administrator is appointed,  
27                                    any books relating to the external administration of the company  
28                                    that are in the former administrator's possession or control.

29                                    (3) The former administrator may take a copy of any part of the books  
30                                    before transferring them to the new administrator.

# EXPOSURE DRAFT

1 *New administrator must allow inspection etc.*

- 2 (4) After the books are transferred, the new administrator must allow  
3 the former administrator to inspect them at any reasonable time and  
4 take a copy of any part of the books.

5 *Offence*

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

11 Penalty: 50 penalty units.

12 *Lien against books not prejudiced*

- 13 (6) If the new administrator is entitled to take possession of the books  
14 under this section:  
15 (a) a person is not entitled, as against the new administrator, to  
16 claim a lien on the books; and  
17 (b) such a lien is not otherwise prejudiced.

## 18 **70-31 Transfer of books to ASIC etc.**

19 *Transfer of books to ASIC*

- 20 (1) If a person ceases to be the external administrator of a company,  
21 ASIC may, by written notice given to the person, require the  
22 person to:  
23 (a) if the person has books relating to the external administration  
24 of the company in his or her possession or control—transfer  
25 those books to ASIC within the period specified in the notice;  
26 or  
27 (b) otherwise—notify ASIC, within the period and in the manner  
28 specified in the notice, that the person does not have books  
29 relating to the external administration of the company in the  
30 person's possession or control.

# EXPOSURE DRAFT

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

**Part 1** Insolvency Practice Schedule (Corporations)

---

1

*Offence*

2

(2) A person commits an offence if:

3

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

4

and

5

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

6

7

Penalty: 50 penalty units.

8

*ASIC must transfer books to new external administrator*

9

(3) If:

10

(a) books relating to an external administration of a company are transferred to ASIC under this section; and

11

(b) the books are in ASIC's possession or control; and

12

13

(c) a person (the *new administrator*) is or becomes the external administrator of the company;

14

15

ASIC must, as soon as practicable, transfer those books to the new administrator.

16

17

*ASIC must transfer books to company*

18

(4) If:

19

(a) books relating to a company are transferred to ASIC under this section; and

20

21

(b) the books are in ASIC's possession or control; and

22

(c) the company ceases to be a company under external administration;

23

24

ASIC must, as soon as practicable, transfer those books to the company.

25

26

*Lien against books not prejudiced*

27

(5) If ASIC is entitled to take possession of the books under this section:

28

29

(a) a person is not entitled, as against ASIC, to claim a lien on the books; and

30

31

(b) such a lien is not otherwise prejudiced.

# EXPOSURE DRAFT

- 1 (6) If ASIC is required to give possession of the books to the new  
2 administrator under this section:  
3 (a) a person is not entitled, as against the new administrator, to  
4 claim a lien on the books; and  
5 (b) such a lien is not otherwise prejudiced.

6 *Notice is not a legislative instrument*

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

## 8 **70-35 Retention and destruction of books**

9 *Retention period for books*

- 10 (1) The last external administrator of a company must retain all books  
11 of the company, and of the external administration of the company,  
12 that:  
13 (a) are relevant to affairs of the company; and  
14 (b) are in the external administrator's possession or control at the  
15 end of the external administration;  
16 for a period (the *retention period*) of 5 years from the end of the  
17 external administration.

18 *Exception—reasonable excuse*

- 19 (2) Subsection (1) does not apply if the external administrator has a  
20 reasonable excuse.

21 *Exception—consent of ASIC etc.*

- 22 (3) Despite subsection (1), the books may be destroyed within the  
23 retention period:  
24 (a) in the case of a members' voluntary winding up—as the  
25 company by resolution directs; and  
26 (b) in the case of a creditor's voluntary winding up or a  
27 court-ordered winding up:  
28 (i) if there is a committee of inspection—as the committee  
29 directs; and  
30 (ii) otherwise—as the creditors by resolution direct; and

# EXPOSURE DRAFT

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

**Part 1** Insolvency Practice Schedule (Corporations)

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1 (c) if the external administrator is appointed as a provisional  
2 liquidator—as the Court directs;  
3 if ASIC consents to the destruction.

4 *Destruction of books at end of retention period*

5 (4) The external administrator may destroy the books at the end of the  
6 retention period.

7 *Offence*

8 (5) A person commits an offence if:

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

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

13 Penalty: 50 penalty units.

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

16 *Relationship with other laws*

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

## 21 **70-36 Books of company in external administration—evidence**

22 If a company is in external administration, all books of the  
23 company, and of the external administrator of the company, that  
24 are relevant to affairs of the company at or after the start of the  
25 external administration are, as between the contributories of the  
26 company, prima facie evidence of the truth of all matters  
27 purporting to be recorded in those books.



# EXPOSURE DRAFT

1 **Subdivision D—Giving information etc. to creditors and others**

2 **70-40 Right of creditors to request information etc. from external**  
3 **administrator**

- 4 (1) The creditors may by resolution request the external administrator  
5 of a company to:  
6 (a) give information; or  
7 (b) provide a report; or  
8 (c) produce a document;  
9 to the creditors.
- 10 (2) The external administrator must comply with the request unless:  
11 (a) the information, report or document is not relevant to the  
12 external administration of the company; or  
13 (b) the external administrator would breach his or her duties in  
14 relation to the external administration of the company if the  
15 external administrator complied with the request; or  
16 (c) it is otherwise not reasonable for the external administrator to  
17 comply with the request.
- 18 (3) The Insolvency Practice Rules may prescribe circumstances in  
19 which it is, or is not, reasonable for an external administrator of a  
20 company to comply with a request of a kind mentioned in  
21 subsection (1).

22 **70-45 Right of individual creditor to request information etc. from**  
23 **external administrator**

- 24 (1) A creditor may request the external administrator of a company to:  
25 (a) give information; or  
26 (b) provide a report; or  
27 (c) produce a document;  
28 to the creditor.
- 29 (2) The external administrator must comply with the request unless:  
30 (a) the information, report or document is not relevant to the  
31 external administration of the company; or

# EXPOSURE DRAFT

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

**Part 1** Insolvency Practice Schedule (Corporations)

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- 1 (b) the external administrator would breach his or her duties in  
2 relation to the external administration of the company if the  
3 external administrator complied with the request; or  
4 (c) it is otherwise not reasonable for the external administrator to  
5 comply with the request.
- 6 (3) The Insolvency Practice Rules may prescribe circumstances in  
7 which it is, or is not, reasonable for an external administrator of a  
8 company to comply with a request of a kind mentioned in  
9 subsection (1).

## 10 **70-46 Right of members to request information etc. from external** 11 **administrator in a members' voluntary winding up**

- 12 (1) This section applies in relation to a members' voluntary winding  
13 up.
- 14 (2) The members of the company may by resolution request the  
15 external administrator of the company to:  
16 (a) give information; or  
17 (b) provide a report; or  
18 (c) produce a document;  
19 to the members.
- 20 (3) The external administrator must comply with the request unless:  
21 (a) the information, report or document is not relevant to the  
22 external administration of the company; or  
23 (b) the external administrator would breach his or her duties in  
24 relation to the external administration of the company if the  
25 external administrator complied with the request; or  
26 (c) it is otherwise not reasonable for the external administrator to  
27 comply with the request.
- 28 (4) The Insolvency Practice Rules may prescribe circumstances in  
29 which it is, or is not, reasonable for an external administrator of a  
30 company to comply with a request of a kind mentioned in  
31 subsection (2).

# EXPOSURE DRAFT

1 **70-47 Right of individual member to request information etc. from**  
2 **external administrator in a members' voluntary winding**  
3 **up**

- 4 (1) This section applies in relation to a members' voluntary winding  
5 up.
- 6 (2) A member of the company may request the external administrator  
7 of a company to:  
8 (a) give information; or  
9 (b) provide a report; or  
10 (c) produce a document;  
11 to the member.
- 12 (3) The external administrator must comply with the request unless:  
13 (a) the information, report or document is not relevant to the  
14 external administration of the company; or  
15 (b) the external administrator would breach his or her duties in  
16 relation to the external administration of the company if the  
17 external administrator complied with the request; or  
18 (c) it is otherwise not reasonable for the external administrator to  
19 comply with the request.
- 20 (4) The Insolvency Practice Rules may prescribe circumstances in  
21 which it is, or is not, reasonable for an external administrator of a  
22 company to comply with a request of a kind mentioned in  
23 subsection (2).

24 **70-50 Reporting to creditors and members**

- 25 (1) The Insolvency Practice Rules may provide for and in relation to  
26 the obligations of external administrators of companies:  
27 (a) to give information; and  
28 (b) to provide reports; and  
29 (c) to produce documents;  
30 to creditors or members.
- 31 (2) Without limiting subsection (1), the Insolvency Practice Rules may  
32 provide for and in relation to:

# EXPOSURE DRAFT

## Schedule 2 Amendments relating to the Insolvency Practice Schedule (Corporations)

### Part 1 Insolvency Practice Schedule (Corporations)

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- 1 (a) other circumstances in which the external administrator of a  
2 company must give information, provide a report or produce  
3 a document to a creditor or member; and  
4 (b) the manner and form in which information is to be given, a  
5 report provided or a document produced; and  
6 (c) the timeframes in which information is to be given, a report  
7 provided or a document produced; and  
8 (d) who is to bear the cost of giving information, providing a  
9 report or producing a document.
- 10 (3) The Insolvency Practice Rules may:
- 11 (a) make different provision in relation to different kinds of  
12 external administration; and  
13 (b) provide that specified requirements imposed under the  
14 Insolvency Practice Rules may be replaced or modified, by  
15 resolution, by:
- 16 (i) the creditors; or  
17 (ii) the members; or  
18 (iii) if there is a committee of inspection—the committee.

#### 19 **Subdivision E—Other requests for information etc.**

#### 20 **70-55 Commonwealth may request information etc.**

##### 21 *Application of this section*

- 22 (1) This section applies if either:
- 23 (a) a former employee of a company under external  
24 administration has made a claim for financial assistance from  
25 the Commonwealth in relation to unpaid employment  
26 entitlements; or  
27 (b) the Commonwealth considers that such a claim is likely to be  
28 made.

##### 29 *Commonwealth may request information etc.*

- 30 (2) The Commonwealth may request the external administrator of the  
31 company to provide specified information, reports or documents in  
32 relation to the external administration.

# EXPOSURE DRAFT

- 1 (3) The external administrator must comply with the request.
- 2 (4) The Insolvency Practice Rules may provide for and in relation to
- 3 who is to bear the cost of providing the information, reports or
- 4 documents.

## 5 **Subdivision F—Reporting to ASIC**

### 6 **70-60 Insolvency Practice Rules may provide for reporting to ASIC**

- 7 (1) The Insolvency Practice Rules may provide for and in relation to
- 8 the obligations of an external administrator of a company:
- 9 (a) to give information; and
- 10 (b) to provide reports; and
- 11 (c) to produce documents;
- 12 to ASIC.
- 13 (2) Without limiting subsection (1), the Insolvency Practice Rules may
- 14 provide for and in relation to:
- 15 (a) the manner and form in which information is to be given, a
- 16 report provided or a document produced; and
- 17 (b) the timeframes in which information is to be given, a report
- 18 provided or a document produced; and
- 19 (c) who is to bear the cost of giving information, providing a
- 20 report or producing a document.
- 21 (3) The Insolvency Practice Rules may make different provision in
- 22 relation to different kinds of external administration.

23 Note: A failure to give information, provide a report or produce a document

24 to ASIC in accordance with the Insolvency Practice Rules may lead to

25 disciplinary action under Subdivision B of Division 40 of Part 2 of

26 this Schedule.

## 27 **Subdivision G—External administrator may be compelled to**

28 **comply with requests for information etc.**

### 29 **70-65 Application of this Subdivision**

- 30 (1) This Subdivision applies if the external administrator of a company
- 31 refuses a request made by a person under:

# EXPOSURE DRAFT

## Schedule 2 Amendments relating to the Insolvency Practice Schedule (Corporations)

### Part 1 Insolvency Practice Schedule (Corporations)

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- 1 (a) Subdivision D; or  
2 (b) Subdivision E; or  
3 (c) section 80-40; or  
4 (d) a rule made under section 70-50;  
5 to give information, provide a report or produce a document.
- 6 (2) In this Subdivision:  
7 (a) the information, report or document is referred to as the  
8 *relevant material*; and  
9 (b) the request is referred to as the *request for relevant material*;  
10 and  
11 (c) giving the information, providing the report or producing the  
12 document is referred to as *giving* the relevant material.

#### 13 **70-70 ASIC may direct external administrator to comply with the** 14 **request for relevant material**

- 15 (1) ASIC may, in writing, direct the external administrator to give all  
16 or part of the relevant material to the person or persons who made  
17 the request for the relevant material within 5 business days after  
18 the direction is given.
- 19 (2) A direction under subsection (1) is not a legislative instrument.

#### 20 **70-75 ASIC must notify external administrator before giving a** 21 **direction under section 70-70**

- 22 (1) Before giving the external administrator a direction under  
23 section 70-70, ASIC must give the external administrator notice in  
24 writing:  
25 (a) stating that ASIC proposes to give the external administrator  
26 a direction under that section; and  
27 (b) identifying:  
28 (i) the relevant material, or the part of the relevant material,  
29 that ASIC proposes to direct be given; and  
30 (ii) the person or persons to whom ASIC proposes to direct  
31 that the relevant material, or that part of the relevant  
32 material, be given; and

# EXPOSURE DRAFT

- 1 (c) inviting the external administrator to make a written  
2 submission to ASIC within 10 business days after the notice  
3 is given, stating:  
4 (i) whether the external administrator has any objection to  
5 giving the relevant material, or that part of the relevant  
6 material, to a person or persons as proposed; and  
7 (ii) if the external administrator has such an objection—the  
8 reasons for that objection.
- 9 (2) If the external administrator objects to giving the relevant material,  
10 or part of the relevant material, to a person, ASIC must take into  
11 account the reasons for that objection when deciding whether to  
12 direct that the relevant material, or that part of the relevant  
13 material, be given to the person.
- 14 (3) A notice under subsection (1) is not a legislative instrument.

15 **70-80 ASIC must not direct external administrator to give the**  
16 **relevant material if external administrator entitled not to**  
17 **comply with the request**

18 ASIC must not give a direction under section 70-70 to give the  
19 relevant material, or part of the relevant material, to a person if  
20 ASIC is satisfied that the external administrator was entitled, under  
21 a provision of this Act or any other law, not to comply with the  
22 request for the relevant material, or that part of the relevant  
23 material, to the person.

24 **70-85 ASIC may impose conditions on use of the relevant material**

25 *ASIC may, by notice, impose conditions*

- 26 (1) ASIC may, by notice in writing to the person or persons to whom  
27 the relevant material is to be given, impose conditions on the use  
28 and disclosure of the relevant material, or part of the relevant  
29 material, by the person or persons.

30 *Offence*

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

# EXPOSURE DRAFT

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

**Part 1** Insolvency Practice Schedule (Corporations)

---

- 1 (a) ASIC directs that the relevant material, or part of the relevant  
2 material, be given to the person; and  
3 (b) ASIC has given the person notice under subsection (1)  
4 imposing a condition in relation to the use or disclosure of  
5 that material by the person; and  
6 (c) the person does not comply with the condition.

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

8 *Notice is not a legislative instrument*

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

## 10 **70-90 Court may order relevant material to be given**

11 (1) The person or persons who made the request for the relevant  
12 material may apply to the Court for an order that the external  
13 administrator give the person or persons all or part of the relevant  
14 material.

15 (2) If:

16 (a) ASIC gives the external administrator a direction under  
17 section 70-70 in relation to all or part of the relevant material;  
18 and

19 (b) the external administrator does not comply with the direction;  
20 ASIC may apply to the Court for an order that the external  
21 administrator comply with the direction.

22 (3) On application under subsection (1) or (2), the Court may:

23 (a) order the external administrator to give the person, or any or  
24 all of the persons, who made the request for the relevant  
25 material all or part of that material; and

26 (b) make such other orders, including orders as to costs, as it  
27 thinks fit.



# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
Insolvency Practice Schedule (Corporations) **Part 1**

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1 **Division 75—Meetings**

2 **75-1 Simplified outline of this Division**

3 The external administrator of a company may convene creditor or  
4 company meetings at any time and must convene them in particular  
5 circumstances, for example when requested by certain creditors or  
6 directed by ASIC.

7 Under Chapter 5 of this Act, there are other instances in which an  
8 external administrator must hold a meeting.

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

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

14 **75-5 Other obligations to convene meetings not affected**

15 Nothing in this Division limits the operation of any other provision  
16 of this Act, or any other law, imposing an obligation to convene a  
17 meeting in relation to a company, or the external administration of  
18 a company.

19 **75-10 External administrator may convene meetings**

20 The external administrator of a company may convene:

- 21 (a) a meeting of the creditors; or  
22 (b) in the case of a members' voluntary winding up—a general  
23 meeting of the company;  
24 at any time.

25 **75-15 External administrator must convene meeting in certain  
26 circumstances**

- 27 (1) The external administrator of a company must convene a meeting  
28 of the creditors if:

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## Schedule 2 Amendments relating to the Insolvency Practice Schedule (Corporations)

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- 1 (a) where there is a committee of inspection—the committee of  
2 inspection requests the external administrator to do so; or  
3 (b) the creditors direct the external administrator to do so by  
4 resolution; or  
5 (c) at least 25% in value of the creditors direct the external  
6 administrator to do so in writing; or  
7 (d) both of the following are satisfied:  
8 (i) less than 25%, but more than 10%, in value of the  
9 creditors direct the external administrator to do so in  
10 writing;  
11 (ii) security for the cost of holding the meeting is given to  
12 the external administrator before the meeting is  
13 convened; or  
14 (e) all of the following are satisfied:  
15 (i) the company is being wound up under a creditors’  
16 voluntary winding up;  
17 (ii) less than 25%, but more than 5%, in value of the  
18 creditors direct the external administrator to do so in  
19 writing;  
20 (iii) none of the creditors who give the direction is a related  
21 entity in relation to the company;  
22 (iv) the direction is given no more than 14 business days  
23 after the resolution for the voluntary winding up of the  
24 company is passed.
- 25 (2) However, the external administrator need not comply with the  
26 request or direction if the request or direction is not reasonable.
- 27 (3) The Insolvency Practice Rules may prescribe circumstances in  
28 which a request or direction is, or is not, reasonable.
- 29 (4) For the purposes of paragraphs (1)(c), (d) and (e), the value of the  
30 creditors is to be worked out by reference to the value of the  
31 creditors’ claims against the company that are known at the time  
32 the direction is given.
- 33 (5) This section does not apply if:  
34 (a) the external administrator is a provisional liquidator of the  
35 company; or
-

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- 1 (b) the external administrator is the administrator of the company  
2 and the company is under administration.

3 **75-20 External administrator must convene meeting if required by**  
4 **ASIC**

- 5 (1) ASIC may, in writing, direct an external administrator of a  
6 company to convene a meeting of the creditors.
- 7 (2) ASIC may include in the direction requirements to be complied  
8 with by the external administrator in notifying the creditors of the  
9 meeting and conducting the meeting.
- 10 (3) The external administrator must comply with a direction given  
11 under subsection (1), and any requirements included in the  
12 direction under subsection (2).
- 13 (4) A direction given under subsection (1) is not a legislative  
14 instrument.

15 **75-25 External administrator's representative at meetings**

- 16 (1) The external administrator of a company may, in writing, appoint a  
17 person to represent the external administrator at a meeting.
- 18 (2) Subsection (1) does not apply to a meeting of a kind prescribed.
- 19 (3) If the external administrator is not personally present at a meeting,  
20 then a reference in a provision of this Act to the external  
21 administrator of a company, in respect of matters occurring at or in  
22 connection with the meeting, is a reference to a person so  
23 appointed to represent the external administrator at the meeting.

24 **75-30 ASIC may attend meetings**

- 25 (1) ASIC is entitled to attend any meeting of creditors or contributories  
26 held under this Act.
- 27 (2) Subject to any provision of this Act (including any provision in  
28 relation to voting), ASIC is entitled to participate in any meeting of  
29 creditors held under this Act.

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Schedule 2 Amendments relating to the Insolvency Practice Schedule (Corporations)

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1 **75-35 Commonwealth may attend certain meetings etc.**

2 *Application of this section*

3 (1) This section applies if:

4 (a) a company is under external administration; and

5 (b) either:

6 (i) a former employee of the company has made a claim for  
7 financial assistance from the Commonwealth in relation  
8 to unpaid employment entitlements; or

9 (ii) the Commonwealth considers that such a claim is likely  
10 to be made.

11 *Commonwealth may nominate representative for meetings*

12 (2) The Commonwealth is entitled to nominate a representative to  
13 attend any meeting of creditors or contributories held in relation to  
14 the external administration.

15 **75-40 Proposals to creditors or contributories without meeting**

16 *Proposal by notice to creditors*

17 (1) The external administrator of a company may at any time put a  
18 proposal to the creditors or contributories by giving notice, in  
19 writing, under this section.

20 *Content and service of notice*

21 (2) The notice must:

22 (a) contain a single proposal; and

23 (b) include a statement of the reasons for the proposal and the  
24 likely impact it will have on creditors or contributories, as the  
25 case may be (if it is passed); and

26 (c) be given to each creditor or contributory, as the case may be,  
27 who would be entitled to receive notice of a meeting of  
28 creditors or contributories, as the case may be; and

29 (d) invite the creditor or contributory, as the case may be, to  
30 either:

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

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- 1 (ii) object to the proposal being resolved without a meeting  
2 of creditors or contributories, as the case may be; and  
3 (e) specify a reasonable time by which replies must be received  
4 by the external administrator (in order to be taken into  
5 account).

6 *Evidentiary certificate relating to proposals*

- 7 (3) A certificate signed by the external administrator of the company  
8 stating any matter relating to a proposal under this section is prima  
9 facie evidence of the matter.

10 *Insolvency Practice Rules relating to proposals*

- 11 (4) The Insolvency Practice Rules may provide for and in relation to  
12 proposals without meeting under this section.  
13 (5) Without limiting subsection (4), the Insolvency Practice Rules may  
14 provide for and in relation to:  
15 (a) the circumstances in which a proposal is taken to be passed;  
16 and  
17 (b) whether a proposal, if passed, is to be taken to have been  
18 passed as a resolution or a special resolution; and  
19 (c) costs and security for those costs in relation to a proposal.

20 **75-41 Outcome of voting at creditors' meeting determined by**  
21 **related entity—Court powers**

22 *Application of this section*

- 23 (1) This section applies if, on the application of a creditor of a  
24 company under external administration or ASIC, the Court is  
25 satisfied of the following matters:  
26 (a) a proposal has been voted on by creditors (either at a meeting  
27 of the creditors or under section 75-40 without a meeting);  
28 (b) if the vote or votes that a particular related creditor, or  
29 particular related creditors, of the company cast on the  
30 proposal had been disregarded for the purposes of  
31 determining whether or not the proposal was passed, the  
32 proposal:

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- 1 (i) if it was in fact passed—would not have been passed; or  
2 (ii) if in fact it was not passed—would have been passed;  
3 or the question would have had to be decided on a casting  
4 vote;  
5 (c) the passing of the proposal, or the failure to pass it, as the  
6 case requires:  
7 (i) is contrary to the interests of the creditors as a group or  
8 of that class of creditors as a group, as the case may be;  
9 or  
10 (ii) has prejudiced, or is reasonably likely to prejudice, the  
11 interests of the creditors who voted against the proposal,  
12 or for it, as the case may be, to an extent that is  
13 unreasonable having regard to the matters in  
14 subsection (2).

15 *Unreasonable prejudice to interests of creditors—matters to be*  
16 *taken into account*

- 17 (2) For the purposes of subparagraph (1)(c)(ii), the matters are:  
18 (a) the benefits resulting to the related creditor, or to some or all  
19 of the related creditors, from the proposal if passed, or from  
20 the failure to pass the proposal, as the case may be; and  
21 (b) the nature of the relationship between the related creditor and  
22 the company, or of the respective relationships between the  
23 related creditors and the company; and  
24 (c) any other relevant matter.

25 *Court may make orders*

- 26 (3) The Court may make one or more of the following:  
27 (a) an order that the proposal be considered and voted on at a  
28 meeting of the creditors convened and held as specified in the  
29 order;  
30 (b) an order directing that the related creditor is not, or such of  
31 the related creditors as the order specifies are not, entitled to  
32 vote on:  
33 (i) the proposal; or  
34 (ii) a resolution to amend or vary the proposal;

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- 1 (c) if the proposal was passed—an order setting aside the  
2 resolution passing the proposal;  
3 (d) such other orders as the Court thinks fit.

4 *Definition—related creditor*

- 5 (4) In this section:

6 *related creditor*, for the purposes of a vote, in relation to a  
7 company, means a person who, when the vote was cast, was a  
8 related entity, and a creditor, of the company.

9 **75-42 Creditors' resolution passed because of casting vote—Court**  
10 **review**

11 *Application of this section*

- 12 (1) This section applies if:  
13 (a) a resolution is passed at a meeting of creditors of a company  
14 under external administration; and  
15 (b) the resolution is passed because the person presiding at the  
16 meeting exercises a casting vote.

17 *Court may set aside or vary resolution*

- 18 (2) A person may apply to the Court for an order setting aside or  
19 varying the resolution, but only if:  
20 (a) the person voted against the resolution in some capacity  
21 (even if the person voted for the resolution in another  
22 capacity); or  
23 (b) a person voted against the resolution on the first-mentioned  
24 person's behalf.
- 25 (3) On application under subsection (2), the Court may:  
26 (a) by order set aside or vary the resolution; and  
27 (b) if it does so—make such further orders, and give such  
28 directions, as it thinks fit.
- 29 (4) On and after the making of an order varying the resolution, the  
30 resolution has effect as varied by the order.

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**Schedule 2** Amendments relating to the Insolvency Practice Schedule (Corporations)  
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1 **75-43 Proposed creditors' resolution not passed because of casting**  
2 **vote—Court's powers**

3 *Application of this section*

- 4 (1) This section applies if:  
5 (a) a resolution is not passed at a meeting of creditors of a  
6 company under external administration; and  
7 (b) the resolution is not passed because the person presiding at  
8 the meeting exercises a casting vote, or refuses or fails to  
9 exercise such a vote.

10 *Voter may apply to the Court for an order*

- 11 (2) A person may apply to the Court for an order under subsection (3),  
12 but only if:  
13 (a) the person voted for the proposed resolution in some capacity  
14 (even if the person voted against the proposed resolution in  
15 another capacity); or  
16 (b) a person voted for the proposed resolution on the  
17 first-mentioned person's behalf.

18 *Court may make orders*

- 19 (3) On application under subsection (2), the Court may:  
20 (a) order that the proposed resolution is taken to have been  
21 passed at the meeting; and  
22 (b) if it does so—make such further orders, and give such  
23 directions, as it thinks fit.
- 24 (4) If an order is made under paragraph (3)(a), the proposed resolution:  
25 (a) is taken for all purposes (other than those of subsection (1))  
26 to have been passed at the meeting; and  
27 (b) is taken to have taken effect:  
28 (i) if the order specifies a time when the proposed  
29 resolution is taken to have taken effect—at that time,  
30 even if it is earlier than the making of the order; or  
31 (ii) otherwise—on the making of the order.



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1 **75-44 Interim order on application under section 75-41, 75-42 or**  
2 **75-43**

3 (1) If:

4 (a) an application under subsection 75-41(1), 75-42(2) or  
5 75-43(2) has not yet been determined; and

6 (b) the Court is of the opinion that it is desirable to do so;  
7 the Court may make such interim orders as it thinks fit

8 (2) An interim order must be expressed to apply until the application is  
9 determined, but may be varied or discharged.

10 **75-45 Order under section 75-41 or 75-42 does not affect act already**  
11 **done pursuant to resolution**

12 An act done pursuant to a resolution as in force before the making,  
13 under section 75-41 or 75-42, of an order setting aside or varying  
14 the resolution is as valid and binding on and after the making of the  
15 order as if the order had not been made.

16 **75-50 Rules relating to meetings**

17 (1) The Insolvency Practice Rules may provide for and in relation to  
18 meetings concerning companies under external administration.

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

21 (a) the circumstances in which meetings must or may be  
22 convened; and

23 (b) notice for convening meetings; and

24 (c) agenda; and

25 (d) information to be given in connection with meetings; and

26 (e) who is to preside at meetings; and

27 (f) the number of creditors or contributories required to  
28 constitute a quorum; and

29 (g) proxies and attorneys; and

30 (h) motions; and

31 (i) voting (including casting votes); and

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

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- 1 (j) the circumstances in which a resolution must or may be put  
2 to creditors or contributories in a meeting; and  
3 (k) the circumstances in which a resolution or a special  
4 resolution put to creditors or contributories in a meeting is  
5 passed; and  
6 (l) facilities, including electronic communication facilities, to be  
7 available at meetings; and  
8 (m) minutes; and  
9 (n) costs in relation to meetings and security for those costs.

## 10 **Division 80—Committees of inspection**

### 11 **80-1 Simplified outline of this Division**

12 Creditors of a company under external administration may decide  
13 that there is to be a committee of inspection to monitor the  
14 administration and to give assistance to the external administrator.

#### 15 *Appointing the committee*

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

- 18 • the creditors by resolution;
- 19 • a single creditor who is owed, or a group of creditors who  
20 together are owed, a large amount;
- 21 • a single employee who is owed, or a group of employees who  
22 together are owed, a large amount.

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

28 If a company is in a related group of companies (called a pooled  
29 group), creditors of all the companies may decide together that

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1 there is to be a committee of inspection for the group and appoint  
2 members of the committee.

3 *Procedures and powers*

4 This Division also deals with the procedures and powers of  
5 committees of inspection (including requesting information,  
6 documents and reports from the external administrator and  
7 obtaining specialist advice).

8 An external administrator of a company must have regard to  
9 directions of the committee but is not obliged to comply.

10 *Review*

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

## 13 **80-5 Creditors may request meeting to establish committee of** 14 **inspection (company not under administration)**

15 (1) If requested by a creditor, the external administrator of a company  
16 must convene a meeting of the creditors for the purpose of  
17 determining either or both of the following:

- 18 (a) whether there is to be a committee of inspection for the  
19 company;  
20 (b) if there is, or is to be, a committee of inspection—who are to  
21 be appointed members of the committee.

22 (2) This section does not apply if:

- 23 (a) the company is a member of a pooled group for which there  
24 is a committee of inspection; or  
25 (b) the company is under administration.

26 Note: Committees of inspection for pooled groups are dealt with in  
27 section 80-26.

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1 **80-6 Companies under administration**

2 Within 8 business days after the administration of a company  
3 begins, the external administrator of the company must convene a  
4 meeting of the creditors to determine:

- 5 (a) whether there is to be a committee of inspection for the  
6 company; and  
7 (b) if there is to be a committee of inspection—who are to be  
8 appointed members of the committee.

9 Note: See section 435C to determine when the administration of a company  
10 begins.

11 **80-10 Committee of inspection—company not a member of a pooled**  
12 **group**

13 (1) The creditors of a company may, by resolution, determine that  
14 there is to be a committee of inspection in relation to the external  
15 administration of the company.

16 (2) This section does not apply if the company is a member of a  
17 pooled group for which there is a committee of inspection.

18 Note: Committees of inspection for pooled groups are dealt with in  
19 section 80-26.

20 **80-15 Appointment and removal of members of committee of**  
21 **inspection by creditors generally**

22 (1) The creditors of a company may, by resolution, appoint members  
23 of a committee of inspection in relation to the external  
24 administration of the company.

25 (2) The creditors of a company may by resolution:

- 26 (a) remove a person appointed as a member of the committee  
27 under this section; and  
28 (b) appoint another person to fill a vacancy in the office of a  
29 member of the committee of inspection appointed under this  
30 section.

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

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

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

5 (4) This section does not apply if the company is a member of a  
6 pooled group for which there is a committee of inspection.

7 Note: Committees of inspection for pooled groups are dealt with in  
8 section 80-26.

## 9 **80-20 Appointment of committee member by large creditor**

10 (1) A creditor representing at least 10% in value of the creditors, or a  
11 group of creditors who together represent at least 10% in value of  
12 the creditors, of a company may appoint a person as a member of a  
13 committee of inspection in relation to the external administration  
14 of the company.

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

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

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

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

24 (a) a resolution has already passed under subsection 80-15(1)  
25 appointing members of the committee; or

26 (b) the creditor, acting either alone or with others, has already  
27 appointed a member of the committee under  
28 subsection 80-25(1); or

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

32 (4) This section does not apply if the company is a member of a  
33 pooled group for which there is a committee of inspection.

34 Note: Committees of inspection for pooled groups are dealt with in  
35 section 80-26.

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Schedule 2 Amendments relating to the Insolvency Practice Schedule (Corporations)

Part 1 Insolvency Practice Schedule (Corporations)

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1       **80-25 Appointment of committee member by employees**

2           (1) Either:

3               (a) an employee of the company; or

4               (b) employees of the company;

5           representing at least 50% in value of entitlements owed to or in  
6           respect of employees by the company may appoint a person as a  
7           member of the committee of inspection to represent the employees.

8           (2) If an employee or a group of employees appoints a person as a  
9           member of a committee of inspection under this section, the  
10          employee or group of employees may by resolution:

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

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

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

17               (a) a resolution has already passed under subsection 80-15(1)  
18               appointing members of the committee; or

19               (b) the employee, acting either alone or with others, has already  
20               appointed a member of the committee under  
21               subsection 80-20(1); or

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

25          (4) This section does not apply if the company is a member of a  
26          pooled group for which there is a committee of inspection.

27           Note:       Committees of inspection for pooled groups are dealt with in  
28                        section 80-26.

29          (5) In this section:

30               *employee* of a company has the same meaning as in Part 5.8A.

31               *entitlements* of an employee of a company has the same meaning  
32               as in Part 5.8A.

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1 **80-26 Committee of inspection—pooled groups**

2 *Application of this section*

3 (1) This section applies if each company that is a member of a pooled  
4 group is being wound up.

5 *Meeting to form a committee of inspection for a pooled group*

6 (2) The external administrator or external administrators must, if  
7 requested by a creditor of one of the companies, convene a  
8 meeting, on a consolidated basis, of the creditors of all of the  
9 companies for the purposes of determining either or both of the  
10 following:

11 (a) whether there is to be a committee of inspection for the  
12 pooled group;

13 (b) if there is, or is to be, a committee of inspection for the  
14 pooled group—who are to be appointed members of the  
15 committee.

16 *Committee of inspection for a pooled group becomes the committee  
17 of inspection for each member of the pooled group*

18 (3) A committee of inspection for a pooled group is taken to be a  
19 committee of inspection for each company that is a member of the  
20 pooled group.

21 *Existing committee of inspection for a member of a pooled group  
22 ceases to exist*

23 (4) If:

24 (a) at the meeting, it is resolved that there is to be a committee of  
25 inspection for the pooled group; and

26 (b) immediately before the meeting, a committee of inspection  
27 was in existence for a company that is a member of the  
28 pooled group;

29 the committee mentioned in paragraph (b) ceases to exist when the  
30 resolution mentioned in paragraph (a) is passed.

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Schedule 2 Amendments relating to the Insolvency Practice Schedule (Corporations)

Part 1 Insolvency Practice Schedule (Corporations)

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1 *Rules relating to companies under external administration who are*  
2 *members of a pooled group*

3 (5) The Insolvency Practice Rules may provide for and in relation to  
4 meetings in relation to the external administration of companies  
5 that are members of a pooled group (*pooled group meetings*).

6 (6) Without limiting subsection (5), the Insolvency Practice Rules may  
7 provide for and in relation to:

8 (a) other circumstances in which pooled group meetings must or  
9 may be convened; and

10 (b) voting (including casting votes) at pooled group meetings;  
11 and

12 (c) the circumstances in which a resolution or a special  
13 resolution put to creditors or contributories in a pooled group  
14 meeting is passed; and

15 (d) costs in relation to pooled group meetings and security for  
16 those costs.

## 17 **80-30 Committees of inspection—procedures etc.**

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

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

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

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

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

28 (c) resignation and removal of members; and

29 (d) vacancies in membership.

## 30 **80-35 Functions of committee of inspection**

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

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- 1 (a) to advise and assist the external administrator of the  
2 company;  
3 (b) to give directions to the external administrator of the  
4 company;  
5 (c) to monitor the conduct of the external administration of the  
6 company;  
7 (d) such other functions as are conferred on the committee by  
8 this Act;  
9 (e) to do anything incidental or conducive to the performance of  
10 any of the above functions.
- 11 (2) An external administrator of a company must have regard to any  
12 directions given to the external administrator by the committee of  
13 inspection, but the external administrator is not required to comply  
14 with such directions.
- 15 (3) If an external administrator of a company does not comply with a  
16 direction, the external administrator must make a written record of  
17 that fact, along with the external administrator's reasons for not  
18 complying with the direction.

19 **80-40 Committee of inspection may request information etc.**

- 20 (1) A committee of inspection may request the external administrator  
21 of a company to:  
22 (a) give information; or  
23 (b) provide a report; or  
24 (c) produce a document;  
25 to the committee.
- 26 (2) The external administrator must comply with the request unless:  
27 (a) the information, report or document is not relevant to the  
28 external administration of the company; or  
29 (b) the external administrator would breach his or her duties in  
30 relation to the external administration of the company if the  
31 external administrator complied with the request; or  
32 (c) it is otherwise not reasonable for the external administrator to  
33 comply with the request.

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

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- 1 (3) The Insolvency Practice Rules may prescribe circumstances in  
2 which it is, or is not, reasonable for an external administrator of a  
3 company to comply with a request of a kind mentioned in  
4 subsection (1).

5 **80-45 Reporting to committee of inspection**

- 6 (1) The Insolvency Practice Rules may provide for and in relation to  
7 the obligations of external administrators of companies:  
8 (a) to give information; and  
9 (b) to provide reports; and  
10 (c) to produce documents;  
11 to committees of inspection.
- 12 (2) Without limiting subsection (1), the Insolvency Practice Rules may  
13 provide for and in relation to:  
14 (a) other circumstances in which the external administrator of a  
15 company must give information, provide a report or produce  
16 a document to a committee of inspection; and  
17 (b) the manner and form in which information is to be given, a  
18 report provided or a document produced; and  
19 (c) the timeframes in which information is to be given, a report  
20 provided or a document produced; and  
21 (d) who is to bear the cost of giving information, providing a  
22 report or producing a document.
- 23 (3) The Insolvency Practice Rules may:  
24 (a) make different provision in relation to different classes of  
25 company or external administration of a company; and  
26 (b) provide that specified requirements imposed under the  
27 Insolvency Practice Rules may be replaced or modified, by  
28 resolution, by:  
29 (i) the creditors; or  
30 (ii) the committee of inspection.

# EXPOSURE DRAFT

1 **80-50 Committee of inspection may obtain specialist advice or**  
2 **assistance**

- 3 (1) A committee of inspection may resolve that a member of the  
4 committee obtain, on behalf of the committee, such advice or  
5 assistance as the committee considers desirable in relation to the  
6 conduct of the external administration.
- 7 (2) The committee of inspection must obtain the approval of the  
8 external administrator of the company or the Court before expenses  
9 are incurred in obtaining the advice or assistance.
- 10 (3) To avoid doubt, an expense incurred under subsection (2) is to be  
11 taken to be an expense incurred by a person as a member of the  
12 committee.

13 **80-55 Obligations of members of committee of inspection**

14 *Deriving profit or advantage from the company*

- 15 (1) A member of a committee of inspection must not directly or  
16 indirectly derive any profit or advantage from the external  
17 administration of the company.

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

- 19 (2) To avoid doubt, a member of a committee of inspection is taken to  
20 derive a profit or advantage from the external administration of the  
21 company if:
- 22 (a) the member directly or indirectly derives a profit or  
23 advantage from a transaction (including a sale or purchase)  
24 entered into for or on account of the company; or
- 25 (b) the member directly or indirectly derives a profit or  
26 advantage from a creditor of the company; or
- 27 (c) a related entity of the member directly or indirectly derives a  
28 profit or advantage from the external administration of the  
29 company.

30 *Exceptions*

- 31 (3) Subsection (1) does not apply if the creditors resolve otherwise.

# EXPOSURE DRAFT

## Schedule 2 Amendments relating to the Insolvency Practice Schedule (Corporations)

### Part 1 Insolvency Practice Schedule (Corporations)

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- 1 (4) The member of the committee is not entitled to vote on the  
2 resolution referred to in subsection (3).
- 3 (5) Subsection (1) does not apply to the extent that:  
4 (a) another provision of this Act, or of another law, requires or  
5 permits the member of the committee of inspection to derive  
6 the profit or advantage; or  
7 (b) the Court gives leave to the member of the committee to  
8 derive the profit or advantage.
- 9 Note: Subsection (1) would not, for example, prevent a creditor from  
10 recovering debts proved in a winding up, as this is permitted under  
11 Part 5.6 of Chapter 5.
- 12 (6) Despite paragraph (2)(c), subsection (1) does not apply to the  
13 extent that:  
14 (a) the profit or advantage arises because the external  
15 administrator employs or engages a person to provide  
16 services in connection with the external administration of the  
17 company; and  
18 (b) the person is a related entity of a member of the committee of  
19 inspection; and  
20 (c) one of the following applies:  
21 (i) the member does not know, and could not reasonably be  
22 expected to know, that the person employed or engaged  
23 by the external administrator is a related entity of the  
24 member;  
25 (ii) the member discloses to the external administrator and  
26 the committee that the person employed or engaged by  
27 the external administrator is a related entity of the  
28 member, and does so as soon as is practicable after the  
29 member becomes aware that the entity is a related entity  
30 and has been employed or engaged by the external  
31 administrator;  
32 (iii) the creditors consent to the related entity being  
33 employed or engaged.

#### 34 *Offence*

- 35 (7) A person commits an offence of strict liability if:
-

# EXPOSURE DRAFT

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

4 Penalty: 50 penalty units.

5 Note: A defendant bears an evidential burden in relation to the matters in  
6 subsections (3), (5) and (6) (see subsection 13.3(3) of the *Criminal*  
7 *Code*).

8 *Effect of contravention of this section*

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

## 11 **80-60 Obligations of creditor appointing a member of committee of** 12 **inspection**

13 *Application of this section*

- 14 (1) This section applies if a creditor representing at least 10% in value  
15 of the creditors of a company appoints a person under  
16 section 80-20 as a member of a committee of inspection in relation  
17 to the external administration of the company.
- 18 (2) The creditor must not directly or indirectly become the purchaser  
19 of any part of the property of the company.

20 *Exceptions*

- 21 (3) Subsection (2) does not apply if the creditors resolve otherwise.
- 22 (4) The creditor is not entitled to vote on the resolution referred to in  
23 subsection (3).
- 24 (5) Subsection (2) does not apply to the extent that:  
25 (a) another provision of this Act, or of another law, requires or  
26 permits the creditor to purchase the property; or  
27 (b) the Court gives leave to the creditor to purchase the property.

28 *Offence*

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

# EXPOSURE DRAFT

## Schedule 2 Amendments relating to the Insolvency Practice Schedule (Corporations)

### Part 1 Insolvency Practice Schedule (Corporations)

---

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

4 Penalty: 50 penalty units.

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

7 *Effect of contravention of this section*

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

#### 10 **80-65 ASIC may attend committee meetings**

11 ASIC is entitled to attend any meeting of a committee of  
12 inspection.

#### 13 **80-70 The Court may inquire into conduct of the committee**

14 The Court may inquire into the conduct of a committee of  
15 inspection and make such orders as it thinks fit to ensure the proper  
16 conduct of the committee.

### 17 **Division 85—Directions by creditors**

#### 18 **85-1 Simplified outline of this Division**

19 

The external administrator of a company must have regard to 20 directions given to the administrator by the creditors of the 21 company but is not obliged to comply with those directions.
---

#### 22 **85-5 External administrator to have regard to directions given by 23 creditors**

- 24 (1) The creditors of a company under external administration (other  
25 than a members' voluntary winding up) may, by resolution, give  
26 directions to the external administrator of the company in relation  
27 to the external administration.

# EXPOSURE DRAFT

- 1 (2) An external administrator of a company must have regard to any  
2 directions mentioned in subsection (1), but the external  
3 administrator is not required to comply with such directions.
- 4 (3) If the external administrator does not comply with a direction, the  
5 external administrator must make a written record of that fact,  
6 along with the external administrator's reasons for not complying  
7 with the direction.
- 8 (4) If there is a conflict between directions given by the creditors  
9 under subsection (1) and by the committee of inspection under  
10 section 80-35, directions given by the creditors override any  
11 directions given by the committee.

## 12 **Division 90—Review of the external administration of a** 13 **company**

### 14 **Subdivision A—Introduction**

#### 15 **90-1 Simplified outline of this Division**

##### 16 *Review by the Court*

17 The Court may inquire into the external administration of a  
18 company either on its own initiative or on the application of the  
19 company, the external administrator, ASIC or another person with  
20 a financial interest (such as a creditor of the company).

21 The Court has wide powers to make orders, including orders  
22 replacing the external administrator or dealing with losses resulting  
23 from a breach of duty by the external administrator.

##### 24 *Review by another registered liquidator*

25 ASIC, the Court, creditors or members of a company may appoint  
26 a registered liquidator to review the external administration of the  
27 company. Such a review may look at a range of matters, including  
28 whether the remuneration of the external administrator is  
29 reasonable and whether costs and expenses have been properly  
30 incurred.

# EXPOSURE DRAFT

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

**Part 1** Insolvency Practice Schedule (Corporations)

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1 The Insolvency Practice Rules may set the powers and duties of a  
2 registered liquidator conducting such a review and may deal with  
3 issues relating to the review process.

4 If a provisional liquidator has been appointed for the company,  
5 review by another registered liquidator is not available.

6 *Removal of external administrator by creditors*

7 The creditors of a company under external administration (other  
8 than a company for which a provisional liquidator has been  
9 appointed) may remove the external administrator of the company  
10 and appoint another. However, the external administrator may  
11 apply to the Court to be reappointed.

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

13 **90-5 Court may inquire on own initiative**

- 14 (1) The Court may, on its own initiative during proceedings before the  
15 Court, inquire into the external administration of a company.
- 16 (2) The Court may, for the purposes of such an inquiry, require a  
17 person who is or has at any time been the external administrator of  
18 the company to:
- 19 (a) give information; or  
20 (b) provide a report; or  
21 (c) produce a document;
- 22 to the Court in relation to the external administration of the  
23 company.
- 24 (3) This section does not limit the Court's powers under any other  
25 provision of this Act, or under any other law.

26 **90-10 Court may inquire on application of creditors etc.**

- 27 (1) The Court may, on the application of a person mentioned in  
28 subsection (2), inquire into the external administration of a  
29 company.



# EXPOSURE DRAFT

- 1 (2) Each of the following persons may make an application for an  
2 inquiry:  
3 (a) a creditor, on his or her own behalf;  
4 (b) if the committee of inspection (if any) so resolves—a  
5 creditor, on behalf of the committee;  
6 (c) the company;  
7 (d) the external administrator of the company;  
8 (e) any other person with a financial interest in the external  
9 administration of the company;  
10 (f) ASIC.
- 11 (3) The Court may, for the purposes of such an inquiry, require a  
12 person who is or has at any time been the external administrator of  
13 the company:  
14 (a) give information; or  
15 (b) provide a report; or  
16 (c) produce a document;  
17 to the Court in relation to the external administration of the  
18 company.
- 19 (4) If an application is made by a person referred to in  
20 paragraph (2)(b), the reasonable expenses associated with the  
21 application are to be taken to be expenses incurred by a person as a  
22 member of the committee.
- 23 (5) This section does not limit the Court's powers under any other  
24 provision of this Act, or under any other law.

## 25 **90-15 Court may make orders in relation to external administration**

### 26 *Court may make orders*

- 27 (1) The Court may make such orders as it thinks fit in relation to the  
28 external administration of a company.

### 29 *Orders on own initiative or on application*

- 30 (2) The Court may exercise the power under subsection (1):  
31 (a) on its own initiative, during proceedings before the Court; or  
32 (b) on application under section 90-20.

# EXPOSURE DRAFT

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

**Part 1** Insolvency Practice Schedule (Corporations)

---

1

## *Examples of orders that may be made*

2

(3) Without limiting subsection (1), those orders may include any one or more of the following:

3

4

(a) an order determining any question arising in the external administration of the company;

5

6

(b) an order that a person cease to be the external administrator of the company;

7

8

(c) an order that another registered liquidator be appointed as the external administrator of the company;

9

10

(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;

11

12

13

14

(e) an order in relation to any loss that the company has sustained because of a breach of duty by the external administrator;

15

16

17

(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.

18

19

20

21

## *Matters that may be taken into account*

22

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

23

24

(a) whether the liquidator has faithfully performed, or is faithfully performing, the liquidator's duties; and

25

26

(b) whether an action or failure to act by the liquidator is in compliance with this Act and the Insolvency Practice Rules; and

27

28

29

(c) whether an action or failure to act by the liquidator is in compliance with an order of the Court; and

30

31

(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

32

33

34

(e) the seriousness of the consequences of any action or failure to act by the liquidator, including the effect of that action or

35

# EXPOSURE DRAFT

1 failure to act on public confidence in registered liquidators as  
2 a group.

3 *Costs orders*

4 (5) Without limiting subsection (1), an order mentioned in  
5 paragraph (3)(d) in relation to the costs of an action may include an  
6 order that:

7 (a) the external administrator or another person is personally  
8 liable for some or all of those costs; and

9 (b) the external administrator or another person is not entitled to  
10 be reimbursed by the company or its creditors in relation to  
11 some or all of those costs.

12 *Orders to make good loss sustained because of a breach of duty*

13 (6) Without limiting subsection (1), an order mentioned in  
14 paragraph (3)(e) in relation to a loss may include an order that:

15 (a) the external administrator is personally liable to make good  
16 some or all of the loss; and

17 (b) the external administrator is not entitled to be reimbursed by  
18 the company or creditors in relation to the amount made  
19 good.

20 *Section does not limit Court's powers*

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

23 **90-20 Application for Court order**

24 (1) Each of the following persons may apply for an order under  
25 section 90-15:

26 (a) a creditor, on his or her own behalf;

27 (b) if the committee of inspection (if any) so resolves—a  
28 creditor, on behalf of the committee;

29 (c) the company;

30 (d) the external administrator;

31 (e) any other person with a financial interest in the external  
32 administration of the company;

# EXPOSURE DRAFT

## Schedule 2 Amendments relating to the Insolvency Practice Schedule (Corporations)

### Part 1 Insolvency Practice Schedule (Corporations)

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- 1 (f) ASIC;
- 2 (g) if the order is for the appointment of another registered
- 3 liquidator to conduct the administration of the company
- 4 because of a vacancy in the office of administrator—an
- 5 officer of the company;
- 6 (h) if the application is in relation to a company that is a friendly
- 7 society within the meaning of the *Life Insurance Act 1995*
- 8 and which may be wound up voluntarily under
- 9 subsection 180(2) of that Act—APRA.
- 10 (2) Paragraph (1)(g) has effect despite section 437C.
- 11 Note: Section 437C deals with powers of officers etc. while a company is
- 12 under external administration.
- 13 (3) If an application is made by a person referred to in
- 14 paragraph (1)(b), the reasonable expenses associated with the
- 15 application are to be taken to be expenses incurred by a person as a
- 16 member of the committee.

#### 17 **90-21 Meetings to ascertain wishes of creditors or contributories**

- 18 (1) The Court may, as to all matters relating to the external
- 19 administration of a company, have regard to the wishes of the
- 20 creditors or contributories as proved to it by any sufficient
- 21 evidence.
- 22 (2) The Court may, if it thinks fit for the purpose of ascertaining those
- 23 wishes, direct meetings of the creditors or contributories to be
- 24 convened, held and conducted in such manner as the Court directs,
- 25 and may appoint a person to act as chair of any such meeting and
- 26 to report the result of the meeting to the Court.
- 27 (3) In the case of creditors, regard is to be had to the value of each
- 28 creditor's debt.
- 29 (4) In the case of contributories, regard is to be had to the number of
- 30 votes conferred on each contributory by this Act or the company's
- 31 constitution.

# EXPOSURE DRAFT

1 **Subdivision C—Review by another registered liquidator**

2 **90-22 Application of this Subdivision**

3 This Subdivision applies in relation to a company that is under  
4 external administration, other than a company in relation to which  
5 a provisional liquidator has been appointed.

6 **90-23 Appointment of reviewing liquidator by ASIC or the Court**

7 *Appointment by ASIC*

- 8 (1) A registered liquidator may be appointed by ASIC to carry out a  
9 review into a matter that relates to the external administration of  
10 the company, if ASIC considers it appropriate to do so.
- 11 (2) ASIC may exercise the power under subsection (1):  
12 (a) on its own initiative; or  
13 (b) on application by a person with a financial interest in the  
14 external administration.
- 15 (3) An application under paragraph (2)(b) must be lodged with ASIC  
16 in the approved form.
- 17 (4) If ASIC appoints a registered liquidator to carry out a review,  
18 ASIC must specify:  
19 (a) the matters in relation to the external administration of the  
20 company which the liquidator is appointed to review; and  
21 (b) the way in which the cost of carrying out the review is to be  
22 determined.

23 *Appointment by the Court*

- 24 (5) A registered liquidator may be appointed by the Court to carry out  
25 a review into a matter that relates to the external administration of  
26 the company.
- 27 (6) The Court may exercise the power under subsection (5):  
28 (a) on application under subsection (7); and  
29 (b) if the Court considers it appropriate to do so.

# EXPOSURE DRAFT

Schedule 2 Amendments relating to the Insolvency Practice Schedule (Corporations)

Part 1 Insolvency Practice Schedule (Corporations)

---

- 1 (7) Either of the following may make an application under this  
2 subsection:  
3 (a) ASIC;  
4 (b) a person with a financial interest in the external  
5 administration of the company.
- 6 (8) If the Court appoints a registered liquidator to carry out a review,  
7 the Court must specify:  
8 (a) the matters in relation to the external administration of the  
9 company which the liquidator is appointed to review; and  
10 (b) the way in which the cost of carrying out the review is to be  
11 determined.

12 *Appointments by ASIC or by the Court—limit*

- 13 (9) A matter referred to in paragraph (4)(a) or (8)(a) cannot relate to  
14 remuneration which an external administrator of the company is  
15 entitled to receive under subsection 60-5(2) (remuneration if no  
16 remuneration determinations made).

## 17 **90-24 Appointment of reviewing liquidator by creditors etc.**

18 *Appointment to carry out review*

- 19 (1) A registered liquidator may be appointed to carry out a review into  
20 either or both of the following matters:  
21 (a) remuneration of the external administrator of the company;  
22 (b) a cost or expense incurred by the external administrator of  
23 the company.

24 *Appointment by resolution*

- 25 (2) The appointment may be made by resolution of:  
26 (a) the creditors; or  
27 (b) if the company is being wound up under a members'  
28 voluntary winding up—the company;
- 29 (3) If the appointment is made by resolution, the resolution must  
30 specify:

# EXPOSURE DRAFT

- 1 (a) the remuneration, costs or expenses which the liquidator is  
2 appointed to review; and  
3 (b) the way in which the cost of carrying out the review is to be  
4 determined.

5 *Appointment by one or more creditors or members*

- 6 (4) The appointment may be made by:  
7 (a) one or more of the creditors; or  
8 (b) if the company is being wound up under a members'  
9 voluntary winding up—one or more of the members.
- 10 (5) However, an appointment may only be made under subsection (4)  
11 if the external administrator of the company agrees to the  
12 appointment.
- 13 (6) The agreement must:  
14 (a) be in accordance with the Insolvency Practice Rules; and  
15 (b) specify:  
16 (i) the remuneration, costs or expenses which the liquidator  
17 is appointed to review; and  
18 (ii) the way in which the cost of carrying out the review is  
19 to be determined.

20 *Appointments by creditors etc.—limit*

- 21 (7) Despite subsection (1), a registered liquidator appointed under this  
22 section has no power to review the remuneration to which the  
23 external administrator of a company is entitled under  
24 subsection 60-5(2) (remuneration if no remuneration  
25 determinations made).

26 **90-25 Reviewing liquidator must consent to appointment**

- 27 A registered liquidator cannot be appointed under this Subdivision  
28 as a reviewing liquidator in relation to a matter unless:  
29 (a) the liquidator has consented in writing to the appointment;  
30 and  
31 (b) as at the time of the appointment, the liquidator has not  
32 withdrawn the consent.

# EXPOSURE DRAFT

Schedule 2 Amendments relating to the Insolvency Practice Schedule (Corporations)

Part 1 Insolvency Practice Schedule (Corporations)

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1     **90-26 Review**

2                     *Review—general*

3             (1) If a reviewing liquidator is appointed under this Subdivision in  
4                 relation to a matter, the reviewing liquidator must carry out a  
5                 review into that matter.

6                     *Reviews relating to remuneration, costs or expenses*

7             (2) If the matter is, or includes, remuneration of the external  
8                 administrator of the company, the review may (but need not)  
9                 include an assessment of whether the remuneration is reasonable.

10            (3) If the matter is, or includes, a cost or expense incurred by the  
11                external administrator of the company, the review must include an  
12                assessment of whether the cost or expense was properly incurred  
13                by the external administrator.

14                Note:        Insolvency Practice Rules made under section 90-29 may provide for  
15                                the meaning of *properly incurred*.

16            (4) A reviewing liquidator must not review:  
17                (a) remuneration of an external administrator of the company  
18                    that relates to a period; or  
19                (b) a cost or expense incurred by the external administrator of  
20                    the company incurred during a period;  
21                unless the period is:  
22                (c) for a reviewing liquidator appointed by the Court under  
23                    paragraph 90-28(2)(c) or (3)(b)—the period determined by  
24                    the Court; or  
25                (d) otherwise—the prescribed period.

26                     *Report of review*

27            (5) A reviewing liquidator must prepare a report on the review.

28     **90-27 Who pays for a review?**

29            (1) The cost of carrying out a review under this Subdivision:  
30                (a) in the case of a reviewing liquidator appointed with the  
31                    agreement of the external administrator of the company



# EXPOSURE DRAFT

- 1 under subsection 90-24(3)—is to be borne by the creditors or  
2 members referred to in that subsection; or  
3 (b) in any other case—forms part of the expenses of the external  
4 administration of the company.
- 5 (2) Subsection (1) has effect subject to an order of the Court under  
6 section 90-28.

## 7 **90-28 Court orders in relation to review**

### 8 *Application of this section*

- 9 (1) This section applies if:  
10 (a) a reviewing liquidator has been appointed under this  
11 Subdivision in relation to one or more matters; and  
12 (b) the review has not been completed.

### 13 *Court orders on application by the reviewing liquidator*

- 14 (2) On application by the reviewing liquidator, the Court may make  
15 any or all of the following orders in relation to the review:  
16 (a) requiring the external administrator of the company or any  
17 other person to provide books, information or assistance to  
18 the reviewing liquidator;  
19 (b) requiring the reviewing liquidator to carry out a review of  
20 one or more matters that relate to the external administration  
21 of the company and that are specified in the order instead of,  
22 or in addition to, the matters referred to in paragraph (1)(a);  
23 (c) accepting the resignation of the reviewing liquidator, and  
24 appointing another registered liquidator as reviewing  
25 liquidator for the matter or matters;  
26 (d) any other order that the Court thinks fit.

### 27 *Court orders on application by a person with a financial interest*

- 28 (3) On application by a person with a financial interest in the external  
29 administration of the company, the Court may make any or all of  
30 the following orders in relation to the review:  
31 (a) requiring the reviewing liquidator to carry out a review of  
32 one or more matters that relate to the external administration

# EXPOSURE DRAFT

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

**Part 1** Insolvency Practice Schedule (Corporations)

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- 1 and that are specified in the order instead of, or in addition to,  
2 the matters referred to in paragraph (1)(a) of this section;  
3 (b) removing from office the reviewing liquidator, and  
4 appointing another registered liquidator as reviewing  
5 liquidator for the matter or matters;  
6 (c) any other order that the Court thinks fit.

## 7 **90-29 Rules about reviews**

- 8 (1) The Insolvency Practice Rules may provide for and in relation to  
9 reviews under this Subdivision.
- 10 (2) Without limiting subsection (1), the Insolvency Practice Rules may  
11 provide for and in relation to any or all of the following matters:  
12 (a) the giving of notice to the external administrator of a  
13 company before appointing, or making an application for the  
14 appointment of, a reviewing liquidator under this  
15 Subdivision;  
16 (b) the meaning, for the purposes of section 90-26, of *properly*  
17 *incurred* in relation to costs or expenses incurred by an  
18 external administrator of a company;  
19 (c) the appointment of reviewing liquidators, including  
20 requirements as to who may be appointed and the provision  
21 of declarations of relevant relationships;  
22 (d) the powers and duties of reviewing liquidators in carrying out  
23 a review;  
24 (e) the form and content of reports by reviewing liquidators;  
25 (f) the preparation and provision of reports by reviewing  
26 liquidators.

## 27 **Subdivision D—Removal by creditors**

### 28 **90-30 Application of this Subdivision**

29 This Subdivision applies in relation to a company that is under  
30 external administration, other than a company in relation to which  
31 a provisional liquidator has been appointed.

# EXPOSURE DRAFT

1 **90-35 Removal by creditors**

2 *Creditors may remove external administrator and appoint another*

- 3 (1) The creditors may, by resolution at a meeting, remove the external  
4 administrator of a company if at least 5 business days' notice of the  
5 meeting is given to all persons who would be entitled to receive  
6 notice of creditors' meetings.
- 7 (2) If the creditors remove the external administrator of a company  
8 under subsection (1), the creditors must, by resolution at the same  
9 meeting, appoint another person as external administrator of the  
10 company.
- 11 (3) The removal of an external administrator does not take effect until  
12 another person is appointed as external administrator of the  
13 company.

14 *Former administrator may apply to Court to be reappointed*

- 15 (4) A person (the *former administrator*) who has been removed as  
16 external administrator of the company by resolution of the  
17 creditors may apply to the Court to be reappointed as external  
18 administrator of the company.
- 19 (5) However, if the former administrator makes such an application,  
20 the former administrator must:
- 21 (a) record all costs incurred by the former administrator and the  
22 company in relation to the application; and
- 23 (b) do so in a way that separates those costs from the costs  
24 incurred by the former administrator and the company in  
25 relation to other matters.
- 26 (6) The Court may order that the former administrator be reappointed  
27 as external administrator of the company if the Court is satisfied  
28 that the removal of the former administrator was an improper use  
29 of the powers of one or more creditors.
- 30 (7) The Court may make such other orders in relation to the  
31 application as it thinks fit.

# EXPOSURE DRAFT

Schedule 2 Amendments relating to the Insolvency Practice Schedule (Corporations)

Part 1 Insolvency Practice Schedule (Corporations)

---

1 **Part 4—Other matters**

2 **Division 95—Introduction**

3 **95-1 Simplified outline of this Part**

4 This Part deals with a variety of matters:

- 5 • An external administrator of a company may assign a right to
- 6 sue.
- 7 • Forms are approved by ASIC. Provision is made for what may
- 8 be required in the form or to accompany the form.
- 9 • The Minister has power to make rules to be called the
- 10 Insolvency Practice Rules.

11 **Division 100—Other matters**

12 **100-5 External administrator may assign right to sue under this Act**

- 13 (1) Subject to subsections (2) and (3), an external administrator of a
- 14 company may assign any right to sue that is conferred on the
- 15 external administrator by this Act.
- 16 (2) If the external administrator's action has already begun, the
- 17 external administrator cannot assign the right to sue unless the
- 18 external administrator has the approval of the Court.
- 19 (3) Before assigning any right under subsection (1), the external
- 20 administrator must give written notice to the creditors of the
- 21 proposed assignment.
- 22 (4) If a right is assigned under this section, a reference in this Act to
- 23 the external administrator in relation to the action is taken to be a
- 24 reference to the person to whom the right has been assigned.

# EXPOSURE DRAFT

## 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:

# EXPOSURE DRAFT

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

**Part 1** Insolvency Practice Schedule (Corporations)

---

- 1 (a) required or permitted by this Schedule to be provided; or  
2 (b) necessary or convenient to be provided in order to carry out  
3 or give effect to this Schedule.
- 4 (2) Rules made under subsection (1) may include offences.
- 5 (3) The penalties for offences described in subsection (2) must not be  
6 more than 50 penalty units for an individual or 250 penalty units  
7 for a body corporate.

# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
Amendments consequential on the introduction of the Insolvency Practice Schedule  
(Corporations) **Part 2**

---

1 **Part 2—Amendments consequential on the**  
2 **introduction of the Insolvency Practice**  
3 **Schedule (Corporations)**

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

5 **3 Subparagraph 7(1)(a)(i)**

6 Omit “an externally-administered body corporate”, substitute “a  
7 Chapter 5 body corporate”.

8 **4 Subsection 7(1) (note)**

9 Omit “an externally-administered body corporate”, substitute “a  
10 Chapter 5 body corporate”.

11 *Australian Securities and Investments Commission Act 2001*

12 **5 Paragraph 1(1)(d)**

13 Omit “and Liquidators”.

14 **6 Subsection 5(1) (definition of *Disciplinary Board*)**

15 Omit “and Liquidators”.

16 **7 Subsection 13(3)**

17 Omit “liquidator registered under Division 2 of Part 9.2 of the  
18 Corporations Act”, substitute “registered liquidator”.

19 **8 Section 15**

20 After “422”, insert “, 422A”.

21 **9 Section 28**

22 After “30A,”, insert “30B,”.

23 **10 After section 30A**

24 Insert:

# EXPOSURE DRAFT

Schedule 2 Amendments relating to the Insolvency Practice Schedule (Corporations)

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

---

## 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 and the receivership of the property of corporations under:
- (a) Chapter 5 of the Corporations Act; and
  - (b) Schedule 2 to that Act; and
  - (c) other provisions of that Act that relate to that Chapter or Schedule.



# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
Amendments consequential on the introduction of the Insolvency Practice Schedule  
(Corporations) **Part 2**

---

- 1 (4) Without limiting subsection (1), a notice under that subsection may  
2 specify information or books that relate to any or all of the  
3 following:  
4 (a) the policies relating to the external administration of  
5 companies and the receivership of the property of  
6 corporations that the registered liquidator has adopted or  
7 proposes to adopt;  
8 (b) the procedures relating to the external administration of  
9 companies and the receivership of the property of  
10 corporations that the registered liquidator has put in place or  
11 proposes to put in place;  
12 (c) the external administration of a company, or companies, that  
13 the registered liquidator has conducted, is conducting or is  
14 proposing to conduct;  
15 (d) the receivership of the property of a corporation, or  
16 corporations, that the registered liquidator has conducted, is  
17 conducting or is proposing to conduct;  
18 (e) any other matter relating to the external administration of  
19 companies or the receivership of the property of corporations  
20 that is prescribed for the purposes of this paragraph.
- 21 (5) Without limiting subsection (1), a notice under that subsection may  
22 require the registered liquidator to give information or produce  
23 books even if doing so would involve a breach of an obligation of  
24 confidentiality that the registered liquidator owes to:  
25 (a) a company that is, has been or is likely to be under external  
26 administration; or  
27 (b) a corporation the property of which is, has been or is likely to  
28 be under receivership.
- 29 (6) ASIC may, by written notice to a registered liquidator who has  
30 received a notice under subsection (1), extend the period within  
31 which the registered liquidator must give the information or  
32 produce the books to which the notice under that subsection  
33 relates.
- 34 (7) In this section:  
35 *external administration* of a company has the same meaning as in  
36 Schedule 2 to the Corporations Act.
-

# EXPOSURE DRAFT

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

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

---

1                    *registered liquidator* means a person who is registered as a  
2                    liquidator under Schedule 2 to the Corporations Act.

## 3                    **11 At the end of section 33**

4                    Add:

- 5                    (3) ASIC may give to a person a written notice requiring the  
6                    production to a specified member or staff member, at a specified  
7                    place and time, of specified books that:  
8                    (a) are in the person's possession or control; and  
9                    (b) relate to the question whether a registered liquidator has  
10                    complied with liquidator requirements, within the meaning of  
11                    subsection 30B(3).

## 12                    **12 Subsection 34(3)**

13                    After "30A," insert "30B,".

## 14                    **13 Paragraph 37(5)(b)**

15                    Omit "or 30A(2)(a), (b) and (d)", substitute " , 30A(2)(a), (b) and (d) or  
16                    30B(2)(a), (b) and (d)".

## 17                    **14 At the end of Division 3 of Part 3**

18                    Add:

## 19                    **39C ASIC may give information and books in relation to Chapter 5** 20                    **bodies corporate**

21                    *Application of this section*

- 22                    (1) This section applies if ASIC obtains or generates information or  
23                    books in the exercise of its powers or the performance of its  
24                    functions in relation to:  
25                    (a) a person in that person's capacity as a registered liquidator;  
26                    or  
27                    (b) the external administration of a company; or  
28                    (c) the receivership of property of a corporation.

# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
Amendments consequential on the introduction of the Insolvency Practice Schedule  
(Corporations) **Part 2**

---

- 1                    *ASIC may give administration information to certain persons*
- 2                    (2) ASIC may give the information, all or part of the books or copies  
3                    of all or part of the books (*administration information*) to one or  
4                    more of the following:
- 5                    (a) if the administration information relates to a corporation—the  
6                    corporation;
- 7                    (b) if the administration information relates to a company that is  
8                    or has been under external administration—a person who is  
9                    or has at any time been:
- 10                    (i) the external administrator of the company; or  
11                    (ii) a related entity of the company; or  
12                    (iii) an officer of the company; or  
13                    (iv) a creditor of the company; or  
14                    (v) a member of a committee of inspection in the external  
15                    administration of the company;
- 16                    (c) if the administration information relates to property of a  
17                    corporation that is or has been under receivership—a person  
18                    who is or has at any time been:
- 19                    (i) the receiver of the property; or  
20                    (ii) a related entity of the corporation; or  
21                    (iii) an officer of the corporation; or  
22                    (iv) a creditor of the corporation;
- 23                    (d) if the administration information relates to a company that is  
24                    or has been under external administration—a person who is  
25                    carrying out, or has at any time carried out, a review of the  
26                    external administration of the company under Subdivision C  
27                    of Division 90 of Schedule 2 to the Corporations Act.
- 28                    *ASIC may only give administration information in certain*  
29                    *circumstances*
- 30                    (3) ASIC must not give administration information to a person under  
31                    this section unless ASIC is satisfied that:
- 32                    (a) the administration information is relevant to the person; or  
33                    (b) the administration information is relevant to the exercise of a  
34                    power or performance of a function under the Corporations  
35                    Act by the person in relation to:
-

# EXPOSURE DRAFT

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

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

---

- 1 (i) a registered liquidator; or  
2 (ii) the external administration of a company; or  
3 (iii) the receivership of property of a corporation; or  
4 (c) it is otherwise reasonable to give the administration  
5 information to the person.

6 *Process to be observed before administration information given*

- 7 (4) Before giving administration information to a person under this  
8 section, ASIC must give the external administrator of the company  
9 or the receiver of the property of the corporation (as the case  
10 requires) notice in writing:  
11 (a) identifying:  
12 (i) the administration information that ASIC proposes to  
13 give; and  
14 (ii) the person to whom ASIC proposes to give the  
15 information; and  
16 (b) inviting the external administrator or receiver (as the case  
17 requires) to make a written submission to ASIC within 10  
18 business days after the notice is given, stating:  
19 (i) whether he or she has any objection to the  
20 administration information being given to the person;  
21 and  
22 (ii) if he or she has such an objection, the reasons for that  
23 objection.
- 24 (5) If the external administrator or receiver (as the case requires)  
25 objects to the administration information being given to a person,  
26 ASIC must take into account the reasons for that objection when  
27 deciding whether to give the information to the person.
- 28 (6) If the external administrator or receiver (as the case requires) has  
29 made a submission objecting to the administration information  
30 being given to a person and ASIC decides to give the information  
31 to the person, ASIC must give the external administrator or  
32 receiver (as the case requires) 5 business days' notice of its  
33 decision before giving the information to the person.

# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
Amendments consequential on the introduction of the Insolvency Practice Schedule  
(Corporations) **Part 2**

---

1

## *Conditions*

2

- (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.

3

4

5

## *Offence*

6

- (8) A person commits an offence if:

7

- (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

8

9

10

- (b) ASIC has given the person notice of the condition under subsection (7); and

11

12

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

13

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

14

## *Notices are not legislative instruments*

15

- (9) Notices under subsections (4) and (7) are not legislative instruments.

16

17

## *Definitions*

18

- (10) In this section:

19

*external administration* of a company has the same meaning as in Schedule 2 to the Corporations Act.

20

21

*external administrator* of a company has the same meaning as in Schedule 2 to the Corporations Act.

22

23

*registered liquidator* means a person who is registered as a liquidator under Schedule 2 to the Corporations Act.

24

25

## **15 Paragraph 63(1)(c)**

26

After “30A,” insert “30B,”.

27

## **16 After paragraph 80(1)(aa)**

28

Insert:

29

- (ab) a matter referred to in paragraph 30B(2)(a); or
-

# EXPOSURE DRAFT

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

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

---

1 **17 Paragraph 127(4)(a)**

2 After “Review Board”, insert “, a committee convened under Part 2 of  
3 Schedule 2 to the Corporations Act”.

4 **18 Paragraph 127(4)(d)**

5 Repeal the paragraph, substitute:

6 (d) will enable or assist:

7 (i) a prescribed professional disciplinary body to perform  
8 one of its functions; or

9 (ii) another prescribed body to perform a function in  
10 relation to registered liquidators; or

11 (e) will enable a committee convened under Part 2 of Schedule 2  
12 to the Corporations Act to perform its functions under the  
13 corporations legislation;

14 **19 Subsection 127(4EA)**

15 Omit “paragraph (4)(d)”, substitute “subparagraph (4)(d)(i)”.

16 **20 After subsection 127(4EA)**

17 Insert:

18 (4EB) If ASIC discloses information to a prescribed body under  
19 subparagraph (4)(d)(ii), the body or a member of the body:

20 (a) must not disclose the information to any other person; and

21 (b) must not use the information for any purpose other than the  
22 performance of functions in relation to registered liquidators.

23 Penalty: Imprisonment for 2 years.

24 **21 After paragraph 136(2)(e)**

25 Insert:

26 (ea) information about the activities that ASIC has undertaken in  
27 exercise of its powers, and performance of its functions,  
28 under Chapter 5 of, or Schedule 2 to, the Corporations Act  
29 and any provisions of that Act that relate to that Chapter or  
30 Schedule;

---

# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
Amendments consequential on the introduction of the Insolvency Practice Schedule  
(Corporations) **Part 2**

---

1 **22 Part 11 (heading)**

2 Repeal the heading, substitute:

3 **Part 11—Companies Auditors Disciplinary Board**

4 **23 Subparagraph 203(2A)(b)(ii)**

5 Repeal the subparagraph.

6 **24 Paragraphs 210A(1)(b) and (c)**

7 Omit “or liquidator”.

8 **25 Paragraph 223(1)(b)**

9 Omit “, as a liquidator or as a liquidator of a specified body corporate,”.

10 **26 Paragraph 223(2)(b)**

11 Omit “, as a liquidator or as a liquidator of a specified body corporate,  
12 as the case requires,”.

13 **27 After paragraph 237(2)(d)**

14 Insert:

15 (da) is made to a committee convened under Part 2 of Schedule 2  
16 to the Corporations Act for the purposes of its performance  
17 of its functions under the corporations legislation; or

18 **28 Paragraph 246(1)(k)**

19 After “the FRC”, insert “, a committee convened under Part 2 of  
20 Schedule 2 to the Corporations Act”.

21 ***Banking Act 1959***

22 **29 Subsections 13(6) and 13A(7)**

23 Omit “an externally-administered body corporate”, substitute “a  
24 Chapter 5 body corporate”.

25 **30 Paragraph 18(1)(c)**

26 Omit “and Liquidators”.

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# EXPOSURE DRAFT

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

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

---

1 **31 Subsections 61(7) and 62(3)**

2 Omit “an externally-administered body corporate”, substitute “a  
3 Chapter 5 body corporate”.

4 ***Bankruptcy Act 1966***

5 **32 Paragraph 186A(1)(a)**

6 Repeal the paragraph, substitute:

7 (a) at any time during the 10-year period ending at the test time,  
8 the individual was an insolvent under administration; or

9 ***Carbon Credits (Carbon Farming Initiative) Act 2011***

10 **33 Section 5**

11 Insert:

12 *Chapter 5 body corporate* has the same meaning as in the  
13 *Corporations Act 2001*.

14 **34 Section 5 (definition of *externally-administered body***  
15 ***corporate*)**

16 Repeal the definition.

17 **35 Section 59**

18 Omit “an externally-administered body corporate”, substitute “a  
19 Chapter 5 body corporate”.

20 Note: This item does not commence at all if item 164A of Schedule 1 to the *Carbon Farming*  
21 *Initiative Amendment Act 2014* does not commence. See table item 5 in subsection 2(1)  
22 of this Act.

23 **36 Paragraph 60(2)(b)**

24 Omit “an externally-administered body corporate”, substitute “a  
25 Chapter 5 body corporate”.

26 Note: This item does not commence at all if item 164A of Schedule 1 to the *Carbon Farming*  
27 *Initiative Amendment Act 2014* does not commence. See table item 5 in subsection 2(1)  
28 of this Act.



# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
Amendments consequential on the introduction of the Insolvency Practice Schedule  
(Corporations) **Part 2**

---

1 **37 Paragraphs 64(3)(c) and 65(1)(c)**

2 Omit “an externally-administered body corporate”, substitute “a  
3 Chapter 5 body corporate”.

4 **38 Subparagraph 84(1)(b)(xii)**

5 Omit “an externally-administered body corporate”, substitute “a  
6 Chapter 5 body corporate”.

7 Note: This item does not commence at all if item 164A of Schedule 1 to the *Carbon Farming*  
8 *Initiative Amendment Act 2014* commences before or on the same day as the provisions  
9 covered by table item 2 in subsection 2(1) of this Act. See table item 7 in  
10 subsection 2(1) of this Act.

11 **39 Subparagraph 84(1)(c)(ii)**

12 Omit “an externally-administered body corporate”, substitute “a  
13 Chapter 5 body corporate”.

14 Note: This item does not commence at all if item 164A of Schedule 1 to the *Carbon Farming*  
15 *Initiative Amendment Act 2014* does not commence. See table item 8 in subsection 2(1)  
16 of this Act.

17 ***Cheques Act 1986***

18 **40 Paragraph 70A(2)(a)**

19 Omit “an externally administered body corporate”, substitute “a  
20 Chapter 5 body corporate”.

21 ***Commonwealth Serum Laboratories Act 1961***

22 **41 Subsection 19D(3) (definition of *resolution*)**

23 After “as in”, insert “section 9 of”.

24 **42 Subsection 19D(3) (definition of *special resolution*)**

25 After “as in”, insert “section 9 of”.

# EXPOSURE DRAFT

Schedule 2 Amendments relating to the Insolvency Practice Schedule (Corporations)

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

---

1 ***Corporations (Aboriginal and Torres Strait Islander) Act***  
2 ***2006***

3 **43 Paragraphs 22-5(1)(e) and 23-5(1)(d)**

4 Omit “an externally-administered body corporate”, substitute “a  
5 Chapter 5 body corporate”.

6 **44 Subsection 45-1(4) (paragraph (b) of the definition of**  
7 ***Corporations Act arrangements and reconstructions***  
8 ***provisions)***

9 Omit “and sections 428, 432, 434 and 536”, substitute “, sections 428,  
10 432 and 434 and Subdivision B of Division 90 of Schedule 2”.

11 **45 Subsection 45-1(4) (paragraph (d) of the definition of**  
12 ***Corporations Act arrangements and reconstructions***  
13 ***provisions)***

14 After “regulations”, insert “and rules”.

15 **46 Subsection 421-1(4) (paragraph (b) of the definition of**  
16 ***exempt document)***

17 After “report”, insert “or return”.

18 **47 Subsection 421-1(4) (subparagraph (b)(i) of the definition**  
19 ***of exempt document)***

20 After “422”, insert “or 422A”.

21 **48 Subsection 521-1(4) (paragraphs (a), (b) and (c) of the**  
22 **definition of *Corporations Act administration***  
23 ***provisions)***

24 After “Part 5.3A”, insert “and Schedule 2”.

25 **49 Subsection 521-1(4) (paragraph (c) of the definition of**  
26 ***Corporations Act administration provisions)***

27 After “regulations”, insert “and rules”.

# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
Amendments consequential on the introduction of the Insolvency Practice Schedule  
(Corporations) **Part 2**

---

1 **50 Subsection 526-35(3) (paragraph (a) of the definition of**  
2 **Corporations Act winding up provisions)**

3 After “and 5.9”, insert “and Schedule 2”.

4 **51 Subsection 526-35(3) (paragraph (b) of the definition of**  
5 **Corporations Act winding up provisions)**

6 Omit “of the Parts”, substitute “of the provisions”.

7 **52 Subsection 526-35(3) (paragraph (c) of the definition of**  
8 **Corporations Act winding up provisions)**

9 Repeal the paragraph, substitute:

10 (c) the regulations and rules made under that Act for the  
11 purposes of the provisions of that Act referred to in  
12 paragraphs (a) and (b);

13 **53 Paragraph 546-10(1)(c)**

14 Omit “509(6)”, substitute “509(3)”.

15 **54 Paragraph 546-10(1)(c)**

16 Omit “return”, substitute “account”.

17 **55 Paragraph 546-10(2)(a)**

18 Omit “a return”, substitute “an account”.

19 **56 Paragraph 546-10(2)(b)**

20 Omit “509(6)”, substitute “509(3)”.

21 **57 Subsection 546-20(6)**

22 Omit “subsection 542(2)”, substitute “section 70-35 of Schedule 2”.

23 **58 Section 700-1**

24 Insert:

25 *Chapter 5 body corporate* has the same meaning as in the  
26 *Corporations Act 2001*.

# EXPOSURE DRAFT

Schedule 2 Amendments relating to the Insolvency Practice Schedule (Corporations)

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

---

1 **59 Section 700-1 (definition of *externally-administered body***  
2 ***corporate*)**

3 Repeal the definition.

4 ***Corporations Act 2001***

5 **60 Section 9 (definition of *Board*)**

6 Omit “and Liquidators”.

7 **61 Section 9**

8 Insert:

9 ***Chapter 5 body corporate*** means a body corporate:

- 10 (a) that is being wound up; or  
11 (b) in respect of property of which a receiver, or a receiver and  
12 manager, has been appointed (whether or not by a court) and  
13 is acting; or  
14 (c) that is under administration; or  
15 (d) that has executed a deed of company arrangement that has  
16 not yet terminated; or  
17 (e) that has entered into a compromise or arrangement with  
18 another person the administration of which has not been  
19 concluded.

20 **62 Section 9 (definition of *committee of creditors*)**

21 Repeal the definition.

22 **63 Section 9 (subparagraph (a)(iii) of the definition of**  
23 ***declaration of indemnities*)**

24 Omit “his or her remuneration as determined under section 449E”,  
25 substitute “the remuneration to which he or she is entitled under  
26 section 60-5 of Schedule 2 (external administrator’s remuneration)”.

27 **64 Section 9 (definition of *externally-administered body***  
28 ***corporate*)**

29 Repeal the definition.

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# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
Amendments consequential on the introduction of the Insolvency Practice Schedule  
(Corporations) **Part 2**

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1 **65 Section 9 (definition of *financial year*)**

2 After “*year*”, insert “, when used in a provision outside Schedule 2,”.

3 **66 Section 9 (paragraphs (a) and (b) of the definition of *firm*)**

4 Omit “externally-administered bodies corporate”, substitute “Chapter 5  
5 bodies corporate”.

6 **67 Section 9**

7 Insert:

8 *Insolvency Practice Rules* means the rules made by the Minister  
9 under section 105-1 of Schedule 2.

10 **68 Section 9 (definition of *insolvent under administration*)**

11 Omit “a person who” (first occurring).

12 **69 Section 9 (paragraphs (a) and (b) of the definition of  
13 *insolvent under administration*)**

14 Before “under”, insert “a person who,”.

15 **70 Section 9 (at the end of paragraph (b) of the definition of  
16 *insolvent under administration*)**

17 Add “or”.

18 **71 Section 9 (definition of *insolvent under administration*)**

19 Omit “and includes:”.

20 **72 Section 9 (at the end of the definition of *insolvent under  
21 administration*)**

22 Add:

23 ; or (e) a person who is a party (as a debtor) to a debt agreement  
24 under:

25 (i) Part IX of the *Bankruptcy Act 1966*; or

26 (ii) the corresponding provisions of the law of an external  
27 Territory or the law of a foreign country.

# EXPOSURE DRAFT

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

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

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1 **73 Section 9 (definition of *official liquidator*)**

2 Repeal the definition.

3 **74 Section 9 (at the end of the definition of *property*)**

4 Add:

5 ; and (i) in Schedule 2 (the Insolvency Practice Schedule)—has a  
6 meaning affected by section 5-26 of that Schedule.

7 **75 Section 9 (definition of *registered liquidator*)**

8 Repeal the definition, substitute:

9 *registered liquidator* has the same meaning as in section 5-5 of  
10 Schedule 2.

11 **76 Section 9 (definition of *resolution*)**

12 After “*resolution*,” insert “when used in a provision outside  
13 Schedule 2”.

14 **77 Section 9 (definition of *special resolution*)**

15 After “*resolution*,” insert “, when used in a provision outside  
16 Schedule 2”.

17 **78 Section 9 (at the end of the definition of *this Act*)**

18 Add “and the Insolvency Practice Rules”.

19 **79 Subsection 57A(3) (note)**

20 Omit “1309(6), 1318(5), 1321(2)”, substitute “599(2), 1309(6),  
21 1318(5)”.

22 **80 Subsection 162(4)**

23 Omit “an externally-administered body corporate”, substitute “a  
24 Chapter 5 body corporate”.

25 **81 At the end of Part 2D.1 of Chapter 2D**

26 Add:

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# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
Amendments consequential on the introduction of the Insolvency Practice Schedule  
(Corporations) **Part 2**

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1 **Division 5—Exercise of powers while company under**  
2 **external administration**

3 **198G Exercise of powers while company under external**  
4 **administration**

5 *Powers of officers while company under external administration*

- 6 (1) While a company is under external administration, an officer of the  
7 company must not perform or exercise a function or power of that  
8 office.

9 *Offence*

- 10 (2) A person commits an offence if:  
11 (a) the person is an officer of a company; and  
12 (b) the company is under external administration; and  
13 (c) the person purports to perform or exercise a function or  
14 power of that office.

15 Penalty: 25 penalty units.

16 *Exceptions*

- 17 (3) Subsections (1) and (2) do not apply to the extent that the officer of  
18 the company is acting:  
19 (a) as the external administrator of the company; or  
20 (b) with the written approval of the external administrator of the  
21 company or the Court; or  
22 (c) in circumstances in which, despite the fact that the company  
23 is under external administration, the officer is permitted by  
24 this Act to act.

25 Note: In proceedings to determine whether a person has committed an  
26 offence under subsection (2), a defendant bears an evidential burden in  
27 relation to the matters in subsection (3), see subsection 13.3(3) of the  
28 *Criminal Code*.

- 29 (4) Subsections (1) and (2) do not apply if the company has executed a  
30 deed of company arrangement and the deed has not yet terminated.

# EXPOSURE DRAFT

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

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

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1 Note 1: Section 444G deals with the effect of a deed of company arrangement  
2 on various persons.

3 Note 2: In proceedings to determine whether a person has committed an  
4 offence under subsection (2), a defendant bears an evidential burden in  
5 relation to the matters in subsection (4), see subsection 13.3(3) of the  
6 *Criminal Code*.

7 *Functions and powers of liquidator or provisional liquidator*  
8 *prevail in case of conflict*

9 (5) If subsection (3) applies and there is a conflict between a function  
10 or power of the external administrator of the company and a  
11 function or power of the officer in relation to the company, the  
12 external administrator's function or power prevails.

13 *Effect of section*

14 (6) This section does not remove an officer of a company from office.

15 (7) For the purposes of this section, a person is not an officer of a  
16 company merely because he or she is a receiver and manager,  
17 appointed under a power contained in an instrument, of property of  
18 the company.

19 (8) Nothing in this section affects a secured creditor's right to realise  
20 or otherwise deal with the security interest.

21 *Definitions*

22 (9) In this section:

23 *external administration* of a company has the same meaning as in  
24 Schedule 2.

25 *external administrator* of a company has the same meaning as in  
26 Schedule 2.

## 27 **82 Section 206B (heading)**

28 Repeal the heading, substitute:



# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
Amendments consequential on the introduction of the Insolvency Practice Schedule  
(Corporations) **Part 2**

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1 **206B Automatic disqualification—convictions, bankruptcy and**  
2 **foreign court orders etc.**

3 **83 Section 206BA (heading)**

4 Repeal the heading, substitute:

5 **206BA Extension of period of automatic disqualification under**  
6 **section 206B**

7 **84 Subsection 254N(1)**

8 Omit “an externally-administered body corporate”, substitute “a  
9 Chapter 5 body corporate”.

10 **85 Subparagraph 283AC(1)(e)(ii)**

11 Omit “an externally-administered body corporate”, substitute “a  
12 Chapter 5 body corporate”.

13 **86 Paragraph 411(9)(b)**

14 Repeal the paragraph, substitute:

15 (b) Subdivision B (court powers to inquire and make orders) of  
16 Division 90 of Schedule 2 applies in relation to that person or  
17 those persons as if:

18 (i) the appointment of the person or persons to administer  
19 the compromise or arrangement were an appointment of  
20 the person or persons as an external administrator of the  
21 body; and

22 (ii) a reference in that Subdivision to an external  
23 administration were a reference to the administration of  
24 the compromise or arrangement; and

25 (iii) a reference in that Subdivision to an external  
26 administrator were a reference to that person or to those  
27 persons.

28 **87 At the end of Part 5.1 of Chapter 5**

29 Add:

# EXPOSURE DRAFT

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

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

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## **415A Outcome of voting at creditors' meeting determined by related entity—Court powers**

- 1  
2
- 3 (1) Subsection (2) applies if, on the application of a creditor of a  
4 Part 5.1 body, the Court is satisfied of the following matters:
- 5 (a) a proposed resolution has been voted on at a meeting of  
6 creditors, or of a class of creditors, of the body held under  
7 this Part;
- 8 (b) that, if the vote or votes that a particular related creditor, or  
9 particular related creditors, of the body cast on the proposed  
10 resolution had been disregarded for the purposes of  
11 determining whether or not the proposed resolution was  
12 passed, the proposed resolution:
- 13 (i) if it was in fact passed—would not have been passed; or  
14 (ii) if in fact it was not passed—would have been passed;  
15 or the question would have had to be decided on a casting  
16 vote;
- 17 (c) that the passing of the proposed resolution, or the failure to  
18 pass it, as the case requires:
- 19 (i) is contrary to the interests of the creditors as a whole or  
20 of that class of creditors as a whole, as the case may be;  
21 or  
22 (ii) has prejudiced, or is reasonably likely to prejudice, the  
23 interests of the creditors who voted against the proposed  
24 resolution, or for it, as the case may be, to an extent that  
25 is unreasonable having regard to the matters in  
26 subsection (2).
- 27 (2) The matters are:
- 28 (a) the benefits resulting to the related creditor, or to some or all  
29 of the related creditors, from the resolution, or from the  
30 failure to pass the proposed resolution, as the case may be;  
31 and  
32 (b) the nature of the relationship between the related creditor and  
33 the body, or of the respective relationships between the  
34 related creditors and the body; and  
35 (c) any other relevant matter.
- 36 (3) The Court may make one or more of the following:
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# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
Amendments consequential on the introduction of the Insolvency Practice Schedule  
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- 1 (a) if the proposed resolution was passed—an order setting aside  
2 the resolution;  
3 (b) an order that the proposed resolution be considered and voted  
4 on at a meeting of the creditors of the body, or of that class of  
5 creditors, as the case may be, convened and held as specified  
6 in the order;  
7 (c) an order directing that the related creditor is not, or such of  
8 the related creditors as the order specifies are not, entitled to  
9 vote on:  
10 (i) the proposed resolution; or  
11 (ii) a resolution to amend or vary the proposed resolution;  
12 (d) such other orders as the Court thinks necessary.
- 13 (4) In this section:  
14 *related creditor*, in relation to a Part 5.1 body, in relation to a vote,  
15 means a person who, when the vote was cast, was a related entity,  
16 and a creditor, of the body.

## 415B Interim order on application under section 415A

- 18 (1) If:  
19 (a) an application under subsection 415A(1) has not yet been  
20 determined; and  
21 (b) the Court is of the opinion that it is desirable to do so;  
22 the Court may make such interim orders as it thinks appropriate.
- 23 (2) An interim order must be expressed to apply until the application is  
24 determined, but may be varied or discharged.

## 415C Order under section 415A does not affect act already done pursuant to resolution

27 An act done pursuant to a resolution as in force before the making,  
28 under section 415A, of an order setting aside or varying the  
29 resolution, is as valid and binding on and after the making of the  
30 order as if the order had not been made.

## 88 After section 422

31 Insert:  
32

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# EXPOSURE DRAFT

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

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

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1     **422A Annual return by receiver**

2             (1) This section applies if a person is the receiver of property of a  
3                 corporation during all or part of a financial year.

4             (2) The person must lodge a return in relation to the receivership.

5             (3) The return must:

6                 (a) be in the approved form; and

7                 (b) be lodged with ASIC within 3 months after the end of the  
8                 financial year.

9             Note:         Fees for lodging documents and late lodgement fees may be imposed  
10                            under the *Corporations (Fees) Act 2001*.

11     **422B Transfer of books to new administrator**

12                            *Application of this section*

13             (1) This section applies if:

14                 (a) a person (the **former receiver**) ceases to act as a receiver, or a  
15                 receiver and manager, of property of a corporation; and

16                 (b) ASIC has not issued a notice to the former receiver under  
17                 section 422C; and

18                 (c) a registered liquidator (the **new administrator**) is appointed  
19                 instead as:

20                            (i) the receiver, or the receiver and manager, of that  
21                            property of the corporation; or

22                            (ii) the external administrator of the company.

23                            *Transfer of books to new administrator*

24             (2) The former receiver must transfer to the new administrator, within  
25                 5 business days after the new administrator is appointed, any books  
26                 relating to the receivership of the property that are in the former  
27                 receiver's possession or control.

28             (3) The former receiver may take a copy of any part of the books  
29                 before transferring them to the new administrator.

# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
Amendments consequential on the introduction of the Insolvency Practice Schedule  
(Corporations) **Part 2**

---

1 *New administrator must allow inspection etc.*

2 (4) After the books are transferred, the new administrator must allow  
3 the former receiver to inspect them at any reasonable time and take  
4 a copy of any part of the books.

5 *Offence*

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

11 Penalty: 50 penalty units.

12 *Lien against books not prejudiced*

13 (6) If the new administrator is entitled to take possession of the books  
14 under this section:  
15 (a) a person is not entitled, as against the new administrator, to  
16 claim a lien on the books; and  
17 (b) such a lien is not otherwise prejudiced.

## 18 **422C Transfer of books to ASIC etc.**

19 *Transfer of books to ASIC*

20 (1) If a person ceases to act as a receiver, or a receiver and manager, of  
21 property of a corporation, ASIC may, by written notice given to the  
22 person, require the person to:  
23 (a) if the person has books relating to the receivership of that  
24 property of the corporation in his or her possession or  
25 control—transfer those books to ASIC within the period  
26 specified in the notice; or  
27 (b) otherwise—notify ASIC, within the period and in the manner  
28 specified in the notice, that the person does not have books  
29 relating to the receivership of that property of the corporation  
30 in the person's possession or control.

# EXPOSURE DRAFT

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

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## *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) books relating to the receivership of property of a corporation are 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:
    - (i) the receiver, or the receiver and manager, of that property of the corporation; or
    - (ii) the external administrator of the company;
- ASIC must, as soon as practicable, transfer those books to the new administrator.

## *ASIC must transfer books to company*

- (4) If:
- (a) books relating to the receivership of property of a corporation are 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 receiver, or receiver and manager, of that property of the corporation; or
    - (ii) the external administrator of the company;
- ASIC must, as soon as practicable, transfer those books to the relevant corporation.

## *Lien against books not prejudiced*

- (5) If ASIC is entitled to take possession of the books under this section:
-

# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
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1 (a) a person is not entitled, as against ASIC, to claim a lien on  
2 the books; and

3 (b) such a lien is not otherwise prejudiced.

4 (6) If ASIC is required to give possession of the books to the new  
5 administrator under this section:

6 (a) a person is not entitled, as against the new administrator, to  
7 claim a lien on the books; and

8 (b) such a lien is not otherwise prejudiced.

9 *Notice is not a legislative instrument*

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

## 11 **89 Paragraph 426(a)**

12 Omit “report that the controller lodges under section 421A or 422”,  
13 substitute “report or return that the controller lodges under  
14 section 421A, 422 or 422A”.

## 15 **90 Paragraph 429(2)(b)**

16 Omit “14 days”, substitute “10 business days”.

## 17 **91 Section 435A**

18 After “this Part”, insert “, and Schedule 2 to the extent that it relates to  
19 this Part”.

## 20 **92 At the end of section 435A**

21 Add:

22 Note: Schedule 2 contains additional rules about companies under external  
23 administration.

## 24 **93 Paragraph 436DA(6)(a)**

25 Repeal the paragraph, substitute:

26 (a) if:

27 (i) there is a committee of inspection; and

28 (ii) the next meeting of the committee of inspection occurs  
29 before the next meeting of the company’s creditors;

30 at the next meeting of the committee of inspection; or

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# EXPOSURE DRAFT

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

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

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1 **94 Sections 436E, 436F, 436G and 437C**

2 Repeal the sections.

3 **95 Subsection 438B(2)**

4 Omit “statement”, substitute “report in the prescribed form”.

5 **96 After subsection 438B(2)**

6 Insert:

7 (2A) The administrator must, within 5 business days after receiving a  
8 report under subsection (2), lodge a copy of the report.

9 **97 Subsection 438B(4)**

10 After “(2)”, insert “, (2A)”.

11 **98 Section 438E**

12 Repeal the section.

13 **99 Subsections 439A(3) and (4)**

14 Repeal the subsections.

15 **100 Section 439B**

16 Repeal the section.

17 **101 Paragraph 439C(a)**

18 Omit “the notice”, substitute “any notice”.

19 **102 Subsections 441A(3), 441B(2) and 441C(2)**

20 Omit “437C”, substitute “198G”.

21 **103 Section 441E**

22 Omit “437C”, substitute “198G”.

23 **104 Subsections 441F(2) and 441G(1)**

24 Omit “437C”, substitute “198G”.

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# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
Amendments consequential on the introduction of the Insolvency Practice Schedule  
(Corporations) **Part 2**

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1 **105 Section 441J**

2 Omit “437C”, substitute “198G”.

3 **106 Paragraph 443D(b)**

4 Repeal the paragraph, substitute:

5 (b) the remuneration to which he or she is entitled under  
6 Division 60 of Schedule 2 (external administrator’s  
7 remuneration).

8 **107 Subsection 444B(4)**

9 Omit “437C”, substitute “198G”.

10 **108 Section 445A**

11 Omit “convened under section 445F”.

12 **109 Paragraph 445C(b)**

13 Omit “that was convened under section 445F by a notice setting out the  
14 proposed resolution”.

15 **110 Paragraph 445D(1)(b)**

16 Omit “report or statement under subsection 439A(4)”, substitute  
17 “document”.

18 **111 Paragraph 445D(1)(c)**

19 Omit “report or statement”, substitute “document”.

20 **112 Paragraph 445E(a)**

21 Repeal the paragraph, substitute:

22 (a) the company’s creditors pass a resolution at a meeting  
23 terminating the deed; and

24 **113 Section 445F**

25 Repeal the section.

26 **114 Division 11A of Part 5.3A of Chapter 5**

27 Repeal the Division.

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# EXPOSURE DRAFT

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

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

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1 **115 Paragraph 446A(1)(c)**

2 Omit “at a meeting convened under section 445F, a”, substitute “the”.

3 **116 Paragraph 446A(7)(a)**

4 Omit “subsection 499(4)”, substitute “section 198G (exercise of powers  
5 while company under external administration)”.

6 **117 Subsection 446B(2)**

7 After “Part 5.5”, insert “or Schedule 2”.

8 **118 Sections 447D, 447E and 448D**

9 Repeal the sections.

10 **119 Division 15 of Part 5.3A of Chapter 5 (heading)**

11 Repeal the heading, substitute:

12 **Division 15—Removal and replacement of administrator**

13 **120 Section 449B**

14 Repeal the section.

15 **121 Subsection 449C(2) (paragraph (a) of the definition of**  
16 ***appointer*)**

17 Omit “section 449B”, substitute “Division 90 of Schedule 2 (review of  
18 the external administration of a company)”.

19 **122 Subsection 449C(5)**

20 Repeal the subsection.

21 **123 Subsection 449C(7)**

22 Omit “437C”, substitute “198G”.

23 **124 Paragraph 449CA(6)(a)**

24 Omit “committee of creditors” (wherever occurring), substitute  
25 “committee of inspection”.

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# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
Amendments consequential on the introduction of the Insolvency Practice Schedule  
(Corporations) **Part 2**

---

1 **125 Sections 449D and 449E**

2 Repeal the sections.

3 **126 Subsection 450A(1A)**

4 Repeal the subsection.

5 **127 Paragraph 450B(c)**

6 Repeal the paragraph, substitute:

7 (b) lodge notice in the prescribed form with ASIC of the  
8 execution of the deed.

9 **128 Section 471A**

10 Repeal the section.

11 **129 Section 471C**

12 Omit “471A or”.

13 **130 Section 472 (heading)**

14 Repeal the heading, substitute:

15 **472 Court to appoint registered liquidator**

16 **131 Subsections 472(1) and (2)**

17 Omit “an official liquidator”, substitute “a registered liquidator”.

18 **132 Subsection 472(6)**

19 Repeal the subsection, substitute:

20 (6) If more than one liquidator is appointed by the Court, the Court  
21 must declare whether anything that is required or authorised by this  
22 Act to be done by the liquidator is to be done by all or any one or  
23 more of the persons appointed.

24 **133 Section 473**

25 Repeal the section, substitute:

# EXPOSURE DRAFT

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

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

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1 **473 Resignation of liquidators**

2 A liquidator appointed by the Court may resign.

3 **473A Vacancies in office of court-appointed liquidator**

4 (1) A vacancy in the office of a liquidator appointed by the Court may  
5 be filled by:

- 6 (a) the Court; or  
7 (b) ASIC.

8 (2) If ASIC fills a vacancy in the office of a liquidator under  
9 subsection (1), ASIC must:

- 10 (a) publish notice of the filling of the vacancy; and  
11 (b) publish the notice in the prescribed manner.

12 (3) If ASIC fills a vacancy in the office of a liquidator under  
13 subsection (1), the liquidator is taken, for the purposes of this Act,  
14 to be appointed by the Court.

15 (4) If more than one liquidator is appointed under this section, the  
16 Court or ASIC (as the case may be) must declare whether anything  
17 that is required or authorised by this Act to be done by the  
18 liquidator is to be done by all or any one or more of the persons  
19 appointed.

20 (5) If a declaration made by ASIC under subsection (4) is inconsistent  
21 with a declaration of the Court made under that subsection, the  
22 declaration of the Court prevails to the extent of any inconsistency.

23 **134 Subsections 475(4) and (5)**

24 Omit “14 days”, substitute “10 business days”.

25 **135 Subsection 475(7)**

26 Omit “7 days”, substitute “5 business days”.

27 **136 Section 476**

28 Repeal the section.

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# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
Amendments consequential on the introduction of the Insolvency Practice Schedule  
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---

1 **137 After subsection 477(2B)**

2 Insert:

3 (2C) Subsection (2B) does not apply to an agreement if the costs and  
4 expenses of the company under the agreement are to be paid out of  
5 money paid to the liquidator:

- 6 (a) by ASIC on behalf of the Commonwealth; and  
7 (b) for the purpose of paying the costs and expenses.

8 **138 Subsection 477(4)**

9 Repeal the subsection.

10 **139 Subsection 477(6)**

11 Repeal the subsection, substitute:

12 (6) Subject to this Part, the liquidator must use his or her own  
13 discretion in the management of affairs and property of the  
14 company and the distribution of its property.

15 **140 Section 479**

16 Repeal the section.

17 **141 Paragraph 481(1)(a)**

18 Omit “section 539”, substitute “section 70-15 of Schedule 2 (audit of  
19 administration books)”.

20 **142 Paragraph 482(2A)(d)**

21 Repeal the paragraph, substitute:

22 (d) any document that accompanied a notice of the meeting  
23 under section 439A when the company was under  
24 administration;

25 **143 Subsection 488(1)**

26 After “this Part”, insert “or Schedule 2”.

27 **144 Section 489D (heading)**

28 Repeal the heading, substitute:

# EXPOSURE DRAFT

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

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

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1 **489D Court's power to make orders under other provisions**

2 **145 Subsections 489D(1) and (2)**

3 After "598 or 1323", insert ", or section 45-1 or 90-15 of Schedule 2".

4 **146 Subsection 489EC(1)**

5 Repeal the subsection, substitute:

6 (1) If ASIC orders under section 489EA that a company be wound up,  
7 ASIC may appoint a liquidator for the purpose of winding up the  
8 affairs and distributing the property of the company.

9 Note: For the remuneration of liquidators appointed under this section, see  
10 Subdivision D of Division 60 of Schedule 2.

11 **147 Section 495**

12 Repeal the section, substitute:

13 **495 Appointment of liquidator etc.**

14 (1) The company in general meeting must appoint a liquidator or  
15 liquidators for the purpose of winding up the affairs and  
16 distributing the property of the company.

17 Note: For rules about the liquidator's remuneration, see Division 60 of  
18 Part 3 of Schedule 2. For rules about convening meetings, see  
19 Division 75 of Part 3 of Schedule 2.

20 (2) If a vacancy occurs in the office of a liquidator (whether by death,  
21 resignation or otherwise), the company in general meeting may fill  
22 the vacancy by the appointment of a liquidator.

23 (3) A general meeting may be convened for the purposes of  
24 subsection (2) by any contributory or, if there were 2 or more  
25 liquidators, by the continuing liquidators.

26 (4) The meeting must be held in the manner provided by this Act or by  
27 the company's constitution or in such manner as is, on application  
28 by any contributory or by the continuing liquidators, determined by  
29 the Court.

# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
Amendments consequential on the introduction of the Insolvency Practice Schedule  
(Corporations) **Part 2**

---

1 **148 Subsection 496(8)**

2 Repeal the subsection, substitute:

3 (8) After the meeting the winding up must proceed as if it were a  
4 creditors' voluntary winding up.

5 **149 Section 497**

6 Repeal the section, substitute:

7 **497 Information about the company's affairs**

8 (1) The liquidator of the company must, within 10 business days after  
9 the day of the meeting of the company at which the resolution for  
10 voluntary winding up is passed:

11 (a) send to each creditor:

12 (i) a summary of the affairs of the company in the  
13 prescribed form; and

14 (ii) a list setting out the names of all creditors, the addresses  
15 of those creditors and the estimated amounts of their  
16 claims, as shown in the records of the company; and

17 (b) lodge a copy of the documents sent in accordance with  
18 paragraph (a).

19 Note: For electronic notification under paragraph (a), see section 600G.

20 (2) The list referred to in subparagraph (1)(a)(ii) must identify any  
21 creditors that are related entities of the company.

22 (3) Unless the Court orders otherwise, nothing in subsection (1)  
23 requires the liquidator to send the list referred to in  
24 subparagraph (1)(a)(ii) to a creditor whose debt does not exceed  
25 \$1,000.

26 (4) Within 5 business days after the day of the meeting of the company  
27 at which the resolution for voluntary winding up is passed or such  
28 longer period as the liquidator allows, the directors of the company  
29 must give the liquidator a report, in the prescribed form, about the  
30 company's business, property, affairs and financial circumstances.

31 (5) An offence based on subsection (4) is an offence of strict liability.

32 Note: For strict liability, see section 6.1 of the *Criminal Code*.

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# EXPOSURE DRAFT

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

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

---

1 (6) The liquidator must, within 10 business days after receiving a  
2 report under subsection (4), lodge a copy of the report.

3 (7) A person must not contravene subsection (6).

4 (8) An offence based on subsection (7) is an offence of strict liability.

5 Note: For strict liability, see section 6.1 of the *Criminal Code*.

6 (9) Subsection (7) does not apply to the extent that the person has a  
7 reasonable excuse.

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

## 10 **150 Section 498**

11 Repeal the section.

## 12 **151 Subsections 499(3) to (7)**

13 Repeal the subsections, substitute:

14 (3) If a liquidator, other than a liquidator appointed by, or by the  
15 direction of, the Court resigns:

16 (a) the Court; or

17 (b) ASIC; or

18 (c) the creditors;

19 may fill the vacancy by the appointment of a liquidator.

20 Note: If the registration of a liquidator is suspended or cancelled, ASIC must  
21 fill the vacancy: see section 40-111 of Schedule 2.

22 (4) If ASIC fills a vacancy in the office of a liquidator under  
23 subsection (3), ASIC must:

24 (a) publish notice of the filling of the vacancy; and

25 (b) publish the notice in the prescribed manner.

26 (5) If ASIC or the Court fills a vacancy in the office of a liquidator  
27 under subsection (3), the liquidator is taken, for the purposes of  
28 this Act, to be appointed by the creditors.

## 29 **152 Sections 502 to 505**

30 Repeal the sections.

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# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
Amendments consequential on the introduction of the Insolvency Practice Schedule  
(Corporations) **Part 2**

---

1 **153 Paragraphs 506(1)(e) and (f)**

2 Repeal the paragraphs, substitute:

- 3 (e) exercise the power of the Court of fixing a time within which  
4 debts and claims must be proved.

5 **154 Subsections 506A(1) to (4)**

6 Repeal the subsections, substitute:

7 *Scope*

- 8 (1) This section applies to a liquidator appointed in relation to a  
9 creditors' voluntary winding up.

10 *Declaration and notification of relevant relationships*

- 11 (2) Within 10 business days after the day of the meeting of the  
12 company at which the resolution for voluntary winding up is  
13 passed, the liquidator must:

- 14 (a) make a declaration of relevant relationships; and  
15 (b) give a copy of the declaration to as many of the company's  
16 creditors as reasonably practicable.

17 Note: Failure to comply with this subsection is an offence (see  
18 subsection 1311(1)).

19 **155 Section 508**

20 Repeal the section.

21 **156 Section 509**

22 Repeal the section, substitute:

23 **509 Final account and deregistration**

- 24 (1) As soon as the affairs of the company are fully wound up, the  
25 liquidator must:

- 26 (a) make up an account showing how the winding up has been  
27 conducted and the property of the company has been  
28 disposed of; and

- 29 (b) lodge the account with ASIC.

# EXPOSURE DRAFT

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

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

---

1

*ASIC must deregister at the end of 3 month period*

2

- (2) ASIC must deregister the company at the end of the 3 month period after the account was lodged.

3

4

*ASIC must deregister on a day specified by the Court*

5

- (3) 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 3 month period after the account was lodged.

6

7

8

9

- (4) The person on whose application an order under subsection (3) is made must, within 10 business days after the making of the order, lodge a copy of the order.

10

11

12

## **157 Section 511**

13

Repeal the section.

14

## **158 Paragraph 513B(d)**

15

Omit “, at a meeting convened under section 445F,”.

16

## **159 Section 531**

17

Repeal the section.

18

## **160 Subsection 532(1)**

19

Omit all the words after “she”, substitute “is a registered liquidator”.

20

## **161 Subsection 532(7)**

21

Repeal the subsection.

22

## **162 Subsection 532(8)**

23

Repeal the subsection, substitute:

24

- (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.

25

26

27

28

# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
Amendments consequential on the introduction of the Insolvency Practice Schedule  
(Corporations) **Part 2**

---

1 **163 Subsection 532(10)**

2 Omit “(7)”.

3 **164 Sections 536, 538, 539, 540, 542, 546 and 547**

4 Repeal the sections.

5 **165 Division 5 of Part 5.6 of Chapter 5**

6 Repeal the Division.

7 **166 Paragraph 556(1)(db)**

8 After “subsection 539(6)”, insert “, or subsection 70-15(5) (audit of  
9 administration books by ASIC) or section 90-26 (review by another  
10 registered liquidator) of Schedule 2”.

11 **167 Sections 574 to 576**

12 Repeal the sections.

13 **168 Before subsection 577(1)**

14 Insert:

15 (1A) Within 5 business days after the liquidator or liquidators of a group  
16 of 2 or more companies:

17 (a) make a pooling determination in relation to the group; or

18 (b) vary a pooling determination in force in relation to the group;  
19 the liquidator or liquidators must convene separate meetings of the  
20 eligible unsecured creditors of each of the companies in the group.

21 Note: For *eligible unsecured creditor*, see section 579Q.

22 **169 Subsection 577(1)**

23 Omit “section 574”, substitute “subsection (1A)”.

24 **170 Subsection 577(1) (note)**

25 Repeal the note.

26 **171 Subsection 577(2)**

27 Repeal the subsection.

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# EXPOSURE DRAFT

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

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

---

1 **172 Subsection 577(3)**

2 Omit “section 574” (wherever occurring), substitute “subsection (1A)”.

3 **173 Paragraph 578(1)(b)**

4 Omit “section 574”, substitute “subsection 577(1A)”.

5 **174 Paragraph 578(1)(c)**

6 Omit “in accordance with section 577”, substitute “as referred to in  
7 section 577”.

8 **175 Paragraph 578(2)(c)**

9 Omit “section 574”, substitute “subsection 577(1A)”.

10 **176 Paragraph 578(2)(d)**

11 Omit “in accordance with section 577”, substitute “as referred to in  
12 section 577”.

13 **177 Paragraph 579(1)(a)**

14 Omit “or 574”, substitute “or subsection 577(1A)”.

15 **178 Paragraph 579A(1)(b)**

16 Omit “statement under paragraph 574(3)(b)”, substitute “document”.

17 **179 Paragraph 579A(1)(c)**

18 Omit “statement”, substitute “document”.

19 **180 Subsection 579L(1) (note)**

20 Omit “section 548A (committee of inspection)”, substitute “Division 80  
21 (committees of inspection) of Schedule 2”.

22 **181 Before section 600AA**

23 Insert:

24 **599 Appeals from decisions of receivers etc.**

25 (1) A person aggrieved by any act, omission or decision of:

# EXPOSURE DRAFT

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

---

1 (a) a person administering a compromise, arrangement or  
2 scheme referred to in Part 5.1; or  
3 (b) a receiver, or a receiver and manager, of property of a  
4 corporation;  
5 may appeal to the Court in respect of the act, omission or decision  
6 and the Court may confirm, reverse or modify the act or decision,  
7 or remedy the omission, as the case may be, and make such orders  
8 and give such directions as it thinks fit.

9 (2) Paragraph (1)(b) does not apply to a corporation that is an  
10 Aboriginal and Torres Strait Islander corporation.

11 Note: Similar provision is made in relation to Aboriginal and Torres Strait  
12 Islander corporations under section 576-10 of the *Corporations*  
13 (*Aboriginal and Torres Strait Islander*) Act 2006.

## 14 **182 Sections 600A to 600E**

15 Repeal the sections.

## 16 **183 Paragraphs 600G(1)(a) to (e)**

17 Repeal the paragraphs.

## 18 **184 Paragraphs 600G(1)(j) and (k)**

19 Repeal the paragraphs.

## 20 **185 Paragraph 600G(1)(l)**

21 Omit “497(2)(a)”, substitute “497(1)(a)”.

## 22 **186 Paragraphs 600G(1)(q) and (r)**

23 Repeal the paragraphs.

## 24 **187 Paragraph 600G(1)(x)**

25 Omit “579K(4).”, substitute “579K(4);”.

## 26 **188 At the end of subsection 600G(1)**

27 Add:

28 (y) a provision of Schedule 2 or the Insolvency Practice Rules.

# EXPOSURE DRAFT

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

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

---

1 **189 Subsection 600G(4)**

2 Repeal the subsection, substitute:

3 (4) If the notifier maintains, or causes to be maintained, a website on  
4 which the notice or document may be accessed, the notifier may  
5 give or send the notice or document to the recipient by notifying  
6 the recipient (using the electronic means nominated by the  
7 recipient or otherwise in writing):

8 (a) that the notice or document is available on the website; and

9 (b) of the website address.

10 (4A) Subsection (4) does not apply if the recipient notifies the notifier in  
11 writing, before the time for giving or sending the notice or  
12 document expires, that the recipient does not have access to the  
13 internet.

14 **190 At the end of Division 3 of Part 5.9**

15 Add:

16 **600J Acts of external administrator valid etc.**

17 (1) The acts of an external administrator are valid despite any defects  
18 that may afterwards be discovered in his or her appointment or  
19 qualification.

20 (2) A disposition of a company's property by an external administrator  
21 (including a disposition by way of conveyance, assignment,  
22 transfer or an instrument giving rise to a security interest) is,  
23 despite any defect or irregularity affecting the validity of the  
24 winding up or the appointment of the external administrator, valid  
25 in favour of any person taking such property in good faith and for  
26 value and without actual knowledge of the defect or irregularity.

27 (3) A person making or permitting a disposition of property to an  
28 external administrator is to be protected and indemnified in so  
29 doing despite any defect or irregularity affecting the validity of the  
30 winding up or the appointment of the external administrator that is  
31 not then known to that person.

32 (4) For the purposes of this section, a disposition of property is taken  
33 to include a payment of money.

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# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
Amendments consequential on the introduction of the Insolvency Practice Schedule  
(Corporations) **Part 2**

---

1 (5) In this section:

2 *external administrator* of a company has the same meaning as in  
3 Schedule 2.

4 **191 Paragraph 601AC(1)(c)**

5 Omit “509(6) (liquidator’s return following winding up)”, substitute  
6 “509(3) (final account and deregistration)”.

7 **192 Paragraph 601AC(2)(a)**

8 Omit “a return”, substitute “an account”.

9 **193 Paragraph 601AC(2)(b)**

10 Omit “509(6)”, substitute “509(3)”.

11 **194 Subsection 601AD(6)**

12 After “subsection 542(2)”, insert “, or subsection 70-35(1) of  
13 Schedule 2 (retention and return or destruction of books)”.

14 **195 Paragraph 601BC(7)(a)**

15 Omit “an externally-administered body corporate”, substitute “a  
16 Chapter 5 body corporate”.

17 **196 Paragraphs 708(17A)(c) and (d)**

18 Repeal the paragraphs, substitute:

19 (c) before the offer was specified in the deed, the administrator  
20 gave as many creditors as reasonably practicable a statement:

21 (i) that set out all relevant information about the offer that  
22 was within the knowledge of the administrator of the  
23 deed; and

24 (ii) that stated that the statement is not a prospectus and  
25 may contain less information than a prospectus.

26 **197 Paragraph 797B(b)**

27 Omit “an externally-administered body corporate”, substitute “a  
28 Chapter 5 body corporate”.

# EXPOSURE DRAFT

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

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

---

1 **198 Paragraph 826B(b)**

2 Omit “an externally-administered body corporate”, substitute “a  
3 Chapter 5 body corporate”.

4 **199 Paragraph 905H(b)**

5 Omit “an externally-administered body corporate”, substitute “a  
6 Chapter 5 body corporate”.

7 **200 Paragraphs 915B(3)(b) and (4)(c)**

8 Omit “an externally-administered body corporate”, substitute “a  
9 Chapter 5 body corporate”.

10 **201 After subparagraph 1274(2)(iaa)**

11 Insert:

12 (iab) a return lodged under section 422A; or

13 **202 Subparagraph 1274(2)(a)(i)**

14 After “section 1279”, insert “(application for registration as an auditor),  
15 or section 20-5 of Schedule 2 (application for registration as a  
16 liquidator)”.

17 **203 Subparagraph 1274(2)(a)(ii)**

18 Omit “1287, 1287A or 1288”, substitute “1287 (notification of matters  
19 by registered auditors), 1287A (annual statements by registered  
20 auditors), 30-1 of Schedule 2 (annual liquidator returns) or 35-1 of  
21 Schedule 2 (notice of significant events)”.

22 **204 Part 9.2 (heading)**

23 Repeal the heading, substitute:

24 **Part 9.2—Registration of auditors**

25 **205 Section 1279 (heading)**

26 Repeal the heading, substitute:



# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
Amendments consequential on the introduction of the Insolvency Practice Schedule  
(Corporations) **Part 2**

---

1 **1279 Application for registration as auditor**

2 **206 Subsection 1279(1)**

3 Repeal the subsection, substitute:

4 (1) A natural person may make an application to ASIC for registration  
5 as an auditor.

6 **207 Sections 1282 to 1284**

7 Repeal the sections.

8 **208 Section 1286**

9 Repeal the section.

10 **209 Subsections 1287(2) and (3)**

11 Repeal the subsections.

12 **210 Subsection 1287(4)**

13 Omit “, as a liquidator or as a liquidator of a specified corporate body”.

14 **211 Section 1288**

15 Repeal the section.

16 **212 Subsection 1290(1)**

17 Omit “, as a liquidator, as a liquidator of a specified body corporate or  
18 as an official liquidator” (first occurring).

19 **213 Subsection 1290(1)**

20 Omit “, as a liquidator, as a liquidator of that body corporate or as an  
21 official liquidator, as the case may be”.

22 **214 Subsection 1290(2)**

23 Omit “, as a liquidator, as a liquidator of a specified body corporate or  
24 as an official liquidator”.

25 **215 Sections 1290A and 1291**

26 Repeal the sections.

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# EXPOSURE DRAFT

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

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

---

1 **216 Section 1292 (heading)**

2 Repeal the heading, substitute:

3 **1292 Powers of Board in relation to auditors**

4 **217 Subsections 1292(2) to (6)**

5 Repeal the subsections.

6 **218 Subsection 1292(7)**

7 Omit “a prescribed person”, substitute “a person who is registered as an  
8 auditor”.

9 **219 Subsection 1292(7)**

10 Omit “each prescribed registration of the person”, substitute “the  
11 registration of the person as an auditor”.

12 **220 Subsection 1292(8)**

13 Repeal the subsection.

14 **221 Subsection 1292(9)**

15 Omit “, as a liquidator or as a liquidator of a specified body corporate”  
16 (first occurring).

17 **222 Subsection 1292(9)**

18 Omit “(2)(d) or (3)(d), as the case may be,”.

19 **223 Subsection 1292(9)**

20 Omit “, liquidator or liquidator of that body, as the case may be,”.

21 **224 Subsection 1292(9)**

22 Omit “, as a liquidator or as a liquidator of a specified body corporate,  
23 as the case may be”.

24 **225 Subsection 1292(10)**

25 Omit “subsections (1) to (6)”, substitute “subsection (1)”.

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# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
Amendments consequential on the introduction of the Insolvency Practice Schedule  
(Corporations) **Part 2**

---

1 **226 Paragraph 1294(1)(a)**

2 Omit “, as a liquidator or as a liquidator of a specified body corporate”.

3 **227 Subsection 1295(1)**

4 After “registration of a person”, insert “as an auditor”.

5 **228 Subsection 1297(1)**

6 Omit “, as a liquidator or as a liquidator of a specified body corporate”.

7 **229 Section 1298**

8 Repeal the section, substitute:

9 **1298 Effect of suspension**

10 A person whose registration as an auditor is suspended is, except  
11 for the purposes of subsection 1285(2), section 1287 (other than  
12 paragraph 1287(1)(a)), section 1287A and this Division, taken not  
13 to be registered as an auditor so long as the registration is  
14 suspended.

15 **230 Section 1298A**

16 Repeal the section.

17 **231 Paragraph 1299B(e)**

18 Omit “an externally-administered body corporate”, substitute “a  
19 Chapter 5 body corporate”.

20 **232 Subsection 1300(3)**

21 After “this Act”, insert “(other than section 70-30 of Schedule 2)”.

22 **233 At the end of subsection 1300(3)**

23 Add:

24 Note: Section 70-30 of Schedule 2 is about books relating to an external  
25 administration.

26 **234 Paragraph 1317B(1)(c)**

27 Omit “and Liquidators Disciplinary Board.”, substitute “Disciplinary  
28 Board; or”.

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# EXPOSURE DRAFT

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

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

---

1 **235 At the end of subsection 1317B(1)**

2 Add:

3 (d) a committee convened under Part 2 of Schedule 2.

4 **236 Subsection 1317B(2)**

5 Omit “and Liquidators”.

6 **237 Paragraph 1317C(j)**

7 Omit “section 1317DAI.”, substitute “section 1317DAI; or”.

8 **238 At the end of section 1317C**

9 Add:

10 (k) a decision of ASIC under section 40-5 of Schedule 2 (which  
11 deals with directing liquidators to comply with requirements  
12 to lodge documents etc.); or

13 (l) a decision of ASIC under section 40-10 of Schedule 2 (which  
14 deals with directing liquidators to correct inaccuracies etc.);  
15 or

16 (m) a decision of ASIC under section 40-100 of Schedule 2 to  
17 take no action in relation to matters raised by an industry  
18 notice lodged under that section (notice by industry bodies of  
19 possible grounds for disciplinary action); or

20 (n) a decision of ASIC to give a direction under section 70-70 of  
21 Schedule 2 (which deals with directing external  
22 administrators to comply with requests for information etc.);  
23 or

24 (o) a decision of ASIC under section 70-85 of Schedule 2 (a  
25 decision to impose a condition on the use or disclosure of  
26 relevant material).

27 **239 Subsection 1317D(1)**

28 Omit “ASIC or the Companies Auditors and Liquidators Disciplinary  
29 Board”, substitute “ASIC, the Companies Auditors Disciplinary Board  
30 or a committee convened under Part 2 of Schedule 2”.

31 **240 Section 1321**

32 Repeal the section.

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# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
Amendments consequential on the introduction of the Insolvency Practice Schedule  
(Corporations) **Part 2**

---

1 **241 After paragraph 1349(1)(n)**

2 Insert:

3 (na) a direction under section 40-15 of Schedule 2; or

4 (nb) a decision of a kind mentioned in section 40-55 of  
5 Schedule 2; or

6 (nc) a cancellation or suspension under Division 40 of Schedule 2;  
7 or

8 **242 After paragraph 1349(3)(l)**

9 Insert:

10 (la) a direction under section 40-15 of Schedule 2; or

11 (lb) a decision of a kind mentioned in section 40-55 of  
12 Schedule 2; or

13 (lc) a cancellation or suspension under Division 40 of Schedule 2;  
14 or

15 **243 After paragraph 1349(4)(i)**

16 Insert:

17 (ia) a direction under section 40-15 of Schedule 2; or

18 (ib) a decision of a kind mentioned in section 40-55 of  
19 Schedule 2; or

20 (ic) a cancellation or suspension under Division 40 of Schedule 2;  
21 or

22 **244 Subsection 1351(3) (table item 5)**

23 Repeal the item.

24 **245 Schedule 3 (after table item 120)**

25 Insert:

26 120A Paragraph 429(2)(b) 50 penalty units.

27 **246 Schedule 3 (table item 121)**

28 Repeal the item.

# EXPOSURE DRAFT

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

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

---

1 **247 Schedule 3 (table item 123)**

2 Repeal the item, substitute:

3

- |     |                    |  |
|-----|--------------------|--|
| 123 | Subsection 438B(4) | (a) if the offence relates to a provision other than subsection 438B(2A)—50 penalty units or imprisonment for 1 year, or both; |
|     |                    | (b) if the offence relates to subsection 438B(2A)—5 penalty units.   |

4 **248 Schedule 3 (table item 127)**

5 Repeal the item.

6 **249 Schedule 3 (table item 129)**

7 Repeal the item.

8 **250 Schedule 3 (table item 130)**

9 Repeal the item, substitute:

10

- |     |                   |  |
|-----|-------------------|--|
| 130 | Subsection 475(9) | (a) if the offence relates to a provision other than subsection 475(4)—25 penalty units or imprisonment for 6 months, or both; |
|     |                   | (b) if the offence relates to subsection 475(4)—50 penalty units.  |

11 **251 Schedule 3 (table item 133)**

12 Repeal the item, substitute:

13

- |      |                   |   |
|------|-------------------|---|
| 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.  |

14 ***Corporations (Review Fees) Act 2003***

15 **252 Paragraph 5(1)(e)**

16 Repeal the paragraph.

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# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
Amendments consequential on the introduction of the Insolvency Practice Schedule  
(Corporations) **Part 2**

---

1 **253 Subsection 7(1) (table item 5)**

2 Repeal the item.

3 ***Cross-Border Insolvency Act 2008***

4 **254 Paragraph 8(b)**

5 Omit “and section 601CL,”, substitute “section 601CL and Schedule 2”.

6 **255 Paragraphs 13(c) and 14(c)**

7 Omit “or section 601CL,”, substitute “section 601CL or Schedule 2”.

8 **256 Paragraph 20(1)(b)**

9 Omit “and section 601CL,”, substitute “section 601CL and Schedule 2”.

10 **257 At the end of paragraph 22(1)(b)**

11 Add “or”.

12 **258 After paragraph 22(1)(b)**

13 Insert:

14 (c) Schedule 2 to the *Corporations Act 2001*;

15 ***Income Tax Assessment Act 1997***

16 **259 Subparagraphs 165-208(1)(e)(i) and (ii) and (2)(e)(i) and**  
17 **(ii)**

18 Omit “an externally-administered body corporate”, substitute “a  
19 Chapter 5 body corporate”.

20 **260 Subparagraphs 165-250(1)(a)(i) and (ii) and (2)(a)(i) and**  
21 **(ii)**

22 Omit “an externally-administered body corporate”, substitute “a  
23 Chapter 5 body corporate”.

24 **261 Subparagraphs 175-100(a)(i) and (ii)**

25 Omit “an externally-administered body corporate”, substitute “a  
26 Chapter 5 body corporate”.

# EXPOSURE DRAFT

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

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

---

1 **262 Paragraphs 703-30(3)(a) and (b)**

2 Omit “an externally-administered body corporate”, substitute “a  
3 Chapter 5 body corporate”.

4 ***Insurance Act 1973***

5 **263 Paragraph 48(1)(c)**

6 Omit “and Liquidators”.

7 **264 Subsection 52(6)**

8 Omit “an externally-administered body corporate”, substitute “a  
9 Chapter 5 body corporate”.

10 **265 Section 62ZP (heading)**

11 Repeal the heading, substitute:

12 **62ZP Relationship of this Division with Chapter 5 and Schedule 2 to**  
13 **the *Corporations Act 2001***

14 **266 Section 62ZP**

15 After “Chapter 5”, insert “and Schedule 2”.

16 **267 Subsection 92(4)**

17 Omit “an official liquidator”, substitute “a registered liquidator (within  
18 the meaning of the *Corporations Act 2001*)”.

19 **268 Subsection 92(5)**

20 Repeal the subsection.

21 ***Life Insurance Act 1995***

22 **269 Paragraph 125(1)(c)**

23 Omit “and Liquidators”.

24 **270 Subsection 137(3)**

25 Omit “an externally-administered body corporate”, substitute “a  
26 Chapter 5 body corporate”.

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# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
Amendments consequential on the introduction of the Insolvency Practice Schedule  
(Corporations) **Part 2**

---

1 **271 After section 183A**

2 Insert:

3 **183B Application by APRA—voluntary winding up of friendly**  
4 **society**

5 (1) This section applies to a friendly society that may be wound up  
6 voluntarily under subsection 180(2).

7 (2) APRA may apply to the Court:

8 (a) to determine any question arising in the winding up of the  
9 friendly society; or

10 (b) to exercise all or any of the powers that the Court might  
11 exercise if the friendly society were being wound up by the  
12 Court.

13 (3) The Court may make any orders on the application that it thinks fit.

14 ***Medical Indemnity Act 2002***

15 **272 Subsection 4(1)**

16 Insert:

17 ***Chapter 5 body corporate*** means:

18 (a) a body corporate that is a Chapter 5 body corporate within  
19 the meaning of the *Corporations Act 2001*; or

20 (b) a body corporate to which a provisional liquidator has been  
21 appointed.

22 **273 Subsection 4(1) (definition of *externally-administered***  
23 ***body corporate*)**

24 Repeal the definition.

25 **274 Subsection 15(2)**

26 Omit “an externally-administered body corporate”, substitute “a  
27 Chapter 5 body corporate”.

# EXPOSURE DRAFT

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

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

---

1 **275 Subsection 17(1)**

2 Omit “an externally-administered body corporate” (wherever  
3 occurring), substitute “a Chapter 5 body corporate”.

4 **276 Subparagraphs 30(2)(a)(iv) and (c)(ii)**

5 Omit “an externally-administered body corporate” (wherever  
6 occurring), substitute “a Chapter 5 body corporate”.

7 **277 Subsection 30(5)**

8 Omit “an externally-administered body corporate”, substitute “a  
9 Chapter 5 body corporate”.

10 **278 Subsection 34L(1) (note 4)**

11 Omit “an externally-administered body corporate”, substitute “a  
12 Chapter 5 body corporate”.

13 **279 Subsection 34L(4) (heading)**

14 Repeal the heading, substitute:

15 *What if the insurer is a Chapter 5 body corporate?*

16 **280 Subsection 34L(4)**

17 Omit “an externally-administered body corporate” (wherever  
18 occurring), substitute “a Chapter 5 body corporate”.

19 **281 Section 34ZD (heading)**

20 Repeal the heading, substitute:

21 **34ZD MDOs and medical indemnity insurers that are Chapter 5**  
22 **bodies corporate**

23 **282 Subsection 34ZD(1)**

24 Omit “an externally-administered body corporate” (wherever  
25 occurring), substitute “a Chapter 5 body corporate”.

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# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
Amendments consequential on the introduction of the Insolvency Practice Schedule  
(Corporations) **Part 2**

---

1 **283 Subsections 34ZD(2) and (3)**

2 Omit “an externally-administered body corporate”, substitute “a  
3 Chapter 5 body corporate”.

4 *National Consumer Credit Protection Act 2009*

5 **284 Subsection 5(1) (paragraph (b) of the definition of**  
6 ***insolvent*)**

7 Omit “an externally administered body corporate”, substitute “a  
8 Chapter 5 body corporate”.

9 *National Greenhouse and Energy Reporting Act 2007*

10 **285 Section 7**

11 Insert:

12 *Chapter 5 body corporate* has the same meaning as in the  
13 *Corporations Act 2001*.

14 **286 Section 7 (definition of *externally-administered body***  
15 ***corporate*)**

16 Repeal the definition.

17 **287 Paragraph 11B(10)(c)**

18 Omit “an externally administered body corporate”, substitute “a  
19 Chapter 5 body corporate”.

20 **288 Paragraph 22P(2)(b)**

21 Omit “an externally administered body corporate (within the meaning  
22 of the *Corporations Act 2001*)”, substitute “a Chapter 5 body  
23 corporate”.

24 *Paid Parental Leave Act 2010*

25 **289 Section 6 (paragraph (a) of the definition of *insolvent*)**

26 Repeal the paragraph, substitute:

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# EXPOSURE DRAFT

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

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

---

1 (a) for a natural person—the person is an insolvent under  
2 administration; and

3 **290 Section 6 (subparagraph (b)(i) of the definition of**  
4 ***insolvent*)**

5 Omit “an externally administered body corporate”, substitute “a  
6 Chapter 5 body corporate”.

7 ***Payment Systems and Netting Act 1998***

8 **291 Section 5 (paragraph (a) of the definition of *external***  
9 ***administration*)**

10 Omit “an externally administered body corporate”, substitute “a  
11 Chapter 5 body corporate”.

12 ***Private Health Insurance Act 2007***

13 **292 Paragraph 217-5(1)(b)**

14 After “of that Chapter,”, insert “and of Schedule 2 to that Act,”.

15 **293 Paragraph 217-10(2)(a)**

16 Repeal the paragraph, substitute:

17 (a) must be a registered liquidator (within the meaning of the  
18 *Corporations Act 2001*); and

19 ***Qantas Sale Act 1992***

20 **294 Subsection 8(3) (definition of *resolution*)**

21 After “as in”, insert “section 9 of”.

22 **295 Subsection 8(3) (definition of *special resolution*)**

23 After “as in”, insert “section 9 of”.

# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
Amendments consequential on the introduction of the Insolvency Practice Schedule  
(Corporations) **Part 2**

---

1 ***Superannuation Industry (Supervision) Act 1993***

2 **296 Subparagraph 263(3)(b)(i)**

3 Omit “an externally-administered body corporate”, substitute “a  
4 Chapter 5 body corporate”.

5 ***Taxation Administration Act 1953***

6 **297 Section 268-100**

7 Omit “of the *Corporations Act 2001* (External administration), or the  
8 *Bankruptcy Act 1966*, to the extent that Chapter or”, substitute  
9 “(External administration) or Schedule 2 to the *Corporations Act 2001*,  
10 or the *Bankruptcy Act 1966*, to the extent those provisions or that”.

11 **298 Section 269-55**

12 Omit “of the *Corporations Act 2001* (External administration), to the  
13 extent that Chapter”, substitute “(External administration) or Schedule 2  
14 to the *Corporations Act 2001*, to the extent those provisions”.

15 ***Tradex Scheme Act 1999***

16 **299 Section 4**

17 Insert:

18 *Chapter 5 body corporate* has the same meaning as in the  
19 *Corporations Act 2001*.

20 **300 Section 4 (definition of *externally-administered body***  
21 ***corporate*)**

22 Repeal the definition.

23 **301 Section 4 (paragraphs (b) and (c) of the definition of**  
24 ***ineligible*)**

25 Omit “an externally-administered body corporate”, substitute “a  
26 Chapter 5 body corporate”.

# EXPOSURE DRAFT

Schedule 2 Amendments relating to the Insolvency Practice Schedule (Corporations)

Part 3 Transition to the Insolvency Practice Schedule (Corporations)

---

1 **Part 3—Transition to the Insolvency Practice**  
2 **Schedule (Corporations)**

3 *Australian Securities and Investments Commission Act 2001*

4 **302 At the end of the Act**

5 Add:

6 **Part 22—Transitional provisions relating to the**  
7 **Insolvency Law Reform Act 2014**  
8

9 **301 Definitions**

10 In this Part:

11 *commencement day* means the day on which Part 1 of Schedule 2  
12 to the *Insolvency Law Reform Act 2014* commences.

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

16 *old Corporations Act* means the *Corporations Act 2001*, as in force  
17 immediately before the commencement day, and includes  
18 regulations made under that Act as in force immediately before that  
19 day.

20 **302 General powers of investigation continue to apply to failure to**  
21 **comply with duties before the commencement day**

22 Despite the amendment of subsection 13(3) by the *Insolvency Law*  
23 *Reform Act 2014*, that subsection continues to apply to duties that  
24 were not performed, or may not have been performed, before the  
25 commencement day by a person who was a liquidator registered  
26 under Division 2 of Part 9.2 of the old Corporations Act.

# EXPOSURE DRAFT

1     **303 Notice to registered liquidators concerning information and**  
2             **books—requirements before the commencement day**

- 3             (1) For the purposes of section 30B and subsection 33(3), the  
4             *liquidator requirements* are taken to include:
- 5                 (a) the requirements in relation to liquidators, the external  
6                     administration of companies and the receivership of the  
7                     property of corporations under Chapter 5 of the old  
8                     Corporations Act; and
  - 9                 (b) other provisions of the old Corporations Act that relate to that  
10                 Chapter.
- 11            (2) For the purposes of subparagraph 30B(2)(c)(ii), a reference to an  
12            alleged or suspected contravention of a law of the Commonwealth,  
13            or of a State or Territory in this jurisdiction includes an alleged or  
14            suspected contravention of such a law that:
- 15                 (a) relates to the performance or exercise of a liquidator’s  
16                     functions, duties or powers before the commencement day;  
17                     and
  - 18                 (b) either:
    - 19                         (i) concerns the management of the affairs of a body  
20                             corporate before the commencement day; or
    - 21                         (ii) involves fraud or dishonesty before the commencement  
22                             day and relates to a body corporate.
- 23            (3) Subsection 33(3) applies, whether or not the liquidator is a  
24            registered liquidator under the Insolvency Practice Schedule  
25            (Corporations) or was registered as a liquidator under Division 2 of  
26            Part 9.2 of the old Corporations Act.

27     **304 ASIC may give information and books relating to**  
28             **pre-commencement activity**

29             On and after the commencement day, section 39C applies in  
30             relation to information and books obtained or generated by ASIC  
31             before the commencement day:

- 32                 (a) in relation to a person who was a liquidator of a company, or  
33                     of a specified company, or an official liquidator before the  
34                     commencement day—in the same way as it applies in

# EXPOSURE DRAFT

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

**Part 3** Transition to the Insolvency Practice Schedule (Corporations)

---

- 1 relation to a registered liquidator on and after the  
2 commencement day; and  
3 (b) in relation to any of the following:  
4 (i) a company that was under administration before the  
5 commencement day;  
6 (ii) a company in relation to which a deed of company  
7 arrangement had been entered into before the  
8 commencement day;  
9 (iii) a company in relation to which a liquidator or  
10 provisional liquidator was appointed before the  
11 commencement day;  
12 in the same way as it applies in relation to a company under  
13 external administration on and after the commencement day;  
14 and  
15 (c) in relation to a corporation property of which is under  
16 receivership before the commencement day—in the same  
17 way as it applies to a corporation property of which is under  
18 receivership on or after the commencement day.

## 19 **305 Information to be included in ASIC’s annual report**

20 The amendment of section 136 made by the *Insolvency Law*  
21 *Reform Act 2014* applies to reports on ASIC’s operations during  
22 the financial year ending on 30 June 2016, and later financial  
23 years.

## 24 **306 Appointments to the Companies Auditors Disciplinary Board**

25 The amendment of section 203 made by the *Insolvency Law*  
26 *Reform Act 2014* applies to appointments made on or after the  
27 commencement day.

## 28 ***Corporations Act 2001***

### 29 **303 At the end of Chapter 10**

30 Add:

---



# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
Transition to the Insolvency Practice Schedule (Corporations) **Part 3**

---

1 **Part 10.25—Transitional provisions relating to the**  
2 **Insolvency Practice Schedule**  
3 **(Corporations)**

4 **Division 1—Introduction**

5 **1550 Simplified outline of this Part**

6 This Part deals with the way this Act will apply when the  
7 provisions of the *Insolvency Law Reform Act 2014* begin to  
8 operate.

9 *Application of Part 2 of the Insolvency Practice Schedule*  
10 *(Corporations)*

11 A person registered as a liquidator before the commencement of  
12 the *Insolvency Law Reform Act 2014* will continue to be registered  
13 and must comply with the requirements and duties under Part 2 of  
14 the Insolvency Practice Schedule (Corporations).

15 *Application of Part 3 of the Insolvency Practice Schedule*  
16 *(Corporations)*

17 The Insolvency Practice Schedule (Corporations) will apply to an  
18 external administration that starts on or after the commencement of  
19 the *Insolvency Law Reform Act 2014* and to most ongoing  
20 administrations (but generally only in relation to new events).

21 *Proceedings before the Court or the Administrative Appeals*  
22 *Tribunal*

23 Proceedings already begun in the Court or the Administrative  
24 Appeals Tribunal before the commencement of the amendments  
25 made by the *Insolvency Law Reform Act 2014* will continue under  
26 the old Act. Orders of the Court under the old Act continue to have  
27 effect.

28 *Regulations*

# EXPOSURE DRAFT

Schedule 2 Amendments relating to the Insolvency Practice Schedule (Corporations)

Part 3 Transition to the Insolvency Practice Schedule (Corporations)

---

1

Regulations may be made to deal with other transitional matters.

2

## 1551 Definitions

3

In this Part:

4

**commencement day** means the day on which Part 1 of Schedule 2 to the *Insolvency Law Reform Act 2014* commences.

5

6

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

7

8

9

**make**, in relation to an order that is a direction, includes give.

10

**new external administration** of a company means an external administration of a company that starts on or after the commencement day.

11

12

13

**old Act** means the *Corporations Act 2001*, as in force immediately before the commencement day and includes the old regulations.

14

15

**old Act registrant** has the meaning given by subsection 1553(4).

16

**old Act registration day**, in relation to a person, has the meaning given by subsection 1555(2).

17

18

**old regulations** means the *Corporations Regulations 2001*, as in force immediately before the commencement day.

19

20

**ongoing external administration** of a company means an external administration of a company that started before the commencement day and ends after that day.

21

22

23

**order** includes a direction.

24

**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).

25

26

27

**Register of Liquidators** means the Register of Liquidators established and maintained under section 15-1 of the *Insolvency Practice Schedule (Corporations)*.

28

29

# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
Transition to the Insolvency Practice Schedule (Corporations) **Part 3**

---

1 **Division 2—Application of Part 2 of the Insolvency**  
2 **Practice Schedule (Corporations) and related**  
3 **consequential amendments**

4 **Subdivision A—Registering liquidators**

5 **1552 Applications for registration under the old Act**

6 (1) If, before the commencement day:

7 (a) a person has applied for registration as a liquidator, or as a  
8 liquidator of a specified body corporate, under section 1279  
9 of the old Act; and

10 (b) the person's application has not been refused; and

11 (c) the person is not registered before the commencement day as  
12 a liquidator, or as a liquidator of a specified body corporate;

13 the application is taken never to have been made and ASIC must  
14 refund any fee paid in relation to the application.

15 (2) A person is *registered* as a liquidator, or as a liquidator of a  
16 specified body corporate, at a particular time if:

17 (a) a certificate of registration as a liquidator or as a liquidator of  
18 a specified body corporate has been issued to the person  
19 under subsection 1282(6) of the old Act before that time; and

20 (b) the day specified in the certificate as the day on which the  
21 registration would begin occurs before the day on which that  
22 time occurs.

23 **1553 Persons registered under the old Act continue to be registered**  
24 **under the Insolvency Practice Schedule (Corporations)**

25 *Person registered under the old Act immediately before the*  
26 *commencement day*

27 (1) If a person is registered as a liquidator, or as a liquidator of a  
28 specified body corporate, immediately before the commencement  
29 day, on the commencement day the person is taken to be registered  
30 as a liquidator under Subdivision B of Division 20 of the  
31 Insolvency Practice Schedule (Corporations).

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# EXPOSURE DRAFT

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

**Part 3** Transition to the Insolvency Practice Schedule (Corporations)

---

1                    *Person registered but suspended under the old Act before the*  
2                    *commencement day*

3                    (2) If:

- 4                    (a) a person is registered as a liquidator, or as a liquidator of a  
5                    specified body corporate, before the commencement day; and  
6                    (b) that person's registration is suspended before the  
7                    commencement day; and  
8                    (c) the period of the suspension does not expire before the  
9                    commencement day;

10                   the person is taken to be registered as a liquidator under  
11                   Subdivision B of Division 20 of the Insolvency Practice Schedule  
12                   (Corporations) on the commencement day, but the person's  
13                   registration is taken to be suspended under the Insolvency Practice  
14                   Schedule (Corporations) for a period that ends when the period of  
15                   the suspension under the old Act would have ended.

16                   Note:            The old Act registrant could apply under Subdivision F of Division 40  
17                   of the Insolvency Practice Schedule (Corporations) to have the  
18                   suspension lifted or shortened.

19                   *Circumstances in which person not taken to be registered*

20                   (3) Despite subsections (1) and (2), a person mentioned in one of those  
21                   subsections is not taken to be registered as a liquidator under  
22                   Subdivision B of Division 20 of the Insolvency Practice Schedule  
23                   (Corporations) on the commencement day if, at the beginning of  
24                   that day:

- 25                   (a) the person is an insolvent under administration; or  
26                   (b) the person is dead.

27                   *Meaning of old Act registrant*

28                   (4) A person who is taken to be registered under Subdivision B of  
29                   Division 20 of the Insolvency Practice Schedule (Corporations)  
30                   because of this section is referred to as an ***old Act registrant***.

## 31                   **1554 Old Act registrant's details**

32                   (1) ASIC must enter on the Register of Liquidators, in relation to each  
33                   old Act registrant, the details prescribed under subsection 15-1(3)

---

# EXPOSURE DRAFT

1 of the Insolvency Practice Schedule (Corporations) that relate to  
2 that old Act registrant.

3 (2) If ASIC holds information in relation to an old Act registrant  
4 before the commencement day, ASIC may use and disclose the  
5 information for the purposes of establishing and maintaining the  
6 Register of Liquidators.

## 7 **1555 Period of old Act registrant’s registration under the Insolvency** 8 **Practice Schedule (Corporations)**

9 (1) The registration of an old Act registrant under the Insolvency  
10 Practice Schedule (Corporations) is for a period ending on the first  
11 anniversary of the old Act registration day for that person that  
12 occurs on or after the commencement day.

13 (2) The *old Act registration day* in relation to a person who was  
14 registered (or but for a suspension would have been registered) as a  
15 liquidator, or as a liquidator of a specified body corporate,  
16 immediately before the commencement day, is the day on which  
17 that registration began.

18 (3) To avoid doubt, the registration of an old Act registrant under the  
19 Insolvency Practice Schedule (Corporations) may be renewed in  
20 accordance with that Schedule.

## 21 **1556 Conditions for old Act registrants—conditions under the** 22 **Insolvency Practice Schedule (Corporations)**

23 To avoid doubt, a condition may be imposed on an old Act  
24 registrant (or on a class that includes an old Act registrant) under  
25 the Insolvency Practice Schedule (Corporations) in accordance  
26 with that Schedule.

## 27 **1557 Current conditions for old Act registrants—undertakings** 28 **under the old Act**

29 *Undertakings under the old Act*

30 (1) If:

# EXPOSURE DRAFT

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

**Part 3** Transition to the Insolvency Practice Schedule (Corporations)

---

1 (a) an old Act registrant was required to give an undertaking  
2 under paragraph 1292(9)(b) or (c) of the old Act; and  
3 (b) that requirement is still in force immediately before the  
4 commencement day;  
5 it is a condition of the old Act registrant's registration under the  
6 Insolvency Practice Schedule (Corporations) that he or she gives  
7 and complies with the undertaking.

8 (2) A condition imposed under subsection (1) is a *current condition*  
9 imposed on the old Act registrant.

10 *Varying etc. conditions of registration*

11 (3) Subdivision C of Division 20 of the Insolvency Practice Schedule  
12 (Corporations) applies to a condition imposed under subsection (1)  
13 in the same way as it applies to a condition imposed by a  
14 committee under the Insolvency Practice Schedule (Corporations).

## 15 **1558 Current conditions for old Act registrants—undertakings** 16 **under the ASIC Act**

17 *Undertakings under the ASIC Act*

18 (1) If:  
19 (a) before the commencement day, an old Act registrant gives  
20 ASIC an undertaking under section 93AA of the ASIC Act to  
21 engage in, or refrain from engaging in, conduct as a  
22 liquidator, or as a liquidator of a specified body corporate;  
23 and  
24 (b) that undertaking is in force immediately before the  
25 commencement day;  
26 it is a condition of the old Act registrant's registration under the  
27 Insolvency Practice Schedule (Corporations) that he or she comply  
28 with the undertaking.

29 (2) A condition imposed under subsection (1) is a *current condition*  
30 imposed on the old Act registrant.

# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
Transition to the Insolvency Practice Schedule (Corporations) **Part 3**

---

1 *Enforcement of undertaking under the ASIC Act not affected*

- 2 (3) Nothing in this section affects the application of section 93AA of  
3 the ASIC Act in relation to a breach of an undertaking accepted  
4 under that section.

5 **1559 Old Act registrant registered as liquidator of a specified body**  
6 **corporate**

7 *Old Act registrant may not accept further appointments*

- 8 (1) If an old Act registrant was registered as a liquidator of a specified  
9 body corporate immediately before the commencement day, it is a  
10 condition of the old Act registrant's registration under the  
11 Insolvency Practice Schedule (Corporations) that he or she must  
12 not accept any further appointments as external administrator of a  
13 company.
- 14 (2) That condition is a **current condition** imposed on the old Act  
15 registrant.

16 *Registration cancelled once current administrations completed*

- 17 (3) On the day immediately after the external administration of the  
18 body corporate in relation to which the old Act registrant was  
19 registered ends:
- 20 (a) the old Act registrant is taken to have lodged a request in the  
21 approved form in accordance with paragraph 40-30(1)(f) of  
22 the Insolvency Practice Schedule (Corporations) to have his  
23 or her registration as a liquidator cancelled; and
- 24 (b) ASIC is taken to have cancelled the registration under  
25 subsection 40-30(1) of the Insolvency Practice Schedule  
26 (Corporations).

27 *Old Act registrant applies for registration under section 20-5 of the*  
28 *Insolvency Practice Schedule (Corporations)*

- 29 (4) To avoid doubt, if the old Act registrant applies under section 20-5  
30 of the Insolvency Practice Schedule (Corporations) to be registered  
31 as a liquidator, and is registered in response to that application, this  
32 section does not affect that registration.

# EXPOSURE DRAFT

Schedule 2 Amendments relating to the Insolvency Practice Schedule (Corporations)

Part 3 Transition to the Insolvency Practice Schedule (Corporations)

---

1 **1560 Old Act registrant chooses not to renew**

2 *Application of this section*

3 (1) This section applies if an old Act registrant does not apply for  
4 renewal of his or her registration under the Insolvency Practice  
5 Schedule (Corporations) before his or her period of registration  
6 under subsection 1555(1) ends (the *expiry day*).

7 *Old Act registrant may not accept further appointments after*  
8 *registration expires*

9 (2) The old Act registrant is taken to be registered as a liquidator under  
10 Subdivision B of Division 20 of the Insolvency Practice Schedule  
11 (Corporations) after the expiry day, subject to a condition that he or  
12 she must not accept any further appointments as external  
13 administrator of a company.

14 (3) That condition is a *current condition* imposed on the old Act  
15 registrant.

16 *Registration cancelled once current administrations completed*

17 (4) On the day immediately after all of the external administrations of  
18 companies that the old Act registrant is entitled to carry out in  
19 accordance with his or her current conditions ends:

20 (a) the old Act registrant is taken to have lodged a request in the  
21 approved form in accordance with paragraph 40-30(1)(f) of  
22 the Insolvency Practice Schedule (Corporations) to have his  
23 or her registration as a liquidator cancelled; and

24 (b) ASIC is taken to have cancelled the registration under  
25 subsection 40-30(1) of the Insolvency Practice Schedule  
26 (Corporations).



# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
Transition to the Insolvency Practice Schedule (Corporations) **Part 3**

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1 **Subdivision B—Annual returns and statements**

2 **1561 Application of obligation to lodge annual liquidator returns**

3 *Application of the Insolvency Practice Schedule (Corporations)*

4 (1) Section 30-1 of the Insolvency Practice Schedule (Corporations)  
5 applies in relation to return years that begin on or after the  
6 commencement day.

7 *Meaning of return year*

8 (2) In working out the return year for an old Act registrant under  
9 subsection 30-1(2) of the Insolvency Practice Schedule  
10 (Corporations), “the day on which that registration first began”,  
11 means “the old Act registration day for that person (as defined for  
12 the purpose of Part 10.24 of this Act)”.

13 *Annual statements under the old Act*

14 (3) The repeal of section 1288 by Schedule 2 to the *Insolvency Law*  
15 *Reform Act 2014* applies in relation to return years beginning on or  
16 after the commencement day.

17 **Subdivision C—Notice requirements**

18 **1562 Notice of significant events**

19 (1) If:

20 (a) within 2 years before the commencement day, an event of a  
21 kind mentioned in subsection 35-1(1) of the Insolvency  
22 Practice Schedule (Corporations) occurs in relation to an old  
23 Act registrant; and

24 (b) the old Act registrant has not already informed ASIC in  
25 writing of the event before the commencement day;

26 the old Act registrant must lodge with ASIC a notice, in the  
27 approved form, relating to the event.

28 (2) The notice must be lodged:

# EXPOSURE DRAFT

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

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- 1 (a) if the old Act registrant is or could reasonably be expected to  
2 be aware of the event on or before the commencement day—  
3 within one month after the commencement day; or  
4 (b) if paragraph (a) is not satisfied, but the old Act registrant is or  
5 could reasonably be expected to be aware of the event after  
6 the commencement day—within one month after the first day  
7 on which the old Act registrant is or could reasonably be  
8 expected to be aware of the event.
- 9 (3) A person commits an offence if:  
10 (a) the person is subject to a requirement under subsection (1)  
11 within the period specified in subsection (2); and  
12 (b) the person intentionally or recklessly fails to comply with the  
13 requirement within that period.

14 Penalty: 100 penalty units.

## 15 **Subdivision D—Cancellation by ASIC under the old Act**

### 16 **1563 Request for cancellation made before the commencement day**

- 17 (1) This section applies if:  
18 (a) before the commencement day, a person requests ASIC under  
19 section 1290 of the old Act to cancel the person's registration  
20 as a liquidator or as a liquidator of a specified body  
21 corporate; and  
22 (b) no decision by ASIC to cancel that registration has come into  
23 effect before the commencement day.
- 24 (2) ASIC may not cancel the registration under section 1290 of the old  
25 Act.
- 26 (3) However, for the purposes of paragraph 40-30(1)(f) of the  
27 Insolvency Practice Schedule (Corporations), the person is taken to  
28 have lodged a request with ASIC in the approved form to have the  
29 person's registration as a liquidator under the Insolvency Practice  
30 Schedule (Corporations) cancelled.
- 31 (4) The amendments of section 1290 made by Schedule 2 to the  
32 *Insolvency Law Reform Act 2014* apply in relation to requests made  
33 to ASIC under section 1290 on or after the commencement day.

# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
Transition to the Insolvency Practice Schedule (Corporations) **Part 3**

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1 **1564 Decision to cancel registration made before the commencement**  
2 **day**

3 (1) This section applies if:

- 4 (a) before the commencement day, a decision is made by ASIC  
5 under section 1290A of the old Act to cancel the registration  
6 of a person as a liquidator, or as a liquidator of a specified  
7 body corporate; and  
8 (b) the decision has not come into effect before the  
9 commencement day.

10 (2) On the commencement day, ASIC is taken to have made a decision  
11 under section 40-30 of the Insolvency Practice Schedule  
12 (Corporations) to cancel the registration of the person as a  
13 liquidator.

14 (3) Section 40-35 of the Insolvency Practice Schedule (Corporations)  
15 applies in relation to the decision as if the decision were made on  
16 the commencement day.

17 **Subdivision E—Disciplinary proceedings before the Board**

18 **1565 Matters not dealt with by the Board before the commencement**  
19 **day**

20 (1) If:

- 21 (a) an application has been made under section 1292 of the old  
22 Act in relation to a person before the commencement day;  
23 and  
24 (b) the Board has not, before the commencement day:  
25 (i) made an order in response to the application under  
26 subsection 1292(2), (3), (4), (5), (6) or (7) of the old  
27 Act; or  
28 (ii) dealt with the person under subsection 1292(9) of the  
29 old Act in response to the application;

30 the Board must cease its consideration of the matter on the  
31 commencement day without making such an order or dealing with  
32 the person under subsection 1292(9) of the old Act.

33 (2) If:

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

**Part 3** Transition to the Insolvency Practice Schedule (Corporations)

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- 1 (a) the Board has ceased to consider a matter because of  
2 subsection (1); and  
3 (b) a conference has been convened in relation to the matter  
4 under subsection 1294A(1), but not yet held;  
5 the Chairperson of the Board need not give notice of the  
6 conference under subsection 1294A(3) and the conference need not  
7 be held.
- 8 (3) The fact that the Board has ceased to consider the matter does not  
9 preclude the matter, or any aspect of the matter, from being dealt  
10 with under Division 40 of the Insolvency Practice Schedule  
11 (Corporations).
- 12 (4) To avoid doubt, nothing in this section affects any right or  
13 obligation that any person has before the commencement day,  
14 including any right to review, in relation to the application or the  
15 consideration of the matter by the Board.

## 1566 Matters dealt with by the Board before the commencement day

- 16 (1) This section applies if:  
17 (a) an application has been made under section 1292 of the old  
18 Act in relation to a person before the commencement day;  
19 and  
20 (b) before the commencement day, the Board has:  
21 (i) made an order in response to the application under  
22 subsection 1292(2), (3), (4), (5), (6) or (7); or  
23 (ii) dealt with the person under subsection 1292(9) in  
24 response to the application.  
25
- 26 (2) The old Act continues to apply in relation to the decision to make  
27 the order under subsection 1292(2), (3), (4), (5), (6) or (7) or deal  
28 with the matter under subsection 1292(9) in response to the  
29 application.
- 30 (3) The same matter may not be dealt with under Division 40 of the  
31 Insolvency Practice Schedule (Corporations).

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1 **1567 Matters which the Board refuses to deal with before the**  
2 **commencement day**

3 (1) This section applies if:

4 (a) an application has been made under section 1292 of the old  
5 Act in relation to a person before the commencement day;  
6 and

7 (b) before the commencement day, the Board has decided to  
8 refuse to:

9 (i) make an order in response to the application under  
10 subsection 1292(2), (3), (4), (5), (6) or (7); or

11 (ii) deal with the person under subsection 1292(9) in  
12 response to the application.

13 (2) The old Act continues to apply in relation to the decision to refuse  
14 to make the order under subsection 1292(2), (3), (4), (5), (6) or (7)  
15 or deal with the matter under subsection 1292(9) in response to the  
16 application.

17 (3) The same matter may not be dealt with under Division 40 of the  
18 Insolvency Practice Schedule (Corporations).

19 **1568 Board considering terminating suspension before the**  
20 **commencement day**

21 (1) If:

22 (a) an application has been made under section 1295 of the old  
23 Act to terminate the suspension of the registration of a  
24 person; and

25 (b) the Board has neither refused the application nor, by order,  
26 terminated the suspension before the commencement day;

27 the Board must cease its consideration of the matter on the  
28 commencement day without making such an order.

29 (2) If:

30 (a) the Board, under section 1295 of the old Act, is considering  
31 of its own motion whether to terminate the suspension of the  
32 registration of a person; and

33 (b) the Board has not, by order, terminated the suspension before  
34 the commencement day;

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

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1 the Board must cease its consideration of the matter on the  
2 commencement day without making such an order.

3 (3) The fact that the Board has ceased to consider the matter does not  
4 preclude the matter from being dealt with under Division 40 of the  
5 Insolvency Practice Schedule (Corporations).

## 6 **1569 Sharing information between the Board and committees**

7 (1) The Chair of a committee convened under Part 2 of the Insolvency  
8 Practice Schedule (Corporations) may request the Chairperson of  
9 the Board (the *Board Chair*) to give the committee any  
10 information or document in the Board's possession or control in  
11 relation to a person who:

12 (a) is, or has at any time been, a registered liquidator under the  
13 Insolvency Practice Schedule (Corporations); or

14 (b) has at any time been registered as a liquidator, or as a  
15 liquidator of a specified body corporate, under the old Act.

16 (2) The Board Chair must comply with the request within 10 business  
17 days.

## 18 **Subdivision F—Suspension, cancellation and disciplinary** 19 **action under the Insolvency Practice Schedule** 20 **(Corporations)**

### 21 **1570 Direction to comply with requirement to lodge documents etc.**

22 Subdivision B of Division 40 of the Insolvency Practice Schedule  
23 (Corporations) applies whether or not a requirement mentioned in  
24 that Subdivision to lodge a document or give information or a  
25 document arises before, on or after the commencement day.

### 26 **1571 Suspension by ASIC under the Insolvency Practice Schedule** 27 **(Corporations)**

28 (1) Section 40-25 of the Insolvency Practice Schedule (Corporations)  
29 applies whether or not an event mentioned in subsection 40-25(1)  
30 occurs before, on or after the commencement day.

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1 (2) However, paragraph 40-25(1)(c) of the Insolvency Practice  
2 Schedule (Corporations) does not apply in relation to the  
3 cancellation of the registration of a person as a trustee under the  
4 *Bankruptcy Act 1966*, as in force at any time before the  
5 commencement day.

6 **1572 Cancellation by ASIC under the Insolvency Practice Schedule**  
7 **(Corporations)**

8 (1) Section 40-30 of the Insolvency Practice Schedule (Corporations)  
9 applies whether or not an event mentioned in subsection 40-30(1)  
10 occurs before, on or after the commencement day.

11 (2) However, paragraph 40-30(1)(c) of the Insolvency Practice  
12 Schedule (Corporations) does not apply in relation to the  
13 cancellation of the registration of a person as a trustee under the  
14 *Bankruptcy Act 1966*, as in force at any time before the  
15 commencement day.

16 **1573 Show-cause notice under the Insolvency Practice Schedule**  
17 **(Corporations)**

18 Subdivision E of Division 40 of the Insolvency Practice Schedule  
19 (Corporations) applies whether or not an event mentioned in  
20 subsection 40-40(1) of the Schedule occurs before, on or after the  
21 commencement day.

22 **1574 Lifting or shortening suspension under the Insolvency Practice**  
23 **Schedule (Corporations)**

24 Subdivision F of Division 40 of the Insolvency Practice Schedule  
25 (Corporations) applies whether or not a person's registration as a  
26 liquidator is suspended under a provision of the old Act or of the  
27 Insolvency Practice Schedule (Corporations).

28 **1575 Action initiated by industry bodies**

29 Section 40-100 of the Insolvency Practice Schedule (Corporations)  
30 applies, whether or not the grounds to which a notice under that  
31 section relates arise because of an action, a failure to act or

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

**Part 3** Transition to the Insolvency Practice Schedule (Corporations)

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1 circumstance that occurs before, on or after the commencement  
2 day.

## 3 **Subdivision G—Powers of the Court and other bodies**

### 4 **1576 Application of court powers under section 45-1 of the** 5 **Insolvency Practice Schedule (Corporations)**

6 The Court may exercise its powers to make an order under  
7 section 45-1 of the Insolvency Practice Schedule (Corporations),  
8 whether or not the action or failure to act in relation to which, or  
9 because of which, the order is made occurs before, on or after the  
10 commencement day.

### 11 **1577 Powers to deal with registration under the old Act on or after** 12 **the commencement day**

13 (1) This section applies if, as a result of the continued application of  
14 the old Act on or after the commencement day, a relevant body  
15 may decide to register a person, or suspend or cancel the  
16 registration of a person, as a liquidator or as a liquidator of a  
17 specified body corporate under the old Act.

18 (2) A relevant body may instead:

19 (a) register the person, or suspend or cancel the registration of  
20 the person, as a liquidator under the Insolvency Practice  
21 Schedule (Corporations); and

22 (b) by order, modify the application of this Part or the Insolvency  
23 Practice Schedule (Corporations) in relation to the  
24 registration, or the suspension or cancellation of the  
25 registration, of the person as a liquidator under the  
26 Insolvency Practice Schedule (Corporations).

27 (3) In this section:

28 *relevant body* means ASIC, the Administrative Appeals Tribunal,  
29 the Court or any other body.



# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
Transition to the Insolvency Practice Schedule (Corporations) **Part 3**

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1 **Division 3—Application of Part 3 of the Insolvency**  
2 **Practice Schedule (Corporations) and related**  
3 **consequential amendments**

4 **Subdivision A—Introduction**

5 **1578 Simplified outline of this Division**

6 This Division deals with the way this Act will apply to external  
7 administrations when the provisions of the Insolvency Practice  
8 Schedule (Corporations) begin to operate.

9 *New external administrations*

10 The Insolvency Practice Schedule (Corporations) applies to  
11 external administrations that start on or after the commencement of  
12 the *Insolvency Law Reform Act 2014* (called new external  
13 administrations).

14 *Ongoing external administrations*

15 For external administrations that start before that day but are still  
16 ongoing (called ongoing external administrations), the Insolvency  
17 Practice Schedule (Corporations) applies in accordance with this  
18 Division but usually only in relation to new events. Generally, the  
19 old Act continues to apply to old events and processes that are  
20 incomplete. There are some exceptions.

21 *Old external administrations*

22 For old external administrations that have ended but that may have  
23 ongoing obligations or processes, in most cases the old Act  
24 continues to apply.

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Schedule 2 Amendments relating to the Insolvency Practice Schedule (Corporations)

Part 3 Transition to the Insolvency Practice Schedule (Corporations)

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1       **Subdivision B—General rules for Part 3**

2       **1579 Application of Part 3 of the Insolvency Practice Schedule**  
3               **(Corporations)—general rules**

4               *New external administrations*

5               (1) Part 3 of the Insolvency Practice Schedule (Corporations) applies  
6               in relation to a new external administration of a company.

7               *Ongoing external administrations*

8               (2) Part 3 of the Insolvency Practice Schedule (Corporations) applies  
9               in relation to an ongoing external administration of a company in  
10              accordance with this Division.

11       **Subdivision C—Remuneration and other benefits received by**  
12               **external administrators**

13       **1580 Application of Division 60 of the Insolvency Practice Schedule**  
14               **(Corporations)—general rule**

15               Subdivision B to D of Division 60 of the Insolvency Practice  
16               Schedule (Corporations) applies in relation to an external  
17               administrator of a company under ongoing external administration  
18               who is appointed on or after the commencement day.

19       **1581 Old Act continues to apply in relation to remuneration for**  
20               **administrators already appointed**

21               (1) Despite the repeal of sections 449E and 473 and the repeal and  
22               substitution of subsections 499(3) to (7) of the old Act by  
23               Schedule 2 to the *Insolvency Law Reform Act 2014*, the old Act  
24               continues to apply in relation to the remuneration of an external  
25               administrator of a company who is appointed before the  
26               commencement day.

27               (2) Despite subsection (1), if, under Subdivision F of this Division,  
28               Division 75 of the Insolvency Practice Schedule (Corporations)  
29               rather than the old Act would apply to a meeting that deals with the  
30               remuneration of an external administrator of a company who is

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1 appointed before the commencement day, Division 75 of the  
2 Insolvency Practice Schedule (Corporations) applies to that  
3 meeting.

## 4 **1582 Duties of administrators relating to remuneration and other** 5 **benefits**

6 (1) Sections 60-20 and 60-25 of the Insolvency Practice Schedule  
7 (Corporations) apply in relation to an external administrator of an  
8 ongoing external administration of a company whether or not the  
9 administrator was appointed before, on or after the commencement  
10 day.

11 (2) However, those sections do not apply in relation to arrangements  
12 made before the commencement day.

## 13 **1583 Remuneration and expenses of former administrators**

14 Sections 60-30 and 60-35 of the Insolvency Practice Schedule  
15 (Corporations) apply in relation to an external administrator of a  
16 company if both the former and the new administrator mentioned  
17 in those sections are appointed on or after the commencement day.

## 18 **1584 Old Act continues to apply in relation to any right of indemnity**

19 (1) This section applies if the remuneration of an external  
20 administrator of a company is fixed under section 449E of the old  
21 Act:

- 22 (a) before the commencement day; or  
23 (b) on or after the commencement day (in accordance with a  
24 provision of this Division).

25 (2) Despite the repeal of that section and the amendment of  
26 paragraph 443D(b) of the old Act by Schedule 2 to the *Insolvency*  
27 *Law Reform Act 2014*, the old Act continues to apply in relation to  
28 any right of indemnity that the external administrator has as if that  
29 repeal and amendment had not happened.

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

**Part 3** Transition to the Insolvency Practice Schedule (Corporations)

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1 **1585 Application of new provisions about vacancies of**  
2 **court-appointed liquidator**

3 Subsection 473A(1) (as inserted by Schedule 2 to the *Insolvency*  
4 *Law Reform Act 2014*) applies whether or not the vacancy in the  
5 office of liquidator occurred before, on or after the commencement  
6 day.

7 **1586 Application of new provisions about exercise of powers while**  
8 **company under external administration**

9 *Application of new section 198G*

10 (1) Section 198G (as inserted by Schedule 2 to the *Insolvency Law*  
11 *Reform Act 2014*) applies in relation to an exercise of power or a  
12 performance of a function that occurs on or after the  
13 commencement day.

14 *Approval under old Act continues to have effect*

15 (2) If, under subsection 499(4) of the old Act, a committee of  
16 inspection or the company's creditors give approval for a director  
17 of the company to continue to perform or exercise the director's  
18 powers or functions, subsections 198G(1) and (2) (as inserted by  
19 Schedule 2 to the *Insolvency Law Reform Act 2014*) do not apply in  
20 relation to the director.

21 **Subdivision D—Funds handling**

22 **1587 Application of Division 65 of the Insolvency Practice Schedule**  
23 **(Corporations)—general rule**

24 Division 65 of the Insolvency Practice Schedule (Corporations)  
25 applies in relation to an ongoing external administration of a  
26 company.

27 **1588 Administration account**

28 If, immediately before the commencement day, a person has a  
29 liquidator's general account in relation to the external  
30 administration of:

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Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
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- 1 (a) a company; or  
2 (b) a company in a pooled group;  
3 the account is taken on and after the commencement day to be the  
4 administration account for the company for the purposes of  
5 section 65-5 of the Insolvency Practice Schedule (Corporations).

## 6 **1589 Paying money into administration account**

7 *Application of the Insolvency Practice Schedule (Corporations)*

- 8 (1) Sections 65-10 and 65-15 of the Insolvency Practice Schedule  
9 (Corporations) do not apply in relation to money received before  
10 the commencement day.

11 *Old regulations continue to apply to money received before*  
12 *commencement*

- 13 (2) Paragraph 5.6.06(1)(b) of the old regulations continues to apply in  
14 relation to money received before the commencement day.

## 15 **1590 Paying money out of administration account**

16 Section 65-25 of the Insolvency Practice Schedule (Corporations)  
17 does not apply in relation to money paid out of an administration  
18 account before the commencement day.

## 19 **1591 Receipts**

20 Section 65-35 of the Insolvency Practice Schedule (Corporations)  
21 does not apply in relation to money paid into or out of an  
22 administration account before the commencement day.

## 23 **1592 Handling securities**

24 *Application of the Insolvency Practice Schedule (Corporations)*

- 25 (1) Section 65-40 of the Insolvency Practice Schedule (Corporations)  
26 does not apply in relation to negotiable instruments and other  
27 securities received before the commencement day.

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

**Part 3** Transition to the Insolvency Practice Schedule (Corporations)

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1 *Old regulations continue to apply to money received before*  
2 *commencement*

3 (2) Regulation 5.6.07 of the old regulations continues to apply in  
4 relation to bills, notes and other securities received before the  
5 commencement day.

## 6 **Subdivision E—Information**

### 7 **1593 Application of Division 70 of the Insolvency Practice Schedule** 8 **(Corporations)—general rule**

9 Division 70 of the Insolvency Practice Schedule (Corporations)  
10 applies in relation to an ongoing external administration of a  
11 company.

### 12 **1594 Accounts and administration returns**

13 *Administration returns for 2016-17 and later years*

14 (1) Sections 70-5 and 70-6 of the Insolvency Practice Schedule  
15 (Corporations) apply in relation to the financial year starting on  
16 1 July 2016 and later financial years.

17 *Accounts under old Act*

18 (2) Subsection (3) of this section applies in relation to the repeal of  
19 each of the following sections of the old Act by Schedule 2 to the  
20 *Insolvency Law Reform Act 2014*:

- 21 (a) 438E;  
22 (b) 445J;  
23 (c) 539.

24 (3) To the extent that a repealed section relates to a period for which  
25 an account or statement must be lodged:  
26 (a) the repeal of the section applies in relation to periods starting  
27 on or after 1 July 2016; and  
28 (b) the section applies in relation to periods starting before 1 July  
29 2016 and ending after that day as if the period ends on  
30 30 June 2016.

# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
Transition to the Insolvency Practice Schedule (Corporations) **Part 3**

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1 *Continuation of audits under old Act*

- 2 (4) For the avoidance of doubt, despite the repeal of a section  
3 mentioned in subsection (2) by Schedule 2 to the *Insolvency Law*  
4 *Reform Act 2014*, audits may be continued under that section in  
5 relation to accounts lodged under that section as if the old Act  
6 continued to apply.

7 **1595 Administration books**

8 *Application of the Insolvency Practice Schedule (Corporations)*

- 9 (1) Section 70-10 of the Insolvency Practice Schedule (Corporations)  
10 does not apply in relation to events:  
11 (a) that occur before the commencement day; and  
12 (b) in respect of which, or because of which, entries or minutes  
13 are to be made.

14 *Old Act continues to apply to events etc. before commencement day*

- 15 (2) Despite the repeal of section 531 of the old Act by Schedule 2 to  
16 the *Insolvency Law Reform Act 2014*, that section continues to  
17 apply in relation to events:  
18 (a) that occur before the commencement day; and  
19 (b) in respect of which, or because of which, entries or minutes  
20 must be made.

21 **1596 Audit of administration books**

22 Sections 70-15 to 70-25 of the Insolvency Practice Schedule  
23 (Corporations) apply to books relating to an ongoing external  
24 administration whether or not the books are kept under a provision  
25 of the old Act or of the Insolvency Practice Schedule  
26 (Corporations).

27 **1597 Transfer of administration books**

28 *Application of the Insolvency Practice Schedule (Corporations)*

- 29 (1) Sections 70-30 and 70-31 of the Insolvency Practice Schedule  
30 (Corporations) apply in relation to a person who ceases to be the
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# EXPOSURE DRAFT

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

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1 external administrator of a company on or after the commencement  
2 day.

3 *Application of repeal of old Act*

4 (2) The repeal of section 1298A of the old Act by Schedule 2 to the  
5 *Insolvency Law Reform Act 2014* applies in relation to a person  
6 whose registration as a liquidator is cancelled or suspended on or  
7 after the commencement day.

## 8 **1598 Retention and destruction of administration books**

9 *Application of the Insolvency Practice Schedule (Corporations)*

10 (1) To avoid doubt, section 70-35 of the Insolvency Practice Schedule  
11 (Corporations) applies to books relating to an ongoing external  
12 administration whether or not the books were kept under a  
13 provision of the old Act or of the Insolvency Practice Schedule  
14 (Corporations).

15 *Old Act continues to apply in relation to books for old external*  
16 *administrations*

17 (2) If:  
18 (a) an external administration of a company ends before the  
19 commencement day; and  
20 (b) immediately before that day, a person was required under  
21 section 542 of the old Act to retain books of the company for  
22 a period; and  
23 (c) but for the repeal of that section by Schedule 2 to the  
24 *Insolvency Law Reform Act 2014*, that period would have  
25 ended on or after the commencement day;  
26 section 542 of the old Act continues to apply (despite its repeal by  
27 Schedule 2 to the *Insolvency Law Reform Act 2014*) on and after  
28 the commencement day in relation to the person for the remainder  
29 of that period.

30 *Continued effect of consent by ASIC under old Act*

31 (3) If before the commencement day, a person is entitled under  
32 subsections 542(3) and (4) of the old Act to destroy books of a



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Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
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1                    company (or of the person's that are relevant to the affairs of the  
2                    company) then, despite section 70-35 of the Insolvency Practice  
3                    Schedule (Corporations), those books may be destroyed.

## 4                    **1599 Giving information to creditors etc.**

5                    Subdivision D of Division 70 of the Insolvency Practice Schedule  
6                    (Corporations) applies whether or not the information, report or  
7                    document referred to in subsection 70-40(1), 70-45(1), 70-46(2),  
8                    70-47(2) or 70-50(1) of the Insolvency Practice Schedule  
9                    (Corporations):

- 10                    (a) was obtained or generated; or  
11                    (b) was made or prepared; or  
12                    (c) is in respect of actions or events that occurred;  
13                    before, on or after the commencement day.

## 14                    **1600 Commonwealth may request information**

15                    Section 70-55 of the Insolvency Practice Schedule (Corporations)  
16                    applies whether or not the information, report or document referred  
17                    to in subsection 70-55(2):

- 18                    (a) was obtained or generated; or  
19                    (b) was made or prepared; or  
20                    (c) is in respect of actions or events that occurred;  
21                    before, on or after the commencement day.

## 22                    **1601 Reporting to ASIC**

23                    Section 70-60 of the Insolvency Practice Schedule (Corporations)  
24                    applies whether or not the information, report or document referred  
25                    to in subsection 70-60(1):

- 26                    (a) was obtained or generated; or  
27                    (b) was made or prepared; or  
28                    (c) is in respect of actions or events that occurred;  
29                    before, on or after the commencement day.

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1 **1602 Old Act continues to apply in relation to notices to remedy**  
2 **default**

3 Despite its repeal by Schedule 2 to the *Insolvency Law Reform Act*  
4 *2014*, section 540 of the old Act continues to apply in relation to a  
5 notice mentioned in that section that is served on a person before  
6 the commencement day.

7 **Subdivision F—Meetings**

8 **1603 Application of Division 75 of the Insolvency Practice Schedule**  
9 **(Corporations)—general rule**

- 10 (1) Division 75 of the Insolvency Practice Schedule (Corporations)  
11 applies in relation to an ongoing external administration of a  
12 company.
- 13 (2) However, Division 75 of the Insolvency Practice Schedule  
14 (Corporations) does not apply in relation to meetings convened or  
15 held before the commencement day.

16 **1604 External administrator must convene meetings in certain**  
17 **circumstances**

18 *Application of the Insolvency Practice Schedule (Corporations)*

- 19 (1) Section 75-15 of the Insolvency Practice Schedule (Corporations)  
20 does not apply in relation to:  
21 (a) requests made before the commencement day; or  
22 (b) directions given before the commencement day; or  
23 (c) resolutions passed before the commencement day.

24 *Old Act continues to apply in relation to resolutions for voluntary*  
25 *winding up passed before commencement day*

- 26 (2) Despite their repeal by Schedule 2 to the *Insolvency Law Reform*  
27 *Act 2014*:  
28 (a) sections 497 and 498 of the old Act continue to apply on and  
29 after the commencement day in relation to a resolution for  
30 voluntary winding up that is passed before the  
31 commencement day; and
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1 (b) subsection 477(4) of the old Act continues to apply on and  
2 after the commencement day if a meeting of creditors has not  
3 been held under section 497 of the old Act in relation to a  
4 voluntary winding up a resolution for which is passed before  
5 the commencement day.

6 **1605 Old Act continues to apply in relation to reporting for first**  
7 **year of administration**

- 8 (1) This section applies if, in relation to a company, a year mentioned  
9 in subsection 508(1) of the old Act starts before the  
10 commencement day but ends after that day.
- 11 (2) Despite its repeal by Schedule 2 to the *Insolvency Law Reform Act*  
12 *2014*, section 508 of the old Act continues to apply on and after the  
13 commencement day in relation to the company for that year.

14 **1606 Old Act continues to apply in relation to companies wound up**  
15 **before commencement day**

16 The repeal and substitution of section 509 by Schedule 2 to the  
17 *Insolvency Law Reform Act 2014* applies in relation to companies  
18 that are fully wound up on or after the commencement day.

19 **1607 Old Act continues to apply for certain meetings convened etc.**  
20 **before commencement day**

- 21 (1) If:
- 22 (a) the administrator of a company under external administration  
23 is required to convene a meeting of the company's creditors  
24 under section 439A of the old Act; and
- 25 (b) the convening period for the meeting as fixed by  
26 subsection 439A(5) of the old Act (or extended under  
27 subsection (6) of that section) ends on or after the  
28 commencement day; and
- 29 (c) as at the commencement day, the meeting has not been  
30 convened;
- 31 then the old Act continues to apply on and after the  
32 commencement day (despite the repeal of subsections 439A(3) and

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1 (4) and section 439B by Schedule 2 to the *Insolvency Law Reform*  
2 *Act 2014*) in relation to the meeting.

3 (2) Despite the repeal of section 445F of the old Act and the  
4 amendment of section 445A of the old Act by Schedule 2 to the  
5 *Insolvency Law Reform Act 2014*, those sections continue to apply  
6 on and after the commencement day in relation to meetings for  
7 which a notice under subsection 445F(2) is given before the  
8 commencement day.

9 (3) Despite its repeal by Schedule 2 to the *Insolvency Law Reform Act*  
10 *2014*, section 479 of the old Act continues to apply on and after the  
11 commencement day in relation to meetings which have been  
12 convened under subsection 479(2) or for which a direction or  
13 request is given under that subsection before the commencement  
14 day.

15 (4) Despite the amendment of subsection 496(8) of the old Act by  
16 Schedule 2 to the *Insolvency Law Reform Act 2014*, that subsection  
17 continues to apply on and after the commencement day in relation  
18 to meetings convened before the commencement day as if the  
19 amendment had not been made.

## 20 **1608 Outcome of voting at creditors' meeting determined by related** 21 **entity or on casting vote—Court powers**

22 Sections 75-41 to 75-45 of Schedule 2 apply whether a proposal  
23 has been voted on or a resolution passed before, on or after the  
24 commencement day.

## 25 **Subdivision G—Committees of inspection**

### 26 **1609 Application of Division 80 of the Insolvency Practice Schedule** 27 **(Corporations)—general rules**

28 (1) Division 80 of the Insolvency Practice Schedule (Corporations)  
29 applies in relation to a committee of inspection for an ongoing  
30 external administration of a company:

31 (a) that is appointed under that Division on or after the  
32 commencement day; or

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1 (b) that is appointed under a provision of the old Act but is taken  
2 to be a committee of inspection under subsection 1610(2) of  
3 this Subdivision.

4 (2) However, Division 80 of the Insolvency Practice Schedule  
5 (Corporations) does not apply in relation to meetings of, or related  
6 to, the committee of inspection convened or held before the  
7 commencement day.

## 8 **1610 Appointing committees of inspection**

9 *Committees appointed under old Act taken to be committee of*  
10 *inspection*

11 (1) Subsection (2) applies if there is, in relation to the external  
12 administration of a company:

- 13 (a) a committee of creditors validly appointed under  
14 section 436E of the old Act; or  
15 (b) a committee of inspection validly appointed under  
16 section 548 of the old Act; or  
17 (c) a committee of inspection validly appointed under  
18 section 548A of the old Act.

19 (2) On and after the day specified in subsection (3), the committee (the  
20 *continued committee*) is taken for the purposes of the Insolvency  
21 Practice Schedule (Corporations) to be:

- 22 (a) in the case of a committee appointed under section 436E or  
23 548 of the old Act—a committee of inspection established  
24 under section 80-10 of the Insolvency Practice Schedule  
25 (Corporations) in relation to the external administration of  
26 the company; and  
27 (b) in the case of a committee appointed under section 548A of  
28 the old Act—a committee of inspection established under  
29 section 80-26 of the Insolvency Practice Schedule  
30 (Corporations) in relation to a pooled group of which the  
31 company is a member.

32 (3) For the purposes of subsection (2), the day is:

- 33 (a) in the case of a committee appointed on or before the  
34 commencement day—the commencement day; and

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- 1 (b) in the case of a committee appointed on a day that is after the  
2 commencement day in accordance with a provision of this  
3 section—that later day.

4 *Old Act continues to apply to certain meetings*

5 (4) If:

6 (a) because of the operation of section 436E, 548 or 548A (the  
7 **repealed section**) of the old Act before the commencement  
8 day, the administrator or liquidator of a company is required  
9 to convene a meeting; and

10 (b) as at the commencement day, the meeting has not been  
11 convened;

12 then (despite their repeal by Schedule 2 to the *Insolvency Law*  
13 *Reform Act 2014*) the repealed sections of the old Act continue to  
14 apply on and after the commencement day in relation to the  
15 meeting.

## 16 **1611 Old Act continues to apply to certain reports by administrator**

17 If, before the commencement day, the administrator of a company  
18 under administration is directed under subsection 436F(3) of the  
19 old Act to give a report, then despite the repeal of section 436F by  
20 Schedule 2 to the *Insolvency Law Reform Act 2014*, that section  
21 continues to apply on and after commencement day in relation to  
22 the report.

## 23 **1612 Membership of continued committees**

24 *Members of continued committees*

25 (1) The members of a continued committee are the members appointed  
26 to the committee under section 436E (in accordance with  
27 section 436G), 548 or 548A of the old Act, as the case requires.

28 *Old Act continues to apply to members of continued committees*

29 (2) If a person is a member of a continued committee, then despite the  
30 repeal of:

31 (a) section 436G, 548 or 548A (and any regulations made under  
32 that section), as the case requires; and

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1 (b) section 550;  
2 by Schedule 2 to the *Insolvency Law Reform Act 2014*, those  
3 provisions continue to apply in relation to the person.

4 *Application of the Insolvency Practice Schedule (Corporations)*

5 (3) The following provisions do not apply in relation to members of a  
6 continued committee:

7 (a) sections 80-15 to 80-25 and paragraph 80-26(2)(b) of the  
8 Insolvency Practice Schedule (Corporations);

9 (b) Insolvency Practice Rules made under section 80-30 of the  
10 Insolvency Practice Schedule (Corporations) that relate to  
11 membership of a committee of inspection.

12 Note: However, the committee could dissolve and the members could form a  
13 new committee to which these provisions would then apply.

## 14 **1613 Continued application of directions by creditors or committees** 15 **under the old Act**

16 Sections 80-35 and 85-5 of the Insolvency Practice Schedule  
17 (Corporations) apply whether or not the direction is given before,  
18 on or after the commencement day.

## 19 **1614 Committee of inspection may request information**

20 Section 80-40 of the Insolvency Practice Schedule (Corporations)  
21 applies whether or not the information, report or document referred  
22 to in subsection 80-40(1):

23 (a) was obtained or generated; or

24 (b) was made or prepared; or

25 (c) is in respect of actions or events that occurred;

26 before, on or after the commencement day.

## 27 **1615 Duties of members of committee of inspection and creditors** 28 **relating to profits and advantages etc.**

29 Sections 80-55 and 80-60 of the Insolvency Practice Schedule  
30 (Corporations) apply to arrangements made on or after the  
31 commencement day.

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Schedule 2 Amendments relating to the Insolvency Practice Schedule (Corporations)

Part 3 Transition to the Insolvency Practice Schedule (Corporations)

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1     **Subdivision H—Review of the external administration of a**  
2                     **company**

3     **1616 Application of Division 80 of the Insolvency Practice Schedule**  
4                     **(Corporations)—general rule**

5                     Division 90 of the Insolvency Practice Schedule (Corporations)  
6                     applies in relation to an ongoing external administration whether or  
7                     not the matter to be reviewed occurred before, on or after the  
8                     commencement day.

9     **1617 Application of the Insolvency Practice Schedule (Corporations)**  
10                    **provisions that conflict with old Act Court orders—**  
11                    **general rule**

- 12                    (1) This section applies if a court makes an order in relation to a  
13                    person or the external administration of a company under the old  
14                    Act (the *old Act order*).
- 15                    (2) The old Act order does not cease to have effect because a provision  
16                    of the old Act under which it was made has been amended or  
17                    repealed by Schedule 2 to the *Insolvency Law Reform Act 2014*.
- 18                    (3) If the old Act order is inconsistent with a provision of this Act that  
19                    is amended or inserted by Schedule 2 to the *Insolvency Law*  
20                    *Reform Act 2014*, then, subject to this Part, the provision does not  
21                    apply to the extent that it is inconsistent with the old Act order.

22     **1618 Old Act continues to apply in relation to ongoing proceedings**  
23                    **before a court—general rule**

- 24                    (1) This section applies if proceedings are brought under the old Act in  
25                    a court (on application or on the initiative of the court) in relation  
26                    to the external administration of a company either:  
27                    (a) before the commencement day; or  
28                    (b) on or after the commencement day (in accordance with a  
29                    provision of this Division).
- 30                    (2) Subject to this Part, nothing in Schedule 2 to the *Insolvency Law*  
31                    *Reform Act 2014* affects:
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- 1 (a) the proceedings; or  
2 (b) the power of the court to make orders in relation to the  
3 proceedings; or  
4 (c) any orders made by the court in relation to the proceedings;  
5 or  
6 (d) any enforcement in relation to, or as a result of, the  
7 proceedings (including giving effect to any court orders); or  
8 (e) any appeal or review in relation to the proceedings.
- 9 (3) Subject to this Part, the old Act continues to apply on and after the  
10 commencement day in relation to the proceedings despite the  
11 amendments and repeals made by Schedule 2 to the *Insolvency*  
12 *Law Reform Act 2014*.
- 13 (4) In this section:  
14 *proceedings* include civil and criminal proceedings, inquiries by  
15 the court, enforcement processes and any other processes.

## 16 **1619 Court powers to inquire into and make orders**

### 17 *Application of the Insolvency Practice Schedule (Corporations)*

- 18 (1) Subsections (2) to (4) are for the avoidance of doubt.
- 19 (2) Sections 90-5 and 90-10 of the Insolvency Practice Schedule  
20 (Corporations) apply whether or not the information, report or  
21 document mentioned in subsections 90-5(2) and 90-10(3) was  
22 prepared before, on or after the commencement day.
- 23 (3) Paragraph 90-15(3)(f) of the Insolvency Practice Schedule  
24 (Corporations) applies whether or not the remuneration is paid or  
25 payable before, on or after the commencement day.
- 26 (4) Subsection 90-15(4) of the Insolvency Practice Schedule  
27 (Corporations) applies whether or not the action or failure to act  
28 occurred before, on or after the commencement day.
- 29 *Old Act continues to apply for inquiries started under section 536*
- 30 (5) Despite the repeal of section 536 of the old Act by Schedule 2 to  
31 the *Insolvency Law Reform Act 2014*, that section continues to

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

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1 apply in relation to inquiries commenced by ASIC before the  
2 commencement day (including inquiries commenced because of  
3 the extension of section 536 by subsection 411(9) to persons  
4 appointed under the terms of a compromise or arrangement).

5 *Application of new section 599*

6 (6) Section 599 (as inserted by Schedule 2 to the *Insolvency Law*  
7 *Reform Act 2014*) applies whether or not the act, omission or  
8 decision occurred before, on or after the commencement day.

## 9 **1620 Review by another registered liquidator**

- 10 (1) The following subsections are for the avoidance of doubt.
- 11 (2) Sections 90-24 and 90-26 of the Insolvency Practice Schedule  
12 (Corporations) apply whether or not:  
13 (a) the remuneration is paid or payable; or  
14 (b) the cost or expense is incurred or paid;  
15 before, on or after the commencement day.
- 16 (3) A period determined by the Court under paragraph 90-26(4)(d) of  
17 the Insolvency Practice Schedule (Corporations) or prescribed  
18 under paragraph 90-26(4)(c) may include a period that:  
19 (a) starts before the commencement day but ends after that day;  
20 or  
21 (b) starts and ends before the commencement day.
- 22 (4) Section 90-28 of the Insolvency Practice Schedule (Corporations)  
23 applies whether or not the books or information mentioned in  
24 paragraph 90-28(2)(a) were prepared before, on or after the  
25 commencement day.
- 26 (5) Rules made for the purposes of section 90-29 of the Insolvency  
27 Practice Schedule (Corporations) in relation to the meaning of  
28 properly incurred may make provision for or in relation to costs  
29 and expenses incurred before, on or after the commencement day.

# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
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1 **1621 Removal by creditors**

2 For the avoidance of doubt, section 90-35 of the Insolvency  
3 Practice Schedule (Corporations) applies whether or not the  
4 external administrator was appointed before, on or after the  
5 commencement day.

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Schedule 2 Amendments relating to the Insolvency Practice Schedule (Corporations)

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1 **Division 4—Administrative review**

2 **1622 Administrative Appeals Tribunal proceedings**

3 (1) This section applies if an application is made to the Administrative  
4 Appeals Tribunal for review of a decision made under the old Act  
5 either:

- 6 (a) before the commencement day; or  
7 (b) on or after the commencement day (in accordance with a  
8 provision of this Part).

9 (2) Subject to this Part, nothing in the *Insolvency Law Reform Act*  
10 *2014* affects:

- 11 (a) any proceedings before the Administrative Appeals Tribunal  
12 in relation to the decision; or  
13 (b) the powers of the Administrative Appeals Tribunal in relation  
14 to the decision; or  
15 (c) any enforcement in relation to, or as a result of, a decision of  
16 the Administrative Appeals Tribunal in relation to the  
17 decision; or  
18 (d) any appeal or review in relation to a decision of the  
19 Administrative Appeals Tribunal in relation to the decision.

20 (3) Subject to this Part, the old Act continues to apply on and after the  
21 commencement day in relation to the proceedings despite the  
22 amendments and repeals made by Schedule 2 to the *Insolvency*  
23 *Law Reform Act 2014*.

24 *Applications for review made after the commencement day*

25 (4) Despite the repeals and amendments made by the *Insolvency Law*  
26 *Reform Act 2014*, applications may be made to the Administrative  
27 Appeals Tribunal for review of the decision.

# EXPOSURE DRAFT

Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
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1 **Division 5—Application of other consequential**  
2 **amendments**

3 **1623 Outcome of voting at creditors’ meeting determined by related**  
4 **entity or on casting vote—Court powers**

5 Sections 415A to 415C, as inserted by the *Insolvency Law Reform*  
6 *Act 2014*, apply whether a proposed resolution has been voted on  
7 before, on or after the commencement day.

8 **1624 Annual return by receiver**

9 Section 422A, as inserted by Schedule 2 to the *Insolvency Law*  
10 *Reform Act 2014*, applies in relation to financial years starting on  
11 or after 1 July 2016.

12 **1625 Transfer of books by a receiver to a new administrator or**  
13 **ASIC**

14 Sections 422B and 422C, as inserted by Schedule 2 to the  
15 *Insolvency Law Reform Act 2014*, apply in relation to a person who  
16 ceases to act as a receiver, or a receiver and manager, of property  
17 of a corporation on or after the commencement day.

18 **1626 Officers reporting to controller about corporation’s affairs**

19 The amendment of paragraph 429(2)(b) by Schedule 2 to the  
20 *Insolvency Law Reform Act 2014* applies in relation to notices  
21 received on or after the commencement day.

22 **1627 Notice about appointment of an administrator**

23 The repeal of subsection 450A(1A) of the old Act by Schedule 2 to  
24 the *Insolvency Law Reform Act 2014* applies in relation to the  
25 appointment of an administrator of a company made on or after the  
26 commencement day.

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Schedule 2 Amendments relating to the Insolvency Practice Schedule (Corporations)

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1 **1628 Lodging notice of execution of a deed of company arrangement**

2 The amendment of paragraph 450B(c), and substitution with  
3 paragraph 450B(b), by Schedule 2 to the *Insolvency Law Reform*  
4 *Act 2014* applies in relation to deeds of company arrangement  
5 executed on or after the commencement day.

6 **1629 Office of liquidator appointed by the Court**

7 *Vacancies in office of liquidator appointed by the Court*

8 (1) Despite the repeal of section 473 of the old Act by Schedule 2 to  
9 the *Insolvency Law Reform Act 2014*, that section continues to  
10 apply in relation to a vacancy in the office of a liquidator appointed  
11 by the Court that occurs before the commencement day.

12 (2) Section 473A, as inserted by Schedule 2 to the *Insolvency Law*  
13 *Reform Act 2014*, applies in relation to vacancies in the office of a  
14 liquidator appointed by the Court that occur on or after the  
15 commencement day.

16 *Where there are 2 or more liquidators appointed by the Court*

17 (3) Subsections 473A(4) and (5), as inserted by Schedule 2 to the  
18 *Insolvency Law Reform Act 2014*, apply in relation to 2 or more  
19 liquidators appointed by the Court, whether the liquidators were  
20 appointed before, on or after the commencement day.

21 **1630 Report as to company's affairs to be submitted to liquidator**

22 (1) The amendments of section 475 by Schedule 2 to the *Insolvency*  
23 *Law Reform Act 2014* applies where a winding up order is made on  
24 or after the commencement day.

25 (2) The repeal of section 476 of the old Act by Schedule 2 to the  
26 *Insolvency Law Reform Act 2014* applies where a report referred to  
27 in subsection 475(1) or (2) is received on or after the  
28 commencement day.

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1 **1631 Orders for release or deregistration**

2 Despite the amendment of paragraph 481(1)(a) by Schedule 2 to the  
3 *Insolvency Law Reform Act 2014*, that paragraph continues to apply in  
4 relation to auditors appointed by ASIC under section 539 of the old Act.

5 **1632 Meeting relating to the voluntary winding up of a company**

6 The amendment of section 506A by Schedule 2 to the *Insolvency Law*  
7 *Reform Act 2014* applies where the resolution for the voluntary winding  
8 up of a company is passed on or after the commencement day.

9 **1633 Pooling determinations**

- 10 (1) The repeal of sections 574 to 576 of the old Act by Schedule 2 to  
11 the *Insolvency Law Reform Act 2014* apply where a pooling  
12 determination is made or varied on or after the commencement  
13 day.
- 14 (2) Subsection 577(1A), as inserted by Schedule 2 to the *Insolvency*  
15 *Law Reform Act 2014*, applies where a pooling determination is  
16 made or varied on or after the commencement day.
- 17 (3) The repeal of subsection 577(2) of the old Act by Schedule 2 to the  
18 *Insolvency Law Reform Act 2014* applies to resolutions agreed on  
19 or after the commencement day.

20 **1634 Electronic methods of giving or sending certain notices**

- 21 (1) If:
- 22 (a) a notice or other document was authorised or required to be  
23 given or sent under a provision of the old Act mentioned in a  
24 paragraph of subsection 600G(1) that is repealed by  
25 Schedule 2 to the *Insolvency Law Reform Act 2014*; and
- 26 (b) although the authorisation or requirement arose before the  
27 commencement day, the notice or other document is required  
28 to be given or sent on or after the commencement day;
- 29 that paragraph of subsection 600G(1) continues to apply in relation  
30 to the giving or sending of the notice or other document.

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

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- 1                   (2) Subsections 600G(4) and (4A), as inserted by Schedule 2 to the  
2                    *Insolvency Law Reform Act 2014*, apply in relation to notices or  
3                    other documents given or sent on or after the commencement day.

4                   **1635 Deregistration following winding up**

- 5                   (1) If, on or after the commencement day, the Court orders the  
6                    deregistration of a company under subsection 509(6) of the old  
7                    Act, subsection 601AC(1) of the old Act continues to apply in  
8                    relation to the order.
- 9                   (2) Subsection 601AC(2) of the old Act continues to apply in relation  
10                  to a company for which a return has been lodged under section 509  
11                  before the commencement day.



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Amendments relating to the Insolvency Practice Schedule (Corporations) **Schedule 2**  
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1 **Division 6—Regulations**

2 **1636 Regulations**

- 3 (1) The Governor-General may make regulations prescribing matters  
4 of a transitional nature (including prescribing any saving or  
5 application provisions) relating to the amendments and repeals  
6 made by Schedule 2 to the *Insolvency Law Reform Act 2014*.
- 7 (2) The regulations may provide that certain provisions of Schedule 2  
8 to the *Insolvency Law Reform Act 2014* are taken to be modified as  
9 set out in the regulations. Those provisions then have effect as if  
10 they were so modified.
- 11 (3) The provisions of Schedule 2 to the *Insolvency Law Reform Act*  
12 *2014* that provide for regulations to deal with matters do not limit  
13 each other.

# EXPOSURE DRAFT

Schedule 3 Other amendments

Part 1 Payments for property

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1 **Schedule 3—Other amendments**

2 **Part 1—Payments for property**

3 *Corporations Act 2001*

4 **1 Subsection 443B(3)**

5 Repeal the subsection, substitute:

- 6 (3) Within 5 business days after the beginning of the administration,  
7 the administrator may give to the owner or lessor a notice that:
- 8 (a) specifies the property; and
  - 9 (b) states that the company does not propose to exercise rights in  
10 relation to the property; and
  - 11 (c) if the administrator:
    - 12 (i) knows the location of the property; or
    - 13 (ii) could, by the exercise of reasonable diligence, know the  
14 location of the property;
- 15 specifies the location of the property.

# EXPOSURE DRAFT

Other amendments **Schedule 3**  
Contravention of deed of company arrangement **Part 2**

---

1 **Part 2—Contravention of deed of company**  
2 **arrangement**

3 *Corporations Act 2001*

4 **2 After Division 11 of Part 5.3A**

5 Insert:

6 **Division 11AA—Notification of contravention of deed**

7 **445HA Notification of contravention of deed of company**  
8 **arrangement**

9 *Director to notify administrator*

- 10 (1) If a director of a company that is subject to a deed of company  
11 arrangement becomes aware that:
- 12 (a) there has been a material contravention of the deed by a  
13 person bound by the deed (who may be the director); or  
14 (b) there is likely to be a material contravention of the deed by a  
15 person bound by the deed (who may be the director);
- 16 the director must, as soon as practicable after becoming aware of  
17 the contravention or likely contravention, give notice of the  
18 contravention or likely contravention to the administrator of the  
19 deed of company arrangement. The notice must be in the  
20 prescribed form.

21 *Administrator to notify company's creditors*

- 22 (2) If the administrator of a deed of company arrangement becomes  
23 aware that:
- 24 (a) there has been a material contravention of the deed by a  
25 person bound by the deed (who may be the administrator); or  
26 (b) there is likely to be a material contravention of the deed by a  
27 person bound by the deed (who may be the administrator);
- 28 the administrator must, as soon as practicable after becoming  
29 aware of the contravention or likely contravention, give notice of

# EXPOSURE DRAFT

## Schedule 3 Other amendments

### Part 2 Contravention of deed of company arrangement

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1 the contravention or likely contravention to as many of the  
2 company's creditors as reasonably practicable. The notice must be  
3 in the prescribed form.

#### 4 **3 After paragraph 482(2A)(d)**

5 Insert:

6 (da) any notice that has been given to the administrator of the  
7 deed of company arrangement or the company's creditors  
8 under section 445HA (notification of contravention of deed  
9 of company arrangement);

#### 10 *Private Health Insurance Act 2007*

#### 11 **4 Paragraph 217-5(1)(b)**

12 After "11," insert "11AA,".

# EXPOSURE DRAFT

Other amendments **Schedule 3**  
Company's former name **Part 3**

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1 **Part 3—Company's former name**

2 *Corporations Act 2001*

3 **5 Subsection 161A(2)**

4 Omit “, (ii), (iii), (v) or (vi)”.

5 **6 Subsection 161A(3)**

6 Omit “subparagraph (1)(b)(iv)”, substitute “subparagraph (1)(b)(ii),  
7 (iii), (iv), (v) or (vi)”.

8 **7 Subsection 161A(6)**

9 Repeal the subsection, substitute:

- 10 (6) The Court may only grant leave under subsection (3) on the  
11 application of:
- 12 (a) if subparagraph (1)(b)(ii) applies—the liquidator of the  
13 company; or
  - 14 (b) if subparagraph (1)(b)(iii) applies—the administrator of the  
15 company; or
  - 16 (c) if subparagraph (1)(b)(iv) applies—the administrator of the  
17 deed of company arrangement; or
  - 18 (d) if subparagraph (1)(b)(v) applies—the managing controller;  
19 or
  - 20 (e) if subparagraph (1)(b)(vi) applies—the receiver.
- 21 (6A) As soon as practicable after applying for leave under  
22 subsection (3), the applicant must lodge with ASIC a notice stating  
23 that the application has been made. The notice must be in the  
24 prescribed form.

# EXPOSURE DRAFT

Schedule 3 Other amendments

Part 4 Termination of deed of company arrangement

---

1 **Part 4—Termination of deed of company**  
2 **arrangement**

3 *Corporations Act 2001*

4 **8 At the end of subsection 440A(1)**

5 Add “or 446AA”.

6 **9 After section 446A**

7 Insert:

8 **446AA Administrator becomes liquidator—additional cases**

9 *Scope*

10 (1) This section applies if a company has executed a deed of company  
11 arrangement and:

12 (a) the Court, at a particular time, makes an order under  
13 section 445D terminating the deed of company arrangement;

14 or

15 (b) both:

16 (i) the deed of company arrangement specifies  
17 circumstances in which the deed is to terminate and the  
18 company is to be wound up; and

19 (ii) those circumstances exist at a particular time.

20 *Resolution that company be wound up voluntarily*

21 (2) The company is taken:

22 (a) to have passed, at the time referred to in paragraph (1)(a) or  
23 subparagraph (1)(b)(ii), as the case may be, a special  
24 resolution under section 491 that the company be wound up  
25 voluntarily; and

26 (b) to have done so without a declaration having been made and  
27 lodged under section 494.

# EXPOSURE DRAFT

Other amendments **Schedule 3**  
Termination of deed of company arrangement **Part 4**

---

1 *Information about company's affairs*

2 (3) Section 497 is taken to have been complied with in relation to the  
3 winding up.

4 *Notice of resolution*

5 (4) The liquidator must:

6 (a) within 5 business days after the day on which the company is  
7 taken to have passed the resolution, lodge with ASIC a  
8 written notice in the prescribed form:

9 (i) stating that the company is taken because of this section  
10 to have passed such a resolution; and

11 (ii) specifying that day; and

12 (b) cause the notice to be published, within 5 business days after  
13 that day, in the prescribed manner.

14 *Power to stay or terminate winding up*

15 (5) Section 482 applies in relation to the winding up as if it were a  
16 winding up in insolvency or by the Court.

17 Note: Section 482 empowers the Court to stay or terminate a winding up and  
18 give consequential directions.

19 (6) An application under section 482 as applying because of  
20 subsection (5) may be made:

21 (a) despite section 198G (exercise of directors' powers while  
22 company under external administration), by the company  
23 pursuant to a resolution of the board; or

24 (b) by the liquidator; or

25 (c) by a creditor; or

26 (d) by a contributory.

27 Note: See also section 499 (appointment of liquidator).

## 28 **10 Subsection 446B(3)**

29 After "(7)", insert "and 446AA(2) to (6)".

## 30 **11 Subsection 499(2)**

31 Repeal the subsection, substitute:

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# EXPOSURE DRAFT

## Schedule 3 Other amendments

### Part 4 Termination of deed of company arrangement

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- 1 (2) However, subsection (1) does not apply to the company if:  
2 (a) section 446A or 446AA applies in relation to the company;  
3 or  
4 (b) regulations made for the purposes of section 446B have the  
5 effect that the company is taken to have passed a special  
6 resolution under section 491 that the company be wound up  
7 voluntarily.

#### 8 **12 After subsection 499(2C)**

9 Insert:

- 10 (2D) If section 446AA applies in relation to the company because of  
11 paragraph 446AA(1)(a):  
12 (a) the Court may, immediately after it makes the order referred  
13 to in that paragraph, appoint a person to be the liquidator for  
14 the purpose of winding up the affairs and distributing the  
15 property of the company; and  
16 (b) if no appointment is made under paragraph (a) of this  
17 subsection:  
18 (i) the company is taken to have appointed the  
19 administrator of the deed of company arrangement  
20 referred to in section 446AA to be the liquidator for the  
21 purpose of winding up the affairs and distributing the  
22 property of the company; and  
23 (ii) the appointment takes effect at the time referred to in  
24 paragraph 446AA(1)(a).  
25 (2E) If section 446AA applies in relation to the company because of  
26 paragraph 446AA(1)(b):  
27 (a) the company is taken to have appointed the administrator of  
28 the deed of company arrangement referred to in  
29 section 446AA to be the liquidator for the purpose of  
30 winding up the affairs and distributing the property of the  
31 company; and  
32 (b) the appointment takes effect at the time referred to in  
33 subparagraph 446AA(1)(b)(ii).  
34 (2F) If regulations made for the purposes of section 446B have the  
35 effect that a company under administration is taken to have passed
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# EXPOSURE DRAFT

Other amendments **Schedule 3**  
Termination of deed of company arrangement **Part 4**

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1 a special resolution under section 491 that the company be wound  
2 up voluntarily:

3 (a) the company is taken to have appointed the administrator of  
4 the company to be the liquidator for the purpose of winding  
5 up the affairs and distributing the property of the company;  
6 and

7 (b) the appointment takes effect when the resolution is taken to  
8 have been passed.

9 (2G) If regulations made for the purposes of section 446B have the  
10 effect that a company subject to a deed of company arrangement is  
11 taken to have passed a special resolution under section 491 that the  
12 company be wound up voluntarily:

13 (a) the company is taken to have appointed the administrator of  
14 the deed to be the liquidator for the purpose of winding up  
15 the affairs and distributing the property of the company; and

16 (b) the appointment takes effect when the resolution is taken to  
17 have been passed.

## 18 **13 At the end of paragraph 513B(d)**

19 Add “or”.

## 20 **14 After paragraph 513B(d)**

21 Insert:

22 (da) if the resolution is taken to have been passed under  
23 section 446AA because of:

24 (i) the making of an order under section 445D by the Court  
25 terminating a deed of company arrangement executed  
26 by the company; or

27 (ii) the existence of circumstances that are specified in a  
28 deed of company arrangement executed by the company  
29 to be circumstances in which the deed is to terminate  
30 and the company is to be wound up;

31 on the section 513C day in relation to the administration that  
32 ended when the deed was executed; or

## 33 **15 Subsection 553(1A) (note 2)**

34 Omit “513B(c) and (d)”, substitute “513B(c), (d) and (da)”.

# EXPOSURE DRAFT

**Schedule 3** Other amendments

**Part 4** Termination of deed of company arrangement

---

1 **16 Subsection 553(1A) (note 2)**

2 Omit “Subsection 446A(2)”, substitute “Subsections 446A(2) and  
3 446AA(2)”.

# EXPOSURE DRAFT

Other amendments **Schedule 3**  
Relation-back day **Part 5**

## 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.

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#### **Relation-back day**

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<b>Item</b>	<b>If:</b>	<b>the <i>relation-back day</i> is:</b>
1	in the case of a company: (a) the Court orders under section 233, 459A, 459B or 461 that the company be wound up; and (b) immediately before the order was made, the company was under administration; and (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: (a) the Court orders under section 233, 459A, 459B or 461 that the company be wound up; and (b) immediately before the order	the day on which that application was filed.

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# EXPOSURE DRAFT

## Schedule 3 Other amendments

### Part 5 Relation-back day

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#### Relation-back day

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<b>Item</b>	<b>If:</b>	<b>the relation-back day is:</b>
	was made, the company was under administration; and (c) the order was made in response to an application filed before the beginning of the administration;	
3	in the case of a company: (a) the Court orders under section 233, 459A, 459B or 461 that the company be wound up; and (b) immediately before the order was made, a deed of company arrangement had been executed by the company and had not yet terminated; and (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: (a) the Court orders under section 233, 459A, 459B or 461 that the company be wound up; and (b) immediately before the order was made, a deed of company arrangement had been executed by the company and had not yet terminated; and (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: (a) the company resolves by special resolution that it be wound up voluntarily; and	the section 513C day in relation to the administration.

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# EXPOSURE DRAFT

Other amendments **Schedule 3**  
Relation-back day **Part 5**

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<b>Relation-back day</b>		
<b>Item</b>	<b>If:</b>	<b>the relation-back day is:</b>
	<p>(b) immediately before the resolution was passed, the company was under administration; and</p> <p>(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;</p>	
6	<p>in the case of a company:</p> <p>(a) the company resolves by special resolution that it be wound up voluntarily; and</p> <p>(b) immediately before the resolution was passed, the company was under administration; and</p> <p>(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;</p>	<p>the section 513C day in relation to the administration.</p>
7	<p>in the case of a company:</p> <p>(a) the company resolves by special resolution that it be wound up voluntarily; and</p> <p>(b) immediately before the resolution was passed, the company was under administration; and</p> <p>(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</p> <p>(d) that application had not been</p>	<p>the day on which that application was filed.</p>

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# EXPOSURE DRAFT

## Schedule 3 Other amendments

### Part 5 Relation-back day

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#### Relation-back day

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<b>Item</b>	<b>If:</b>	<b>the relation-back day is:</b>
	dismissed or withdrawn before the administration commenced;	
8	<p>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:</p> <p>(a) passed a resolution terminating the deed of company arrangement; and</p> <p>(b) also resolved under section 445E that the company be wound up; and either:</p> <p>(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</p> <p>(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;</p>	<p>the section 513C day in relation to the administration that ended when the deed was executed.</p>
9	<p>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:</p>	<p>the day on which that application was filed.</p>

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# EXPOSURE DRAFT

Other amendments **Schedule 3**  
Relation-back day **Part 5**

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**Relation-back day**

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<b>Item</b>	<b>If:</b>	<b>the relation-back day is:</b>
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- (a) passed a resolution terminating the deed of company arrangement; and
- (b) also resolved under section 445E that the company be wound up; and both:
- (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
- (d) that application has not been dismissed or withdrawn before the first-mentioned resolution is taken to have been passed;

- |    |   |  |
|----|---|--|
| 10 | <p>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:</p> <ul style="list-style-type: none"><li>(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</li><li>(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;</li></ul> | <p>the section 513C day in relation to the administration that ended when the deed was executed.</p> |
|----|---|--|
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# EXPOSURE DRAFT

## Schedule 3 Other amendments

### Part 5 Relation-back day

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#### Relation-back day

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<b>Item</b>	<b>If:</b>	<b>the <i>relation-back day</i> is:</b>
11	<p>in the case of a company:</p> <p>(a) 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</p> <p>(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</p> <p>(c) that application has not been dismissed or withdrawn before the resolution is taken to have been passed;</p>	<p>the day on which that application was filed.</p>
12	<p>in the case of a company, the company is taken to have passed a special resolution that it be wound up voluntarily because:</p> <p>(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</p> <p>(b) those circumstances exist at a particular time;</p> <p>and either:</p> <p>(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</p> <p>(d) an application for an order under section 233, 459A, 459B or 461</p>	<p>the section 513C day in relation to the administration that ended when the deed was executed.</p>

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# EXPOSURE DRAFT

Other amendments **Schedule 3**  
Relation-back day **Part 5**

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**Relation-back day**

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<b>Item</b>	<b>If:</b>	<b>the relation-back day is:</b>
	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;	
13	in the case of a company, the company is taken to have passed a special resolution that it be wound up voluntarily because: (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 (b) those circumstances exist at a particular time; and both: (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 (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.

# EXPOSURE DRAFT

Schedule 3 Other amendments

Part 5 Relation-back day

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# EXPOSURE DRAFT

Other amendments **Schedule 3**  
Miscellaneous amendments **Part 6**

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1 **Part 6—Miscellaneous amendments**

2 *Corporations Act 2001*

3 **19 Section 9 (definition of *civil penalty disqualification*)**

4 Repeal the definition.

5 **20 At the end of section 418**

6 Add:

7 (4) In this section:

8 *senior manager* does not include a receiver and manager.

9 **21 Paragraph 435C(3)(h)**

10 Repeal the paragraph, substitute:

11 (h) if the company is a general insurer (within the meaning of the  
12 *Insurance Act 1973*)—management of the general insurer  
13 vests in a judicial manager of the company appointed by the  
14 Federal Court under Part VB of the *Insurance Act 1973*; or

15 (i) if the company is a life company (within the meaning of the  
16 *Life Insurance Act 1995*)—management of the life company  
17 vests in a judicial manager of the life company appointed by  
18 the Federal Court under Part 8 of the *Life Insurance Act*  
19 *1995*.

20 **22 After subsection 436DA(4)**

21 Insert:

22 (4A) As soon as practicable after making a declaration under  
23 subsection (2), the administrator must lodge with ASIC a notice  
24 setting out the text of the declaration. The notice must be in the  
25 prescribed form.

26 Note: Failure to comply with this subsection is an offence (see  
27 subsection 1311(1)).

28 **23 After subsection 436DA(6)**

29 Insert:

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# EXPOSURE DRAFT

## Schedule 3 Other amendments

### Part 6 Miscellaneous amendments

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1 (6A) As soon as practicable after making a replacement declaration  
2 under subsection (5), the administrator must lodge with ASIC a  
3 notice setting out the text of the replacement declaration. The  
4 notice must be in the prescribed form.

5 Note: Failure to comply with this subsection is an offence (see  
6 subsection 1311(1)).

#### 7 **24 Subsection 442C(4)**

8 Omit “of the company”.

#### 9 **25 After subsection 449CA(4)**

10 Insert:

11 (4A) As soon as practicable after making a declaration under  
12 subsection (2), the administrator must lodge with ASIC a notice  
13 setting out the text of the declaration. The notice must be in the  
14 prescribed form.

15 Note: Failure to comply with this subsection is an offence (see  
16 subsection 1311(1)).

#### 17 **26 After subsection 449CA(6)**

18 Insert:

19 (6A) As soon as practicable after making a replacement declaration  
20 under subsection (5), the administrator must lodge with ASIC a  
21 notice setting out the text of the replacement declaration. The  
22 notice must be in the prescribed form.

23 Note: Failure to comply with this subsection is an offence (see  
24 subsection 1311(1)).

#### 25 **27 Paragraph 477(1)(a)**

26 Omit “so far as is necessary for the beneficial disposal or winding up of  
27 that business”, substitute “so far as is, in the opinion of the liquidator,  
28 required for the beneficial disposal or winding up of that business”.

#### 29 **28 Paragraph 491(2)(a)**

30 Omit “lodge a printed copy of the resolution”, substitute “lodge with  
31 ASIC, in the prescribed form, a notice setting out the text of the  
32 resolution”.

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# EXPOSURE DRAFT

Other amendments **Schedule 3**  
Miscellaneous amendments **Part 6**

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## 29 Before subsection 506A(5)

Insert:

- (3) As soon as practicable after making a declaration under subsection (2), the administrator must lodge with ASIC a notice setting out the text of the declaration. The notice must be in the prescribed form.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

## 30 After subsection 506A(6)

Insert:

- (6A) As soon as practicable after making a replacement declaration under subsection (5), the administrator must lodge with ASIC a notice setting out the text of the replacement declaration. The notice must be in the prescribed form.

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.

# EXPOSURE DRAFT

Schedule 3 Other amendments

Part 6 Miscellaneous amendments

---

1 **33 At the end of section 579C**

2 Add:

3 (5) If the Court makes an order under subsection (2), the applicant for  
4 the order must:

5 (a) lodge with ASIC a notice setting out the text of the order; and

6 (b) do so within 2 business days after the making of the order.

7 The notice must be in the prescribed form.

8 (6) If the Court makes a declaration under subsection (3), the applicant  
9 for the declaration must:

10 (a) lodge with ASIC a notice setting out the text of the  
11 declaration; and

12 (b) do so within 2 business days after the making of the  
13 declaration.

14 The notice must be in the prescribed form.

15 (7) If the Court makes an order under subsection (4) on the application  
16 of a person, the applicant for the order must:

17 (a) lodge with ASIC a notice setting out the text of the order; and

18 (b) do so within 2 business days after the making of the order.

19 The notice must be in the prescribed form.

1 **Part 7—Application of amendments**

2 *Corporations Act 2001*

3 **34 At the end of Chapter 10**

4 Add:

5 **Part 10.26—Transitional provisions relating to**  
6 **Schedule 3 of the Insolvency Law Reform**  
7 **Act 2014**  
8

9 **1637 Application of amendments made by Schedule 3 to the**  
10 ***Insolvency Law Reform Act 2014***

- 11 (1) The amendment made by Part 1 of Schedule 3 to the *Insolvency*  
12 *Law Reform Act 2014* applies in relation to the administration of a  
13 company that begins on or after the commencement of that  
14 Schedule.
- 15 (2) The amendment made by Part 2 of Schedule 3 to the *Insolvency*  
16 *Law Reform Act 2014* applies in relation to material  
17 contraventions, and likely material contraventions, of a deed of  
18 company arrangement that occur on or after the commencement of  
19 that Schedule, regardless of when the deed was executed.
- 20 (3) The amendment made by item 9 of Part 4 of Schedule 3 to the  
21 *Insolvency Law Reform Act 2014* applies in relation to deeds of  
22 company arrangement that are terminated on or after the  
23 commencement of that Schedule.
- 24 (4) The amendments made by Part 5 of Schedule 3 to the *Insolvency*  
25 *Law Reform Act 2014* apply for the purposes of working out the  
26 relation-back day in relation to a winding up of a company or  
27 Part 5.7 body starting on or after the commencement of that  
28 Schedule.
- 29 (5) The amendments made by items 22, 23, 25, 26, 29 and 30 of Part 6  
30 of Schedule 3 to the *Insolvency Law Reform Act 2014* apply in
-

# EXPOSURE DRAFT

## Schedule 3 Other amendments

### Part 7 Application of amendments

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- 1 relation to declarations made after the commencement of that  
2 Schedule.
- 3 (6) The amendment made by item 28 of Part 6 of Schedule 3 to the  
4 *Insolvency Law Reform Act 2014* applies in relation to resolutions  
5 passed on or after the commencement of that Schedule.
- 6 (7) The amendments made by items 31 and 32 of Part 6 of Schedule 3  
7 to the *Insolvency Law Reform Act 2014* apply in relation to orders  
8 made on or after the commencement of that Schedule.
- 9 (8) The amendment made by item 33 of Part 6 of Schedule 3 to the  
10 *Insolvency Law Reform Act 2014* applies in relation to orders and  
11 declarations made on or after the commencement of that Schedule.