Explanatory Material

Draft Insolvency Practice Rules (Corporations) 2016

Draft Insolvency Practice Rules (Bankruptcy) 2016

Draft Corporations and Other Legislation Amendment (Insolvency Law Reform) Regulation 2016

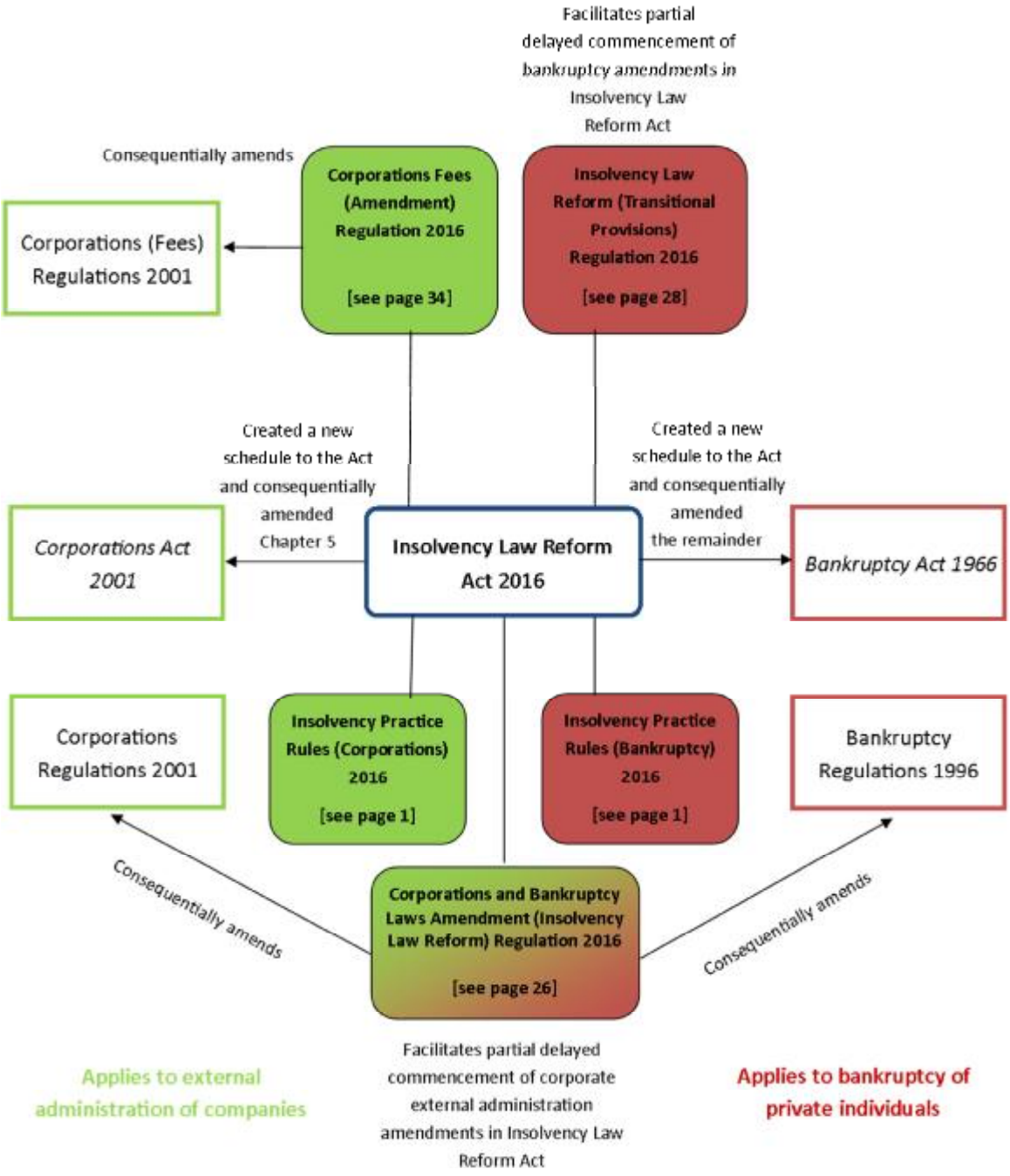
Draft Insolvency Law Reform (Transitional Provisions) Regulation 2016

Draft Corporations (Fees) Amendment Regulation 2016

Introductory note

The following explanatory materials provide an overview of the legislative instruments that will be made under, or as a result of, the *Insolvency Law Reform Act 2016*. Diagram 1 provides an overview of the legislative architecture.

Diagram 1: Legislative instruments which constitute the Insolvency Law Reform package



Draft Insolvency Practice Rules (Bankruptcy) 2016

Draft Insolvency Practice Rules (Corporations) 2016

Part 1 - Introduction

Commencement

1. The Rules will commence on 1 March 2017, unless otherwise indicated.

Authority

2. The Corporations Rules are made under the *Corporations Act 2001*, while the Bankruptcy Rules are made under the *Bankruptcy Act 1966*. The Rules complete the regulatory framework established in these Acts through the passage of the Insolvency Law Reform Act 2016 (ILR Act).

Division 5 – Definitions

3. Rule 5-5 defines a range of terms used throughout the Rules.

[Rule 5-5]

4. Rule 15-1 requires the Registers of Liquidators and Trustees to include the details of a practitioner's *current registration*. A person's *current registration* is taken to be continuous regardless of whether they were initially registered before the commencement of the ILR Act.

[Rule 5-10]

5. A member of a Committee formed to consider a registration or disciplinary matter will be considered to have a *material personal interest* if the interests of a related entity of the member are affected.

[Rule 5-15]

Part 2 – Registering and disciplining practitioners

Division 15 – Register of practitioners

6. The ILR Act repealed the previous requirements for the establishment of a Register of Liquidators and Register of Trustees and replaced it with similar provisions in the Insolvency Practice Schedule (Corporations) and Insolvency Practice Schedule (Bankruptcy) (section 15-1). The information to be published on the Register was left to be prescribed in the Rules.

Note: References to 'Rules' throughout this document apply to the Bankruptcy and Corporations Insolvency Practice Rules, unless otherwise specified.
The term 'practitioner' refers to liquidators, external administrators and trustees.
The term 'regulator' refers to the Australian Securities and Investments Commission (ASIC) and the Australian Financial Security Authority (AFSA).
The term 'IPS' refer to the Insolvency Practice Schedule (Corporations) and Insolvency Practice Schedule (Bankruptcy).

7. The relevant regulator must publish on the relevant Register, details of each practitioner including:

   - the name of the individual, the name of the individual's firm and the address of any place of business;
   - when the person's registration commenced;
   - any disciplinary action taken in relation to their registration; and
   - any conditions placed on their registration.

8. Placing any disciplinary action taken by the Regulator or the Court against the practitioner on the public register will assist in improving community confidence in the regulation of practitioners by making the timing of disciplinary matters transparent.

9. In the event that a party is found to be innocent, a disciplinary committee will have the power to order that the register be amended to either remove the fact that the practitioner faced the committee or otherwise state the outcome of the committee's deliberations.

10. The relevant regulator may also include other information relevant to the practitioner or the practitioner's practice on the Register. This information is not required to be made publically available by the regulator.

[15-1]

Division 20 – Registering external administrators

11. Under section 20-20(4) of the IPS a person who applies for registration as an external administration must be registered if a Committee formed to consider the person's registration is satisfied that the person meets a range of requirements including having the qualifications, experience, knowledge and abilities prescribed in the IPRs.

12. Rule 20-1 provides for the qualifications, experience, knowledge and abilities that persons applying for registration as an external administrator must possess. The Committee must therefore be satisfied that the applicant:

    - Has completed three years of full-time tertiary study or its equivalent in commercial law and accounting. This means that an individual who has completed a bachelor of accounting, but has not completed any study in commercial law would not be able to be registered as a liquidator or registered trustee.
    - Has completed two course units of tertiary study or its equivalent in insolvency. This would currently be satisfied through the completion of the ARITA Advanced Certification which is delivered by ARITA in partnership with the University of Technology Sydney. However it is desired that other tertiary institutions will develop comparable programs over time which could either be built into undergraduate (although the units themselves would need to be at a post-graduate standard), masters or other postgraduate programs.

- Has completed 4000 hours of 'relevant employment' at a senior level. 4000 hours is equivalent to three years of full-time employment engaged in external administration at a senior level.
  - The term 'relevant employment' is defined under Rule 20-1(3) to allow for a divergence in breadth of employment for those applying for unconditional registration.
- Has demonstrated the ability to actually perform the functions and duties of an external administrator satisfactorily.
- Is able to comply with any conditions that may be imposed as part of the registration. Such conditions could include those stipulated under section 20-35 of the ILR Schedule or Rule 20-5.

13. While not exhaustive, it is expected that an individual's relevant employment will be considered to be at a 'senior level' if the individual reported directly to the relevant external administrator or trustee, and:
    - formed opinions and made recommendations to the external administrator or trustee about the financial and potential legal position of the body corporate or debtor;
    - were directly involved in planning and managing on behalf of the external administrator or trustee the conduct of the external administration or bankruptcy;
    - prepared draft reports to creditors on behalf of the external administrator or trustee;
    - instructed solicitors and evaluated legal advice as directed by the external administrator or trustee; and
    - supervised staff who reported through the individual to the external administrator or trustee, and had responsibility for allocating other resources.
14. The Rules also set down conditions which will apply to all external administrators and registered trustees. At this time only two conditions have been stipulated.
    - If a person's registration as a liquidator and/or trustee has been suspended, the person must maintain adequate and appropriate insurance against the liabilities that the practitioner may incur as a result of work carried out before the suspension.
    - An external administrator or trustee must comply with the continuing professional education requirements of any professional body which they are a member of. Continuing professional education is aimed at ensuring that practitioners maintain a current knowledge of the industry. It is not intended at this time that the law would require practitioners to undertake CPE above that required by the professional bodies to which over 80% of practitioners are members of.

[Rule 20-5]

Notified estate charges

15. A number of provisions in the IPS (Bankruptcy) provide that the registration of a registered trustee can be cancelled or suspended, or a show-cause notice issued, if the trustee owes more than a prescribed amount of notified estate charges. The amount is prescribed as $500.

[Rule 20-10 (Bankruptcy)]

Division 35 – Notice requirements

16. Section 35-5 of the IPS requires all external administrators and registered trustees to notify their respective Regulator if a range of events occur, including if a statement made by an external administrator in a regulatory return is or becomes inaccurate. Paragraph 35-5(1)(b) provides that further events could be set out in the Rules.

17. Rule 35-5 provides that if a practitioner ceases to practice, changes his or her name, changes firm or the address of any place where the practitioner practices then the external administrator must notify the regulator. The IPS sets out the powers available to the regulator in the event of a breach of this requirement.

[Rule 35-5]

Division 40 – Disciplinary and other action

18. Subdivision 40G of the IPS seeks to provide a framework to allow industry bodies to provide more information to the relevant regulator in order to improve the timeliness of regulator action on poor conduct. In order to facilitate that information flow, section 40-105 provides protection from adverse consequences for the industry body where that information is provided in good faith.

19. Rule 40-1 prescribes a range of insolvency, accounting and legal profession bodies which will be able to utilise this framework to provide information to the regulator and avail themselves of the legal protection.

[Rule 40-1]

Division 42 – Standards for registered trustees

20. Schedule 4A to the *Bankruptcy Regulations 1996* will be repealed and Division 40 of the IPRs (Bankruptcy) will provide a new framework for standards for registered trustees. Including requirements to:

    - Act honestly and impartially in relation to the administration.
    - Act independently and impartially in the disposal of property.
    - Keep proper records in relation to work done.

21. Subdivisions B, C and D provide standards for different classes of practitioners in the administration of a debtor's estate.

22. Under subsection 40-40(4) of the IPS (Bankruptcy) the IPRs may prescribe standards applicable to the exercise of powers, or carrying out of duties, of registered trustees. Section 40-40 provides that a registered trustee may be given a show-cause notice if the Inspector-General in Bankruptcy believes that the trustee has failed to comply with the following standards to be prescribed in the IPRs.

23. Rule 42-5 specifies that the purpose of these standards is to ensure a high level of professionalism is upheld at all times by a registered trustee in the performance of their duties and the exercise of their powers.

[Division 42 (Bankruptcy)]

Division 50 – Part 2 Committees

24. The IPS adopts the regulatory framework which has until now applied only to the regulation and discipline of bankruptcy trustees. Under this framework, the decision as to whether a person will be registered as a practitioner, or have their registration taken away, is made by a Committee of three persons.

25. The three person committee will be formed at the point at which a matter is referred by the regulator. The committee must consist of an industry representative, a representative of the regulator and an appointee of the Minister. The Chair of the committee will be the delegate of the regulator.

[Rule 50-15]

26. The industry representative must be a registered practitioner appointed by the peak insolvency representative body, ARITA. The person must also have at least five years' experience as a practitioner. This reflects the current situation in personal bankruptcy.

[Rules 50-5; 50-10]

27. A committee member may resign and if he or she does so, the resignation must be provided in writing to the Chair. The resignation may either be immediate or on a day specified in the resignation notice.

28. An industry member of a committee may be involuntarily removed from a Committee in a range of circumstances, and a mechanism is provided to inform ARITA of that fact in order to prompt the appointment of a replacement member by ARITA. It is anticipated that the notice under rule 50-25 (2) would be provided to the CEO of ARITA; however this will be a matter for the Committee to determine as part of its processes. ARITA must appoint a replacement in accordance with section 50-5 (2) of the IPS.

[Rules 50-20; 50-25; 50-30]

29. A matter will be able to be transferred from one Committee to another where the Chair is satisfied that the consideration of the matter by an established committee should be terminated due to efficiency or fairness considerations.

[Rule 50-35]

30. All members of a Committee will be obligated to disclose to the Chair any material personal interest that relates to a matter which the person is considering. That disclosure must be made as soon as practicable after the member becomes aware of the interest.

[Rule 50-40]

31. Consistent with the general procedures of a committee formed under the Bankruptcy Act, a Committee:

- must observe natural justice;
- is not bound by any rules of evidence but may inform itself on any matter it sees fit; and

- must keep a written record of its decisions.

32. The requirement to observe natural justice brings with it an obligation for the Committee to provide a practitioner with procedural fairness and that the decision must be made free from actual or apprehended bias. While it is not possible, or desirable, to provide an exhaustive list of how a Committee will satisfy the need to afford natural justice, there are a range of procedural factors which it is expected that a Committee will ensure are present in considering a matter.

    - Adequate disclosure to the practitioner so that effective representations may be made.
    - The reasonable opportunity (or real chance) to present the person's case to the decision-maker, and the requirement to consider the case or the representations.
    - The opportunity for a hearing at which the practitioner can avail themselves of legal representation if they so wish.

33. Again while not exhaustive of all circumstances which would represent a breach of natural justice, it will not be acceptable for a member of the Committee to play dual roles of accuser, witness or prosecutor and decision-maker. For that reason the delegate of the regulator would be expected to not have played a role in the investigation of the practitioner or the preparation of the case being considered.
34. Committee proceedings will be inquisitorial proceedings where members are not restrained by judicial rules of evidence. This means that the committee will not hear submissions on whether information provided is admissible in a court of law or not.
35. The committee is also not limited to considering just the information provided by the external administrator or the regulator; the committee can consider any information and make reasonable inquiries of any person in order to form its own view in the matter.
36. A committee would provide advice on the information it will rely upon to the practitioner and allow a reasonable time for the practitioner to respond before making its decision.

[Rules 50-45 and 50-60]

37. A committee will be able to make a decision in a meeting where each member is either present physically or taking part in the meeting through electronic means. This would, for example, allow a member to be present via telephone, video-conferencing and internet based communications.
38. A committee will also be able to make a decision in relation to a matter on the papers without the holding of a physical meeting.
39. Decisions of a committee will be made on the basis of a majority of the votes of the members.

[Rule 50-50 (3)]

40. If a committee is required to interview a person who is applying:

    - for registration as a practitioner;
    - to vary a condition on registration; or
    - to lift or shorten a suspension;

the Chair of the committee must determine the date, time and manner of the interview and communicate those details to the applicant and the other members of the committee. Participation in the interview by the applicant or committee members may be through electronic means.

41. The IPS allows the committee to waive the requirement for an interview where the applicant agrees (paragraph 20-20(2)(b); subsection 20-55(2); subsection 40-85(2) IPS).

42. While it is not made explicit that an interview forms part of a disciplinary proceeding, the requirement for natural justice to be observed means that the opportunity for a hearing would be expected in all disciplinary matters.

[Rule 50-65]

43. It is expected that a committee will decide all disciplinary matters within 60 days. However where this does not occur, the decision will not be invalidated because it was not made within that timeframe.

[Rule 50-70]

44. Sections 20-25, 20-60, 40-60 and 40-90 of the IPS require a report to be prepared of the decision of a committee. That report must be prepared in writing and signed by all members of the committee. Any statement of reasons must include the reasons of a dissenting member, if there is one.

[Rule 50-75]

45. 50-35(2)(b)(iv) of the IPS provides that committee members may disclose information or a document disclosed as part of a registration or disciplinary committee to certain prescribed bodies to enable or assist such a body to perform its disciplinary function in relation to its members.

46. The bodies prescribed for that purpose are insolvency and accounting professional bodies, law societies and bar associations within Australia.

[Rule 50-80]

Part 3 – General rules relating to administrations

Division 60 – Remuneration and other benefits received by practitioners

47. Under section 60-20 of the IPS, a practitioner must not directly or indirectly derive any profit or advantage from the administration of a company or bankruptcy. Subsection 60-20(5) provides that this prohibition does not apply where the profit or advantage was gained from a payment that is made to the practitioner by or on behalf of the Commonwealth or an agency or authority of the Commonwealth and is of a kind prescribed.

48. The rules set down situations where payments received by the external administrator will be explicitly carved out from the prohibition in section 60-20 in order to avoid any doubt as to the propriety of receipt.

- Where the payment is received from ASIC and the payment is made from funds out of the Assetless Administration Fund (applies in corporate insolvency only).

- Where the payment is received from the Department of Employment and the payment is made for the purposes of administering claims for financial assistance from the Commonwealth in relation to unpaid employment entitlements, whether that is through the Fair Entitlements Guarantee or any future program with a similar function.

[Rule 60-1]

Inspector-General may determine remuneration

49. A registered trustee may apply to the Inspector-General to determine his or her remuneration where the remuneration has not been determined by the creditors or a committee of inspection (COI) because:
    - a remuneration proposal has been put to the creditors or the COI, and the proposal was not agreed to; or
    - it is not cost effective or practicable for the trustee to seek creditor or COI approval.

[Rule 60-5 (Bankruptcy)]

50. Where a registered trustee wishes to apply for the Inspector-General to determine remuneration, he or she must do so in the form approved by the Inspector-General. The application must include the information and evidence listed in rule 60-10(2) including:
    - evidence that the registered trustee has either attempted and failed obtain approval for their remuneration, or that it was not cost effective or practicable to obtain the approval; and
    - sufficient detail on the nature and complexity of the work for which remuneration is sought.

[Rule 60-10 (Bankruptcy)]

51. In making a determination in regards to a trustee's remuneration, the Inspector-General must have regard to whether the remuneration is reasonable. In coming to that determination, the Inspector-General must take into account a range of factors, including;
    - whether the work performed, or that will be performed, is necessary and proper;
    - the size, quality and complexity of the work;
    - compliance with the requirements of the Act and IPRs; and
    - the value and nature of assets being dealt with.

[Rule 60-15 (Bankruptcy)]

Remuneration on a percentage basis – maximum percentage

52. Where a registered trustee seeks to have their remuneration approved on a percentage of money received by the trustee in respect of the administration, the percentage must not exceed:
    - if the money received is $30,000 or less – 20%;

- if the money received is between $30,001 and $50,000 – 20% for the first $30,000, then 17.5% for the amount above $30,001; and
- if the money received is above $50,000 - 20% for the first $30,000, then 17.5% for the amount above $30,000, then 15% for the amount above $50,000.

53. The maximum percentages of remuneration were previously provided in regulation 8.07 of the Bankruptcy Regulations. These percentages have been increased on the basis that previous figures were no longer sufficient.

[Rule 60-20 (Bankruptcy)]

Division 65 – Funds handling

General Rules

54. Division 65 of the IPS (Bankruptcy) outlines a registered trustee's duties around handling of funds, including the payment of money in and out of an administration account and the review of third party bills of cost. It also outlines the potential consequences for a breach of these duties, including the payment of penalties.

55. Rule 65-1 provides that an administration account must be held in an authorised deposit-taking institution (as defined in the Bankruptcy Act) and must be an interest-bearing account. Failure to comply with these requirements may constitute a breach of section 65-50 of the IPS (Bankruptcy).

[Rule 65-1 (Bankruptcy)]

56. Rule 65-5 provides for the rate and calculation of penalty interest for breaches of subsection 65-25(1) of the IPS (Bankruptcy). The penalty interest will accrue from the start of the breach until the breach has been remedied.

[Rule 65-5 (Bankruptcy)]

Review of third party bill of costs

57. Section 65-46 of the IPS (Bankruptcy) provides that the Rules may prescribe for and in relation to a review by the Inspector-General of a bill of costs for services. Rule 65-20 outlines the requirements for an application in writing within 28 days of receipt of the bill or any extended period.

58. Subrules 65-20(7) and (8) allow for the trustee and the relevant third party to apply to the Administrative Appeals Tribunal (AAT) for a review of a decision by the Inspector-General to extend the period for an application. These provisions are currently in subregulations 8.12E(5) and (6) of the Bankruptcy Regulations but will be moved to the Rules. This allows the Rules to adapt and evolve with future requirements and changes in practice and procedure. The Rules are still subject to parliamentary scrutiny through the disallowance process and the responsible Minister cannot delegate their power to make the Rules to any other person under subsection 105-1(6) of the IPS (Bankruptcy).

[Rule 65-20 (Bankruptcy)]

Division 70 – Information

Compliance with requests for information

59. The IPS provides that an external administrator must comply with a request for information, provide a report or produce a document to creditors in an external administration, whether through a resolution or through a request from an individual, unless an exception applies (sections 70-40, 70-45, 70-46 (Corporations), 70-47 (Corporations) of the IPS). One exception provided in the IPS is that a request need not be met if it is not reasonable for the external administrator to comply.

60. The Rules outline a number of situations where a request will be deemed inherently unreasonable.

- Where the request substantially prejudices the interests of a creditor, group of creditors or a third party, and that prejudice outweighs the benefits of complying with the request.
- Where the information, report or document requested is privileged on the basis of legal professional privilege.
- Where providing the information would be a breach of confidence.
- Where there is insufficient available property to comply with the request.
- Where the information has already been provided.
- Where the information will be included in a statutory disclosure within the next 20 business days.
- Where the request is vexatious.

61. A practitioner will be able to rely on a request being considered vexatious if was made within 15 business days of a similar request being made. This timeframe does not mean that a request may not be vexatious if made outside that timeframe. For example, if a creditor on multiple occasions asks for the same information 16 business days after receiving the answer to their last request.

[Subrules 70-5(2)-(3); 70-10(2)-(3); 70-15(2)-(3); 70-17(2)-(3) (Corporations); 70-20(2)-(3) (Bankruptcy); 70-21(2)-(3) (Corporations)]

62. The Rules also outline a number of situations where a request will be deemed inherently reasonable.

63. A practitioner cannot refuse to comply with a request for information, provide a report or produce a document on the basis that there is insufficient funds available where the requester agrees to pay the reasonable costs of complying with the request.

64. There has been some concern from industry participants that the operation of the Privacy Act may prohibit the publication or provision of creditor lists to creditors. The ability of creditors to have an awareness of who other creditors are, and how much they are owed, is critical to the operation of creditor empowerment as a 'creditor rights' to monitor and influence the conduct of an administration are often linked to the number and/ or value of creditors supporting a request.

65. It is not necessary to explicitly state in the Rules that the provision of a creditor list will always be an authorised purpose under the Privacy Act. Explicitly providing for such a clarification would not have been desirable as such a disclosure:

- is already clearly authorised under an Australian Law for the purpose of APP 6.2(b) of the Privacy Act, and
- would be a permitted general situation for the purpose of APP 6.2(c) of the Privacy Act.

[Subrules 70-5(4)-(5); 70-10(4)-(5); 70-15(4)-(5); 70-17(4)-(5) (Corporations); 70-20(4)-(5) (Bankruptcy); 70-21(4)-(5) (Corporations)]

66. If a practitioner receives a request for information, a report or document which is not considered to be unreasonable, the practitioner must comply with the request within five business days or longer as agreed with the creditor. An external administrator will be taken to have complied with the timeframe if they send the information, report or document to the maker of the request within five business days. The information, report or document does not need to have been received by the creditor within five business days.

67. If the practitioner is reasonably satisfied that provision of the information with that timeframe is not possible (for example, because a document needs to be created by the external administrator before it is provided to the creditor), then the external administrator may extend the period for compliance. If the practitioner does so, he or she must provide the person who made the request with a written response regarding when the request will be complied with and why the extension in time was reasonable and necessary.

[Rule 70-1]

68. If a practitioner receives a request for information, a report or document which is considered to be unreasonable, the practitioner must provide the person who made the request with a written response as to why the request was unreasonable. A note must also be made on the files of the administration as to why the request was unreasonable.

[Rule 70-3]

Statutory disclosures

69. A trustee will be required to notify the creditors upon the commencement of their appointment of their appointment and of certain creditor's rights. The trustee must also give a declaration about relevant relationships with the regulated debtor or the former trustee and whether there is a conflict of interest of duty. This information must be sent at the same time as the trustee's first communication with the creditors and the relationships declaration must be kept up to date in accordance with Rule 70-40.

70. This Rule has been adopted from similar provisions currently in place for external administrators.

[Rules 70-20 (Bankruptcy) and 70-40 (Bankruptcy)]

71. An external administrator will be required to notify the creditors of a company in external administration upon the commencement of their appointment. This initial notification must be sent by the external administrator within five business days of his or her appointment.

72. The notification must also inform the creditors of their rights to:

- request information, reports and documents from the external administrator;

- direct that the external administrator convene and hold a meeting of creditors;
- give directions to the external administrator; and
- remove and replace the external administrator.

[Rule 70-24 (Corporations)]

73. Regulation 8.12A currently provides for the initial remuneration notice requirements for a trustee, which will be repealed and replaced with Rule 70-25. The notice is provided by the trustee to the debtor and creditors and includes an estimate of the trustee's remuneration and how that has been calculated. The notice will also include information on how disbursements are to be calculated so creditors and the debtor are notified of likely costs incurred through disbursements.

[70-25 (Bankruptcy)]

74. An external administrator will also be required to report to creditors in a winding up on the likelihood that they will receive a dividend before the completion of the winding up. This report must be provided to creditors within three months after the commencement of the winding up. This obligation does not apply in other forms of corporate external administration.

75. A similar obligation is placed on registered trustees through section 19 of the Bankruptcy Act.

[Rule 70-27 (Corporations)]

76. The ILR Act repealed the requirement on a liquidator in a corporate insolvency or voluntary administration to disclose matters to enable the decision-maker (be that members, creditors or a committee of inspection) to make an informed assessment as to whether the remuneration proposed by the liquidator is reasonable which were previously required under sections 449E and 499.

77. These requirements are reinstated through Rules 70-30 and 70-34. The requirement to provide a remuneration report applies to all forms of external administration. The requirement to provide a remuneration report applies equally whether an external administrator is seeking approval through a resolution of creditors at a meeting or without holding a meeting.

78. Rule 70-30 will also apply to trustees in the administration of a regulated debtor's estate. The remuneration report will give creditors sufficient information to make an informed assessment on whether the proposed remuneration is reasonable. This report replaces the requirement for a Remuneration Approval Notice currently under Regulation 8.12B of the Bankruptcy Regulations.

79. In a bankruptcy, the report will also alert creditors and the regulated debtor of their right to elect to receive a remuneration claim notice under Rule 70-35.

[Rule 70-30; 70-34 (Corporations)]

80. A trustee will only be required to prepare and provide a remuneration claim notice under this Rule if the debtor or a creditor elects to receive it and if the total remuneration claimed exceeds the maximum default amount.

81. This reflects concerns from industry participants that the provision of three notices in relation to remuneration can be excessive and that this notice should only be a requirement where the recipients choose to receive it.

[Rule 70-35 (Bankruptcy)]

82. Section 70-55 of the IPS provides the Commonwealth with the ability to request the external administrator of a company to provide specified information, reports or documents. The external administrator must comply with the obligation.

83. However if there is insufficient property available to comply with the request for information, report or document, the Commonwealth must bear the reasonable cost of complying with the request.

[Rule 70-45; 70-34 (Corporations)]

84. A liquidator must notify ASIC that they have been appointed to administer a company before the end of the next business day. The notice must be provided in the form prescribed by ASIC.

85. An administrator must also notify ASIC if the creditors in an administration resolve that control of the company should be given back to the directors of the company or that the company should be wound up. This requirement will not apply if the liquidator is already required to notify ASIC under other provisions of the Corporations Act.

[Rule 70-50 (Corporations)]

Division 75 – Meetings

86. Division 75 of the Rules sets out the requirements for convening and holding meetings during an external administration and applies whether the meeting is required under Chapter 5 of the Corporations Act or under Schedule 2 – Insolvency Practice Schedule.

Convening meetings

87. A meeting must be convened by providing notice to the member, creditor, contributory, employee or member of a committee of inspection (COI) as the case may be. The notice must be provided in writing.

[Rule 75-10]

88. The notice must be sent in the form approved by the regulator and must include:

- the date, time and place of the meeting;
- the purpose of the meeting;
- the entitlement of a creditor to vote at a meeting of creditors; and
- a form for use in appointing a proxy.

The proxy form must also be in the form approved by the practitioner and must:

- ensure that it is not pre-filled; and
- provide information regarding a creditors' right to be represented at the meeting by an attorney.

[Rule 75-15; 75-25]

89. The notice must be given at least 10 business days before the meeting, except where the timing of the meeting is stipulated under another part of the Corporations Act or Bankruptcy Act or it is a meeting of a COI.

- Where the timing of the meeting is stipulated another part of the Corporations Act or Bankruptcy Act, notice must be given in accordance with that requirement.
- Where the meeting is of a COI, notice may be given in a period less than 10 business days where the external administrator thinks it appropriate in the circumstances.

90. In the case of a corporate insolvency where the meeting is a joint meeting of creditors and members, the notice must be sent to the creditors at the same time as it is sent to the members of the company.

[Rule 75-20]

91. Any meeting held during an external administration or in a bankruptcy must be convened for a time and place convenient to the majority of potential attendees.

92. A meeting may be held in more than one location provided appropriate electronic facilities are provided by the practitioner for the participation of all attendees. This rule allows for simultaneous physical meeting places connected by, for example, a mutual live video link.

[Rule 75-30]

93. While rule 75-30 provides the ability to convene a meeting in more than one location, a practitioner may alternatively provide arrangements for the remote participation of attendees without choosing to convene a meeting in multiple locations.

94. This provides for attendee participation in situations where there may be small numbers of creditors based disparately such that convening in a central location (or multiple locations) is not reasonable, the practitioner may provide alternative electronic facilities which a creditor can access in order to participate in the meeting. This may be, but is not limited to, a teleconference number which the creditor can dial-in.

95. Where such electronic facilities are made available, the notice of meeting sent out to attendees must set out how to access the facilities and indicate that an attendee wishing to attend remotely must inform the practitioner in writing of that fact at least two working days before the meeting is held.

96. The practitioner (or another person if they convened the meeting) must take all reasonable steps to ensure that the facilities are operating throughout the meeting. Provided the facilities are operating, it is the responsibility of the attendee to access the meeting.

[Rule 75-35; 75-75]

97. The convenor of the meeting during an external administration of a company must advertise the meeting on ASIC's published notices website at least 10 business days before the meeting is held, unless the meeting is the first meeting in a voluntary administration or is being held to decide the future of a company under administration – notice of these meetings must be published five business days prior.

[Rule 75-40 (Corporations)]

98. The convenor of a meeting of creditors called to consider a composition or arrangement (under section 73 of the Bankruptcy Act) or in relation to personal insolvency agreement (under section 188 of the Bankruptcy Act) must lodge notice of the meeting in the approved form with the Inspector-General.

[Rule 75-40 (Bankruptcy)]

Procedures at meetings

99. In corporate insolvencies, an external administrator or their nominee must preside at a meeting, unless the meeting has been convened by someone other than the external administrator. In that case, the persons participating must elect one of the participants to preside.

100. In personal insolvencies, the trustee must preside at meetings of creditors. This reflects standard practice in personal insolvency administrations.

[Rule 75-50]

101. Rule 75-55 specifies what should be included in a meeting agenda and mirrors the current requirements under section 64G of the Bankruptcy Act.

[Rule 75-55 (Bankruptcy)]

102. Rule 75-60 specifies a requirement to table the statement of affairs and mirrors the current requirements under section 64R of the Bankruptcy Act.

[Rule 75-60 (Bankruptcy)]

103. Rule 75-65 relates to the conduct of a meeting and mirrors the current requirements under sections 64K and 64S of the Bankruptcy Act.

[Rule 75-65 (Bankruptcy)]

104. Both the practitioner and the attendees entitled to vote at a meeting may propose a resolution at a meeting. The person presiding at a meeting must inform the attendees of their right to propose a resolution.

[Rule 75-70]

105. Creditors must give to the trustee a statement in relation to the debt that is claimed to be owed, the consideration paid if the debt was assigned and, if this is the first creditors' meeting, any security in respect of the debt and particulars of how the debt arose.

106. This information will assist the trustee in determining the value of a creditor's vote in relation to creditors' resolutions.

[Rule 75-80 (Bankruptcy)]

107. The respective entitlements of creditors to vote at a meeting of creditors are set out at Rule 75-90. The entitlement of creditors to vote differs between personal and corporate external administrations and will not be amended from the position before the ILR Act commences (that is the position under Regulation 5.6.23 of the Corporations Regulations and section 64ZA of the Bankruptcy Act).

108. Where any question arises as to the entitlement of a person to vote, the practitioner may determine the creditor's entitlement. If the practitioner needs to adjourn a meeting to determine such a question, he or she may do so until such time as resolved by the meeting (but not later than 10 business days).

[Rule 75-90]

109. Paragraph 560(c) of the Act provides that a person by whom money is advanced to a company in to pay the company's outstanding employee entitlements has the same rights as a creditor

of the company in relation to matters set out in Chapter 5 of the Act. This includes voting at a meeting of creditors of the company.

110. Where that person votes, the person is entitled to one vote regardless of whether the person has advanced money to more than one employee or to an employee on more than one occasion.

[Rule 75-92 (Corporations)]

111. The current rules regarding the votes of secured creditors provided for under Regulation 5.6.24 of the Corporations Regulations which will be repealed and replicated in the Rules.

[Rule 75-93 (Corporations)]

112. The external administrator may admit or reject a proof of debt for the purposes of determining a creditor's right to vote. Such a decision may be appealed against to the Court within 10 business days.

[Rule 75-94 (Corporations)]

113. In a corporate insolvency where a company has more than two creditors, persons representing at least two creditors must be present in person or by proxy in order to constitute a quorum for a meeting. If a quorum is not present, the meeting may only resolve to:

- elect a person to preside at the meeting (unless the external administrator has convened the meeting);
- prove debts for the purposes of voting; and
- adjourn the meeting.

114. In a personal insolvency where there are more than two creditors, persons representing at least two creditors must be present in person or by proxy in order to constitute a quorum for a meeting. Additionally, the trustee must be present to constitute a quorum.

115. Where a quorum is not present, the meeting is adjourned to the same day, time and place in the following week or to a date, time and place determined by the president.

116. Notice must be given to creditors of the new date, time and place of the adjourned meeting by the close of business the next day.

[Rule 75-95]

117. A creditor who participates in a meeting must cast their vote personally, unless they have a valid proxy or attorney in place.

[Rule 75-97 (Corporations)]

118. A resolution put to the vote at a meeting is to be decided on the voices, unless a poll is requested. If a poll is requested, the vote must be taken at the same meeting.

[Rule 75-100]

119. A resolution will be passed at a meeting of creditors if it is supported by a majority of the number of creditors voting and by a majority of the value of the creditors voting.

120. The president may exercise a casting vote on a resolution in the event that only one majority is obtained, unless the resolution relates to the removal or remuneration of a practitioner.

    - Where there is a split vote on a remuneration resolution, the resolution is automatically defeated.

    - Where there is a split vote on a resolution to remove a practitioner, the president may only exercise a casting vote to break the deadlock in favour of the resolution.

121. If a casting vote is or is not cast, the president must inform the meeting of their reasons and minute those reasons.

[Rule 75-105]

122. A resolution for the approval of an external administrator's remuneration must not be bundled with any other resolution. This does not preclude resolutions on matters other than remuneration being considered at a single meeting or being mailed out together for approval without holding a meeting under section 75-40.

[Rule 75-115 (Corporations)]

123. Where the practitioner seeks the approval of creditors to a resolution without a meeting under section 75-40 of the Act, the resolution will be taken to have passed if supported by a majority in number and value of those creditors who respond. The resolution will not pass however if 25% of responding creditors notify the practitioner that they object to the proposal being resolved without a meeting, even if it is otherwise supported by a majority in number and value.

124. The practitioner must make a record of the outcome of the proposal in the administration books, as well as inform the relevant regulator of the outcome in the approved form.

[Rule 75-120]

125. A special resolution is passed if, of the creditors who are voting, 75% of creditors vote in favour of the resolution and 75% in value of the creditors vote in favour of the resolution. Otherwise, the special resolution is not passed.

126. Similar requirements are in place for the passing of a special resolution without a meeting of creditors. The special resolution will not pass if any of the responding creditors notify the trustee that they object to a resolution without a creditors' meeting, within the time specified in the notice.

[75-125 (Bankruptcy) and 75-130 (Bankruptcy)]

127. A meeting may be adjourned for up to 15 business days by the practitioner or by resolution. An exception is provided for the second meeting of a voluntary administration which can be adjourned for up to 45 business days.

128. The meeting must be held at the same place, unless otherwise resolved.

129. Where a meeting is adjourned, the practitioner or other person who convened the meeting must provide notice to other creditors by the end of the next business day.

130. If the meeting is adjourned for more than 6 business days, the person who convenes the meeting must cause notice of where and when the adjourned meeting is being held to be published.

[Rule 75-135]

131. The person presiding at a meeting, must draw up, sign and lodge minutes of any meeting held during an external administration within one month, unless the meeting is convened under sections 436E or 439A of the Act. The minutes must include a record of the persons present.

132. Where the minutes relate to a meeting held under sections 436E or 439A of the Act, they must be drawn up, signed and lodged within 10 business days. For bankruptcies, the minutes must be drawn up, signed and entered in the record within 10 business days.

133. The minutes form part of the administration's books and records, and must be made available at the office of the practitioner for creditors or contributories to inspect.

[Rule 75-140]

Rules about proxies and attorneys

134. A proxy can be appointed to represent anyone who is entitled to vote at a meeting, provided the person entitled to vote has signed an instrument of appointment and a copy of the instrument is provided to the practitioner.

135. Once a signed instrument has been provided, a proxy has the same right to speak and vote at the meeting as the person who appointed the proxy.

[Rule 75-150]

136. An attorney may also be appointed to attend and vote on behalf of a person entitled to vote at a meeting. The practitioner must be satisfied that the person claiming to be an attorney is duly authorised to act as an attorney. This would ordinarily be through the provision of an instrument appointing the attorney, but may not be.

[Rule 75-165]

Additional rules about pooled groups

137. Section 574 of the Corporations Act sets out the requirement for separate meetings of the companies in a group to held where a pooling determination has been made. This section is repealed by the ILR Act, and the requirement for the separate meetings to be held transferred to a new section 577(1A).

138. The requirements for notice of these meetings, including what must accompany the notice of meeting, previously set out in section 574 is replicated in Rule 75-180.

[Rule 75-180 (Corporations)]

139. Section 575 of the Corporations Act sets out the requirement for notice to be provided to each member of a company if the company is being wound up under a members' voluntary winding up and the company is part of a group where a pooling determination has been made. This section is repealed by the ILR Act.

140. The requirements for notice of these meetings, including what must accompany the notice of meeting, previously set out in section 575 is replicated in Rule 75-185.

[Rule 75-185 (Corporations)]

141. Where a group of companies is being wound up and a pooling determination is in force, a resolution will be passed where it is supported by:

- a majority of the number of creditors voting from all of the companies that are members of the pooled group; and
- by a majority of the value of the creditors voting from all of the companies that are members of the pooled group.

[Rule 75-190 (Corporations)]

142. Under section 80-26 of the ILR Act, the creditors of a company which is a member of a pooled group can direct that an external administrator convene a meeting of creditors of all of the companies within the pooled group.

143. In all other situations, creditors can direct that a practitioner convene a meeting under section 75-15. Where the creditors meet the thresholds listed in section 75-15, the practitioner must comply unless the request is unreasonable.

144. Such a direction will be considered unreasonable where the practitioner is of the opinion that one of the following applies:

- Where complying with the request would substantially prejudices the interests of a creditor, group of creditors or a third party, and that prejudice outweighs the benefits of complying with the request.
- Where there is insufficient available property to comply with the request.
- Where a meeting on the same matters has already been held or will be held shortly.
- Where the request is vexatious.

145. If a practitioner rejects a request for a meeting to be held, he or she must do so acting in good faith.

146. While a request will be deemed to be vexatious where a similar direction has been given within the past four weeks, this does not seek to limit the definition of the term 'vexatious'.

147. If the creditors are willing to bear the cost of calling and holding a meeting, an external administrator must comply with a direction to convene a meeting even if there would otherwise have been insufficient property to comply, a meeting has been held considering the matter or a meeting will shortly be held to consider the matter.

[Rule 75-195 (Corporations); 75-250]

Additional rules for particular kinds of estates

148. In the case of joint bankruptcies, a trustee must explain to meeting attendees the likely effect of section 110 of the Bankruptcy Act to the distribution of dividends. Section 110 provides for the priority of distribution in relation to joint and separate debts. The trustee must also explain the effect of section 141 of the Bankruptcy Act to the distribution of dividends. Section 141 provides for the priority of distribution in relation to firm partnerships.

[Rule 75-207 (Bankruptcy)]

Additional rules for particular kinds of external administration

149. Where an administrator convenes a meeting to decide the future of the company (under section 439A of the Act) or to deal with a vacancy in the office of the administrator (under section 449C of the Act), he or she must give notice to creditors five business days before the meeting.

150. If the notice is being convened to deal with a vacancy, the notice must include certain information regarding the company and the purpose of the meeting.

151. If the notice is being convened to decide the future of the company it must also include statements setting out the external administrator's opinions on a range of matters necessary to inform the creditors and enable them to make an informed decision.

152. This provision does not seek to change the requirements on voluntary administrators that applies under subsections 439A(3) or 439A(4) of the Corporations before the commencement of the ILR Act.

[Rule 75-225 (Corporations)]

Other rules about meetings

153. A trustee is subject to certain duties under Rule 75-255 when presiding at a meeting.

[Rule 75-255 (Bankruptcy)]

154. The creditors of a bankrupt individual or a company under external administration can remove a practitioner and appoint another person in their place by resolution under section 90-35 of the ILR Act.

155. Where a meeting is convened to consider the replacement of an external administrator, both the outgoing and incoming administrators have a right to speak.

156. The incoming administrator must also table a written:

- consent to be appointed; and
- declaration of any relevant relationships, indemnities or other potential issues that could impact on their independence or otherwise represents a conflict of interest or duty.

[Rule 75-260; 90-18 (Corporations)]

157. Strict compliance with the rules for convening and holding a meeting will not be required in order for a meeting to be validly held. Substantial compliance will be sufficient.

[Rule 75-265]

Division 80 – Committees of inspection

158. A COI can consist of creditors, attorneys' of creditors and/ or persons authorised by a creditor to be a member of the committee. The Department of Employment (or any other Commonwealth department or agency which may be responsible for the Fair Entitlements Guarantee (FEG) or equivalent program in the future) may also be appointed if a claim has been made under FEG or an equivalent program, or the Department considers that such a claim will be made in the future.

159. A meeting of a COI may be convened by either the external administrator or a member of the COI.

160. A COI may only act if there is a majority of the members of the COI present.

[Rule 80-5 (Corporations)]

161. The position of a member of a COI will be vacated if:

- The member resigns in writing.
- The member becomes insolvent.
- The member is absent from five consecutive meetings of the Committee without the leave of the remainder of the COI.
- The creditors resolve that the member be removed.

162. A vacancy may be filled by a person appointed at a meeting of creditors. If a vacancy is not filled by the creditors as a whole, the remaining COI members may fill the vacancy.

163. A COI will remain in existence provided there are at least two validly appointed members of the Committee.

[Rule 80-10]

164. The IPS provides that an external administrator must comply with a request for information, provide a report or produce a document to a COI in an external administration if requested, unless an exception applies (sections 80-40(2) of the IPS). One exception provided in the IPS is that a request need not be met if it is not reasonable for the external administrator to comply.

165. The Rules outline a number of situations where a request will be deemed inherently unreasonable.

- Where the request substantially prejudices the interests of a creditor, group of creditors or a third party, and that prejudice outweighs the benefits of complying with the request.
- Where the information, report or document requested is privileged on the basis of legal professional privilege.
- Where providing the information would be a breach of confidence.
- Where there is insufficient available property to comply with the request.
- Where the information has already been provided.
- Where the information will be included in a statutory disclosure within the next 20 business days.
- Where the request is vexatious.

166. If a request is considered to be unreasonable, the external administrator must notify the COI that the request is unreasonable, the reasons why it is unreasonable and keep a record of that fact.

[Rule 80-15, 80-25]

Within five business days of receiving a request for information, or longer period agreed with the COI, an external administrator must respond to the COI. In responding the external administrator, must:

- provide the information requested; or
- inform the COI that compliance with the request will take a period longer than five days due to the nature of the request, specify when the information will be provided and why the extension in time is necessary.

[Rule 80-20]

Division 90 (Corporations) – Review of the external administration of a company

167. The Act provides a new power for creditors, ASIC or the Court to appoint a registered liquidator to review the external administration of a company.

168. An agreement to appoint a reviewing liquidator under section 90-24 of the Insolvency Practice Schedule must be written.

[Rule 90-4]

169. The Act provides that the reviewing liquidator can be appointed by ASIC or a creditor to review remuneration and expenses 'incurred in a prescribed period'. The Rules provide that the remuneration and expense must have been incurred within 12 months of the commencement of the review in order for the remuneration or expense to be considered as part of the review.

[Rule 90-7]

170. If ASIC appoints a reviewing liquidator, it must notify the external administrator at least 15 business days before appointing the reviewer.

[Rule 90-12]

171. Where the Court, ASIC, creditors or individual creditor (the appointing body) wishes to appoint an individual to act as a reviewing liquidator, the individual must provide to the appointing body a declaration before consenting to the appointment. The declaration must set out any relevant relationships, indemnities or other potential issues that could impact on their independence or otherwise represents a conflict of interest or duty. The declarations must also be lodged with ASIC.

172. Once appointed, the reviewing liquidator must provide a copy of the declaration to as many creditors as practicable.

173. The declaration must be updated by the reviewing liquidator if issues arising subsequently make the statements included in the declaration out of date, or the reviewing liquidator becomes aware that the statements are not accurate. The replacement declaration must be given to as many creditors as possible and lodged with ASIC.

[Rule 90-18]

174. In conducting a review under Division 90, a reviewing liquidator will be empowered to do any of the following:

- engage an industry or other relevant expert to assist with assessing the remuneration and costs incurred;
- direct the external administrator to provide itemised invoices in a form, and within the time, specified by the liquidator;
- interview the external administrator and his or her employees and any third party which has provided goods or services to the administration;
- direct the external administrator and his or her employees and any third party which has provided goods or services to the administration to give a written statement about a particular matter which is relevant to the review;
- direct the external administrator to produce all or part of the liquidator's files or documents in relation to the administration of the estate; and
- any other power necessary, or reasonably incidental, to carry out a review.

175. A reviewer must:

- carry out the review on the basis of the information available to the reviewer, regardless of whether an external administrator, his or her staff or another third party has refused or otherwise failed to comply with a request to provide information or be interviewed.
- act independently and in the interests of the creditors of the administration; and
- avoid actual and apparent conflicts of interest.

[Rule 90-22]

176. The report to be prepared by the reviewing practitioner will be required to be provided in the form, and with the content, as agreed between the reviewer and the appointing body.

177. Once the report is completed, the reviewer must notify the creditors as soon as practicable that it has been prepared. The report must then be tabled at the next meeting of creditors if one is held following the finalisation of the report.

178. Copies of the report must also be provided to the external administrator, the COI is one has been established and ASIC, unless the reviewer was appointed by ASIC. In that case, ASIC must approve the report being released to the COI.

179. A Court may determine who receives a copy of the report where the review was ordered by a Court.

[Rule 90-24]

Division 90 (Bankruptcy) – Review of the administration of a regulated debtor's estate

Review by Inspector-General

180. The ILR Act provides that the Inspector-General may review a decision of the trustee to withdraw funds from the estate for payment of their remuneration. Such reviews may be carried out by the Inspector-General's own initiative or by application by the regulated debtor or a creditor.

181. The Rules require an application for review by the Inspector-General to be in writing. The application must be made within 28 days after receipt of a remuneration claim notice, or if that does not apply, to be made within 28 days after the end of the administration of the estate. This reflects the change to an optional remuneration claim notice regime. In the event that a regulated debtor or creditor elects not to receive a remuneration claim notice, the end of an administration would provide notice of the trustee's final remuneration and trigger a right to review.

182. The Inspector-General has discretion to extend the time period for applying for a review.

183. Subrules 90-5(4) and (5) allow for the applicant and the trustee to apply to the Administrative Appeals Tribunal (AAT) for a review of a decision by the Inspector-General to extend the period for an application. These provisions are currently in subregulations 8.12I(6) and (7) of the Bankruptcy Regulations but will be moved to the Rules. This allows the Rules to adapt and evolve with future requirements and changes in practice and procedure. The Rules are still subject to parliamentary scrutiny through the disallowance process and the responsible Minister cannot delegate their power to make the Rules to any other person under subsection 105-1(6) of the IPS (Bankruptcy).

[Rule 90-5 (Bankruptcy)]

184. Rule 90-10 establishes a threshold for applications by the regulated debtor or a creditor for review. The threshold ensures that the right of review is not abused or used to agitate issues better dealt with through other mechanisms. The Rule specifies that the Inspector-General must refuse an application for review in certain circumstances, for example where the application is frivolous or vexatious. However, where the Inspector-General is satisfied that there are exceptional circumstances, he or she may accept the application.

[Rule 90-10 (Bankruptcy)]

Conduct of reviews by Inspector-General

185. The Rules provide for the conduct of reviews by the Inspector-General with regard to sections 65-46 (payments to third parties) and 90-22 (trustee remuneration) of the IPS (Bankruptcy).

186. Rule 90-55 provides that the Inspector-General must conduct the review expeditiously and with as little formality and technicality as is permissible. The Rule outlines some of the powers of the Inspector-General in conducting a review and includes the power to direct a person to give a written statement and the power to direct a trustee to refund remuneration that was not properly claimed.

[Rule 90-50 (Bankruptcy) and Rule 90-55 (Bankruptcy)]

187. The Inspector-General is empowered to withhold remuneration or costs to a trustee or a third party in the event of that persons non-compliance with an Inspector-General's direction under

Rule 90-55(3). For example, where a third party in relation to a review of their bill of costs does not comply with a direction to provide an itemised bill of costs, the Inspector-General may order that the trustee distribute dividends without regard to the third party's claim for costs.

[Rule 90-60 (Bankruptcy)]

188. Rule 90-65 provides that the Inspector-General must make his or her decision within 60 days. The Inspector-General may decide to affirm or disallow all or part of the claim for remuneration or for the third party's bill of costs. The Inspector-General may require that the trustee repay any remuneration paid that exceeds the trustee's entitlement.

189. The Inspector-General's decision on review must set out the decision and reasons for the decision. It must also outline the material questions of fact and evidence relied upon to reach his or her findings.

190. The decision must also set out the right to apply to the court to review the Inspector-General's decision under 90-21(3) of the IPS (Bankruptcy).

[Rule 90-65 (Bankruptcy)]

191. Section 90-15 of the IPS (Bankruptcy) allows the Court to make orders in relation to the administration of a regulated debtor's estate on its own initiative or on application by a person with a financial interest, a creditor or the Inspector-General.

192. Rule 90-80 specifies that such an application made by anyone other than the Inspector-General must be within 60 days of the day the applicant became aware of the trustee's act, omission or decision.

[Rule 90-80 (Bankruptcy)]

Draft Corporations and Other Legislation Amendment (Insolvency Law Reform) Regulation 2016

Draft Insolvency Law Reform (Transitional Provisions) Regulation

Commencement

193. The Corporations and Other Legislation Amendment (Insolvency Law Reform) Regulation 2016 will commence in two stages reflecting a split commencement of the Insolvency Practice Schedules.

194. Schedule 2 sets out the transitional provisions which effect a split commencement for the Insolvency Practice Schedule (Corporations). The split commencement of the Insolvency Practice Schedule (Bankruptcy) will be put into effect through the Insolvency Law Reform (Transitional Provisions) Regulation 2016.

Amendments commencing on 1 March 2017

ASIC Regulations

195. Regulation 8AA will be amended to increase the number of professional disciplinary bodies able to receive confidential information from ASIC under section 127(4)(d) of the ASIC Act. The Australian Restructuring, Insolvency and Turnaround Association and any State of Territory law society that has disciplinary functions may now also receive information under this power.

[Item 20[1]]

Bankruptcy Regulations

196. The definition of taxing officer will be removed as this reference is redundant.

[Item 24]

197. Schedule 4A of the Bankruptcy Regulations which set down Performance standards for registered trustees is repealed, modified and replaced as Division 42 in the Insolvency Practice Rules (Bankruptcy) 2016.

[Item 75]

198. Amendments are made to the replace references to 'working days' with 'business days'.

[Items 25, 35, 55, 65, 110, 120, 125]

199. Items 16, 17, 18 and 19 of Schedule 8 to the Bankruptcy Regulations refer to sections of the Bankruptcy Act that have been repealed by the ILR Act. These Items in Schedule 8 have been repealed accordingly.

[Item 115]

[1] All references in this section to Items refers to Items of the Corporations and Other Legislation Amendment (Insolvency Law Reform) Regulation 2016 unless otherwise noted

Corporations Regulations

200. Various obligations relating to the regulation of the insolvency profession which were previously stipulated in Division 5 of the Corporations Regulations are repealed, modified and/or replaced in the Insolvency Practice Rules (Corporations) 2016.

[Items 320–335; 340–350; 355–420]

Other Regulations

201. Consequential amendments are made to various other legislative instruments as a result of changes to terminology from the ILR Act.

Amendments commencing on 1 September 2017

Bankruptcy Regulations

202. Regulations 4.15 to 4.19 of the Bankruptcy Regulations are repealed as these provisions are covered by the Rules in relation to meeting requirements.

[Item 40]

203. Part 8 of the Bankruptcy Regulations is repealed as the substance has been addressed by the IPS (Bankruptcy) and the Rules.

204. Division 1 of Part 8 is inserted to preserve current regulations 8.06 and 8.06A in relation to requirements for a trustee filing an instrument a consent to act or a certificate of appointment (under subsection 156A(1) or (3) of the Bankruptcy Act).

205. Division 2 of Part 8 is inserted to preserve rules around controlling trustees other than the Official Trustee or registered trustee.

[Item 50]

206. Regulations 10.04, 10.05 and 10.09 of the Bankruptcy Regulations are repealed as these provisions are covered by the Rules in relation to meeting requirements.

[Item 60]

207. Schedule 2 to the Bankruptcy Regulations relates to meeting rules for composition or arrangement with creditors. This schedule is repealed as these provisions are covered by the Rules in relation to meeting requirements.

[Item 70]

208. Part 2 of Schedule 6 to the Bankruptcy Regulations relates to meeting rules for administrations where a debtor has authorised their trustee or solicitor to be a controlling trustee. This part is repealed as these provisions are covered by the Rules in relation to meeting requirements.

[Item 80]

209. Items 8 and 10 of Part 3 of Schedule 6 are no longer required as the requirement to keep records and the provisions for the removal of a trustee are covered by the Rules and the IPS (Bankruptcy).

[Item 85]

210. Part 7 of Schedule 6 is no longer required as the requirement to keep records is covered by the Rules and the IPS (Bankruptcy).

[Item 90]

211. Items 3 to 13 of Schedule 7 are no longer required as these provisions are covered by the Rules in relation to meeting requirements.

212. Subitems 14.3 and 14.4 of Schedule 7 are redundant as they refer to sections of the Bankruptcy Act that have been repealed by the ILR Act.

213. Items 46, 47 and 48 of Schedule 7 are redundant as they refer to sections of the Bankruptcy Act that have been repealed by the ILR Act.

[Items 95 – 105]

Corporations Regulations

214. Various prescribed forms are repealed. ASIC has the power to approve forms that were previously prescribed and which are still required.

[Items 305, 310, 430 – 472]

215. Where a voluntary administration transitions to a creditors voluntary winding up or a resolution is passed to wind up a company voluntarily, a liquidator is required to lodge a form with ASIC by the next business day to enable a notice of the winding up to be published on ASIC's published notices website.

216. The mandatory meeting that was previously compulsory in a creditors' voluntary winding up will not be required from 1 September 2017. The publication of this advertisement is therefore brought forward in order to improve the timeliness of information available to creditors.

[Item 336 and 354]

217. The ILR Act introduced an obligation on a liquidator to advertise the commencement of a court-ordered winding up on ASIC's published notices website. Subregulation 5.4.01B sets out what information regarding the Court order must be published.

[Item 352]

218. Various obligations relating to the administration of liquidations, voluntary administrations and controllerships which were previously stipulated in Division 5 of the Corporations Regulations are repealed, modified and/or replaced in the Insolvency Practice Rules (Corporations) 2016.

[Items 310–315; 325–390]

Other Regulations

219. Consequential amendments are made to the Corporations (Aboriginal and Torres Strait Islander) Regulations as a result of changes to operation of the Corporations Regulations.

[Items 195-245]

Transition of Part 3 of the Insolvency Practice Schedule

220. In order to facilitate an efficient transition from the current requirements regarding the regulation of external administrations set out in the Bankruptcy Act and the Corporations Act

to the new requirements set down in the Insolvency Law Reform Act, Part 3 of the Insolvency Practice Schedule (Corporations) and Part 3 of the Insolvency Practice Schedule (Bankruptcy) will commence on 1 September 2017.

221. The commencement of consequential amendments to the Corporations Act and Bankruptcy Act under the ILR Act will be similarly split on the basis of whether they relate to matters dealt with under Part 2 or Part 3 of the respective Insolvency Practice Schedule. The commencement of the various Parts of the ILR Act is outlined at diagram 2.

222. This transitional modification will allow for the amendment of software utilised across the industry to reflect the changes in the legislative package as a whole.

223. While the transitional changes to the commencement dates for Insolvency Practice Schedule (Corporations) are provided for under the Corporations and Other Legislation Amendment (Insolvency Law Reform) Regulation 2016, the comparable changes to the Insolvency Practice Schedule (Bankruptcy) are provided for under the Insolvency Law Reform (Transitional Provisions) Regulation 2016.

[Items 1-25; 31-55 Corporations and Other Legislation Amendment (Insolvency Law Reform) Regulation 2016; Insolvency Law Reform (Transitional Provisions) Regulation]

Diagram 2: Commencement of *Insolvency Law Reform Act 2016*

Schedule 1 – Amendments relating to the Insolvency Practice Schedule (Bankruptcy) – effected through the Insolvency Law Reform (Transitional Provisions) Regulation 2016

Commence 1 March 2017	Commence 1 September 2017
Insolvency Practice Schedule (Bankruptcy) - Parts 1 & 2	
	Insolvency Practice Schedule (Bankruptcy) – Part 3
Amendments consequential on the introduction of Insolvency Practice Schedule (Bankruptcy) - Items 3-8	
	Items 9-10
Items 11-12	
	Items 13-14
Item 15	
	Item 16
Item 17	
	Item 18
Item 19-20	
	Item 21
Item 22	
	Item 23-24
Item 25-26	
	Items 27-38
Item 39	
	Item 40
Items 41-44	
	Items 45-46
Item 47	
	Items 48-49
Item 50	
	Item 51-56
Items 57-71	
	Item 72-77
Item 78	
	Items 79-83
Items 84-85	
	Items 86-88
Item 89 – table item 6 Item 89 – table item 11	Item 89 – table items 7-10
Item 90 – table items 29-30	Item 90 – table items 31-34
	Item 91
Item 92 - except 70-40	Item 92 – only 70-40
	Item 93
Items 94-98	
	Items 99-100

Schedule 2 – Amendments relating to the Insolvency Practice Schedule (Corporations) – effected through the Corporations and Other Legislation Amendment (Insolvency Law Reform) Regulation 2016

Commence 1 March 2017	Commence 1 September 2017
Item 1	
Item 2 – Part 1 Item 2 – Part 2	
	Item 2 – Part 3
Items 3 - 44	
Item 45	
	Item 46
Items 47-48	
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Items 50-55	
	Items 56-59
Items 60-64	
	Items 65-66
Items 67-83	
	Item 84
Items 85-88	
	Items 89-140
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Item 156	
	Items 157-172
Item 173-177	
	Items 178-208
Items 209-212	
	Items 213
Items 214-244	
	Items 245-246
Items 247-251	
	Items 252-253
Items 254-257	
	Items 258-260
Item 261	
	Items 262-264
Items 265-307	
	Items 308-312
Items 313-321	

Schedule 3 – Other amendments

Commence 1 March 2017	Commence 1 September 2017
All parts	

Annual returns during transitional period

224. Specific rules are provided to replace the transitional provision for annual administration returns set out at section 1592 of the Corporations Act. Section 1592 was criticised as being unclear and ambiguous.

225. Under the new transitional rule,

- A liquidator must continue to comply with his or her obligations to lodge documents under *old return provisions* in the first six months after 1 September 2017 if the administration commenced before 1 September 2017.

- If there is then a further six month until the administration's anniversary, the liquidator will then be required to lodge a return in the form approved by ASIC for the period after the post-1 September 2017 lodgement under the *old return provision* and the remainder of the year until the anniversary date of the administration (that is, six months). This is referred to as the *transitional return period*.

- After the end of the *transitional return period*, the liquidator must then lodge a section 70-5 return that covers the first full anniversary year after 1 September 2017.

226. The *old return provisions* include subsection 438E(1), subsection 445J(1) and subsection 539(1) where the liquidator is continuing on with the winding up.

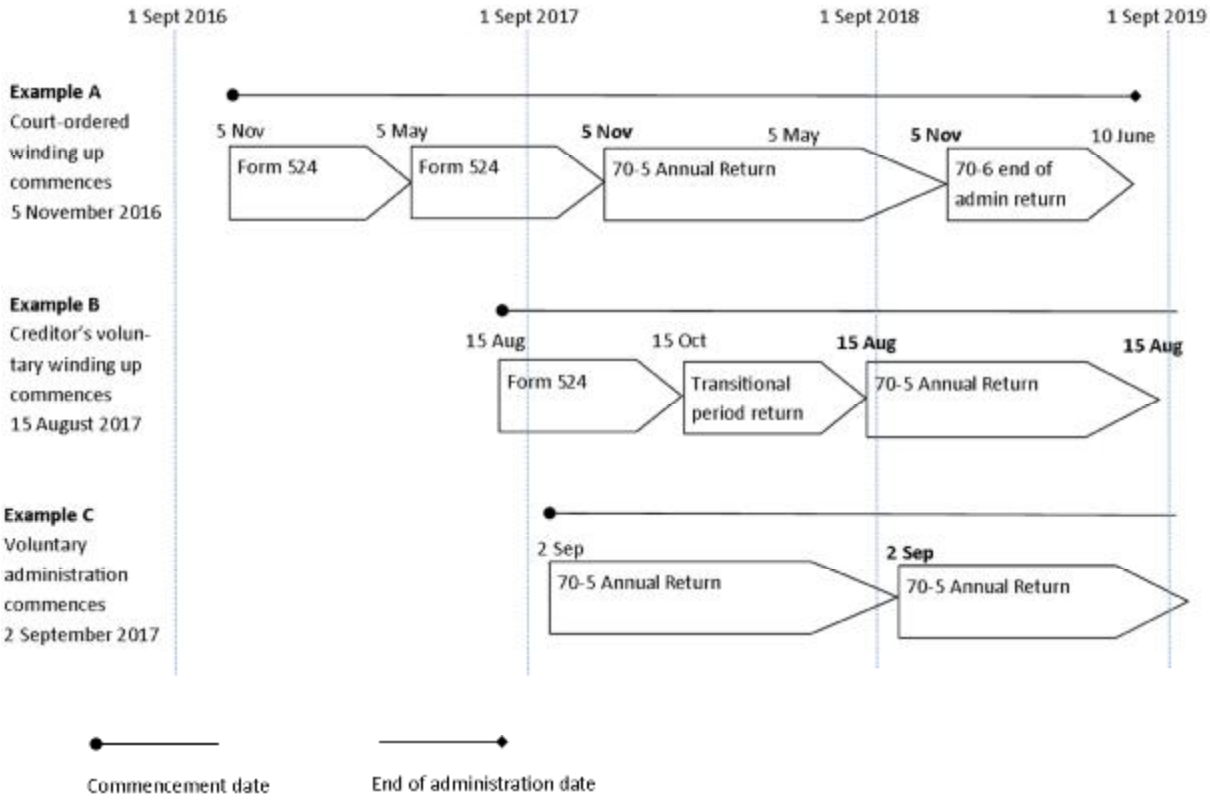
227. A new transitional rule (section 1592A) provides for a change in the commencement of the end of administration obligation under section 70-6.

228. Both sections 70-5 and 70-6 refer to *returns* to be lodged with ASIC in the *approved form*. The contents and lodgement processes for the approved form may change over time. For example, ASIC may approve an end of administration form under section 70-6 that takes effect from 1 September 2017 which substantively reflects old lodgement obligations (that is, the contents of the approved form may be similar to the contents of a *Form 524 Presentation of accounts and statement*). ASIC may then subsequently approve a form that takes effect from 1 March 2018 which asks for different information in a different format (including mandating a form which can only be lodged electronically).

229. Similar transitional arrangements will apply to the requirement for statements to be prepared by controllers annually and at the completion of a controllership.

[Items 30 and 60]

Diagram 3: Timing of annual external administration returns during transitional period



[Item 30]

Draft Corporations (Fees) Amendment Regulation 2016

The Fees Regulations are amended to reflect the replacement of the current processes for the registration of a registered liquidator with the provisions under Division 20 of the *Insolvency Law Reform Act 2016*.

- The fee for lodging an application for registration as a liquidator will set at $2,200.
- The fee for being registered as a liquidator will be set at $1,300.
- The fee for renewing a liquidator's registration will be set at $1,920 if lodged within one month of the liquidator's renewal date or $1,700 if lodged before one month before the renewal date.

These fees are set to align with the current fees applying to registered trustees. These fees will apply from 1 March 2017 and may be subject to future revision.

[Items 1-3]

Amendments are made as a consequence of the repeal of a number of provisions under the ILR Act and the *Corporations and Other Legislation Amendment (Insolvency Law Reform) Regulation 2016.* These amendments commence on 1 September 2017.

The convenor of a meeting who is required to lodge a notice under sections 75-40 and 75-135 of the ILR Act or regulation 5.4.01B will be required to pay the same cost for the lodgement of a notice for publication on ASIC's published notices website. This figure is currently $153 but will automatically rise on 1 July 2017.

[Items 5-10]