

EXPOSURE DRAFT



EXPOSURE DRAFT

Insolvency Practice Rules (Bankruptcy) 2016

I, George Brandis QC, Attorney-General, make the following rules.

Dated 2016

George Brandis QC [DRAFT ONLY—NOT FOR SIGNATURE]
Attorney-General

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Part 1—Introduction

Division 1—Introduction

1-1 Name

These are the *Insolvency Practice Rules (Bankruptcy) 2016*.

1-5 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	Immediately after the commencement of Schedule 1 to the <i>Insolvency Law Reform Act 2016</i> .	

Note: This table relates only to the provisions of this instrument as originally made.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

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

1-10 Authority

This instrument is made under the *Bankruptcy Act 1966*.

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Part 1 Introduction

Division 5 Definitions

Section 5-5

Division 5—Definitions

5-5 The Dictionary

Note: A number of expressions used in this instrument are defined in section 5 of the Act and section 5-5 of Schedule 2 to the Act.

In this instrument:

ACN has the same meaning as in the *Corporations Act 2001*.

Act means the *Bankruptcy Act 1966*.

ARITA means the Australian Restructuring Insolvency and Turnaround Association, ACN 002 472 362.

current, in relation to the registration of a person as a trustee: see section 5-10.

disciplinary action, in relation to a person who is registered as a trustee, means:

- (a) any action taken by the Inspector-General in relation to the person under Division 40 of the Insolvency Practice Schedule (Bankruptcy), other than:
 - (i) the giving of a direction under subsection 40-10(2) of the Schedule in relation to information that the Inspector-General reasonably suspects is incomplete or incorrect; or
 - (ii) the giving of a notice under section 40-40 of the Schedule (a show-cause notice); or
- (b) the imposition of conditions on the registration of the trustee under paragraph 155I(1)(a) of the old Act; or
- (c) the deregistration of the trustee under paragraph 155I(1)(b) of the old Act.

external administration of a company has the same meaning as in the Insolvency Practice Schedule (Corporations).

external administrator of a company has the same meaning as in the Insolvency Practice Schedule (Corporations).

Insolvency Practice Schedule (Bankruptcy) means Schedule 2 to the Act.

Insolvency Practice Schedule (Corporations) means Schedule 2 to the *Corporations Act 2001*.

material personal interest has a meaning affected by section 5-15.

old Act means the *Bankruptcy Act 1966*, as in force immediately before the day on which Schedule 1 to the *Insolvency Law Reform Act 2016* commences.

Part 2 committee means a committee convened under one of the following provisions of the Insolvency Practice Schedule (Bankruptcy):

- (a) subsection 20-10(1) (applications for registration);
- (b) subsection 20-45(1) (applications to vary etc. conditions of registration);
- (c) subsection 40-45(1) (disciplinary action);
- (d) subsection 40-75(1) (applications to lift or shorten a suspension).

receiver has the same meaning as in the *Corporations Act 2001*.

receiver and manager has the same meaning as in the *Corporations Act 2001*.

remuneration claim notice: see subsections 70-35(4) and (5).

resolution: see sections 75-105 and 75-120.

special resolution: see sections 75-125 and 75-130.

5-10 What is a *current* registration?

- (1) If, at a particular time:
 - (a) a person is registered as a trustee; and
 - (b) that registration has not been broken by cancellation of, or a failure to renew, the registration;the registration of the person as a trustee is *current* at that time.
- (2) The registration is taken to have first begun on the day on which the unbroken chain of registration first began.
- (3) To avoid doubt, the registration of a person as a trustee is not broken because:
 - (a) the person was registered as a trustee under the old Act; and
 - (b) on the commencement of Schedule 1 to the *Insolvency Law Reform Act 2016*, the person was taken to be registered as a trustee under Subdivision B of Division 20 of the Insolvency Practice Schedule (Bankruptcy) because of the operation of item 105 of Schedule 1 to the *Insolvency Law Reform Act 2016*.

5-15 Meaning of *material personal interest*

Without limiting the circumstances in which a member of a Part 2 committee has a *material personal interest* that relates to a matter, a member of a Part 2 committee has a material personal interest that relates to a matter if the matter relates to a related entity of the member.

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Part 2 Registering and disciplining practitioners

Division 15 Register of Trustees

Section 15-1

Part 2—Registering and disciplining practitioners

Division 15—Register of Trustees

15-1 Register of Trustees

- (1) This section is made for the purposes of subsection 15-1(3) of the Insolvency Practice Schedule (Bankruptcy).
- (2) The Register of Trustees must include each of the following for each person who is registered as a trustee:
 - (a) the name of the person;
 - (b) the date on which the person's current registration as a trustee first began;
 - (c) the address of the principal place where the person practises as a registered trustee;
 - (d) the address of each other place where the person practises as a registered trustee;
 - (e) if the person practises as a registered trustee as a member of a firm or under a name or style other than the person's own name—the name of that firm or the name or style under which the person practises;
 - (f) particulars of any disciplinary action taken against the person;
 - (g) a summary of the current conditions imposed on the person as a registered trustee.
- (3) The Inspector-General may include other information on the Register of Trustees if it is relevant to:
 - (a) the registration of a person as a trustee; or
 - (b) a person's practice as a trustee.
- (4) The Inspector-General must make the information included on the Register of Trustees under subsection (2) publicly available.
- (5) The Inspector-General may make the information included on the Register of Trustees under subsection (3) publicly available.

Division 20—Registering trustees

20-1 Qualifications, experience, knowledge and abilities required by applicants for registration

- (1) This section is made for the purposes of paragraph 20-20(4)(a) of the Insolvency Practice Schedule (Bankruptcy).
- (2) A committee to which an application for registration as a trustee is referred under section 20-15 of the Insolvency Practice Schedule (Bankruptcy) must be satisfied that the applicant has each of the following qualifications, experience, knowledge and abilities:
 - (a) the applicant has completed the academic requirements for the award of a tertiary qualification that includes at least 3 years of full-time study (or its equivalent) in commercial law and accounting;
 - (b) the applicant has completed the academic requirements for at least 2 course units accredited under the Australian Qualifications Framework Level 8 (or equivalent study) in the practice of external administrators of companies, receivers, receivers and managers, and trustees under the Act;
 - (c) during the 5 years immediately preceding the day on which the application is made, the applicant has been engaged in at least 4000 hours of relevant employment at senior level;
 - (d) the applicant has demonstrated the capacity to perform satisfactorily the functions and duties of a registered trustee;
 - (e) the applicant is able to satisfy any conditions to be imposed under the Insolvency Practice Schedule (Bankruptcy), if the applicant is registered as a trustee.

- (3) In this section:

relevant employment, in relation to an applicant, means employment that:

- (a) involves assisting a registered trustee in the performance of his or her duties as trustee under the Act; and
- (b) involves the providing of advice in relation to the matters under the Act; and
- (c) provides exposure to the external administration of companies and receivership and receivership and management.

20-5 Conditions on registration of trustees

- (1) This section is made for the purposes of section 20-35 of the Insolvency Practice Schedule (Bankruptcy).
- (2) It is a condition on the registration of any person as a trustee that the person must comply with the continuing professional education requirements (if any) of any relevant professional body of which they are a member.

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Part 2 Registering and disciplining practitioners

Division 20 Registering trustees

Section 20-10

- (3) It is a condition on the registration of any person whose registration as a trustee has been suspended that the person must, during the period of the suspension, maintain:
- (a) adequate and appropriate professional indemnity insurance; and
 - (b) adequate and appropriate fidelity insurance;
- against the liabilities that the trustee may incur as a result of work carried out as a registered trustee before the suspension takes effect.

20-10 Prescribed amount of notified estate charges

- (1) This section is made for the purposes of the following provisions of the Insolvency Practice Schedule (Bankruptcy):
- (a) paragraph 20-75(1)(e);
 - (b) paragraph 40-25(1)(d);
 - (c) paragraph 40-30(1)(d);
 - (d) paragraph 40-40(1)(h).
- (2) The prescribed amount of notified estate charges is \$500.

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Registering and disciplining practitioners **Part 2**
Notice requirements **Division 35**

Section 35-5

Division 35—Notice requirements

35-5 Events of which a registered trustee must notify the Inspector-General

The following are events in relation to which a registered trustee must lodge a notice with the Inspector-General under paragraph 35-5(1)(b) of the Insolvency Practice Schedule (Bankruptcy):

- (a) the registered trustee ceases to practise as such;
- (b) the registered trustee changes his or her name;
- (c) if the registered trustee practises as such as a member of a firm, or under a name or style other than the person's own name—the name of the firm, or that other name or style, changes;
- (d) the address of any place where the registered trustee practises as such changes.

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Part 2 Registering and disciplining practitioners

Division 40 Disciplinary and other action

Section 40-1

Division 40—Disciplinary and other action

40-1 Industry bodies that may notify the Inspector-General of grounds for disciplinary action

The following industry bodies are prescribed for the purposes of section 40-110 of the Insolvency Practice Schedule (Bankruptcy):

- (a) ARITA;
- (b) CPA Australia;
- (c) Chartered Accountants Australia and New Zealand;
- (d) the Institute of Public Accountants;
- (e) the New South Wales Bar Association;
- (f) the Law Society of New South Wales;
- (g) the Victorian Bar Inc.;
- (h) the Law Institute of Victoria;
- (i) the Bar Association of Queensland;
- (j) the Queensland Law Society;
- (k) the Legal Practice Board of Western Australia;
- (l) the Law Society of South Australia;
- (m) the Law Society of Tasmania;
- (n) the Law Society of the Australian Capital Territory;
- (o) the Law Society Northern Territory.

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Division 42—Standards for registered trustees

42-1 Authority

This Division is made for the purposes of subsection 40-40(4) of the Insolvency Practice Schedule (Bankruptcy).

42-5 Purpose of Division

- (1) This Division sets out standards applicable to the exercise of powers, and the carrying out of duties, of registered trustees.
- (2) The purpose of the standards is to ensure:
 - (a) that a registered trustee acts at all times in accordance with the trustee's powers and duties under the Act, the Regulations and these Rules and in relation to the practice of bankruptcy law generally; and
 - (b) that an administration to which these standards apply is carried out consistently at a high level.

Subdivision A—Standards for registered trustees generally

42-5 Application of this Subdivision

This Subdivision applies in relation to registered trustees in the administration of regulated debtors estates.

42-10 Trustees to act honestly and impartially

- (1) A registered trustee must act honestly and impartially in relation to each administration.
- (2) Without limiting subsection (1), a registered trustee must not make or sign a document that the trustee knows, or ought reasonably to know, is false or misleading in a material particular.
- (3) The trustee must not include in any document prepared by the trustee a clause that disclaims the trustee's responsibility for the document's authenticity.

42-12 Communication

- (1) Communications by a registered trustee must be:
 - (a) clear and concise and, where appropriate, expressed in lay terms; and
 - (b) objective; and
 - (c) responsive; and
 - (d) timely; and
 - (e) expressed in a professionally courteous tone and manner.
- (2) A registered trustee must take care to ensure that all communications, including reports (whether issued personally or by delegation) are accurate and do not omit

EXPOSURE DRAFT

Part 2 Registering and disciplining practitioners

Division 42 Standards for registered trustees

Section 42-15

or obscure information required to be included or relevant to users of the communication.

- (3) A registered trustee must preserve confidential information where necessary, unless disclosure of such information is required by law.

42-15 Conflict of interest

If, during an administration, it becomes apparent that the registered trustee has an actual or potential conflict of interest in relation to the administration, the trustee must, as soon as practicable after becoming aware of the conflict of interest:

- (a) notify the creditors, the person who appointed the trustee, a committee of inspection or the Court, as appropriate, of the conflict of interest; and
- (b) take appropriate steps to avoid the conflict of interest.

42-20 Compliance with standards by trustee's employees

A registered trustee must ensure that his or her employees comply with this Subdivision.

42-25 Preliminary inquiries and actions

A registered trustee must undertake preliminary inquiries and actions at the start of each administration, including the following:

- (a) informing the regulated debtor (or legal personal representative in the case of a deceased debtor) of his or her obligations under the Act and the penalties for failing to comply with those obligations;
- (b) obtaining and reviewing the statement of affairs of the regulated debtor;
- (c) if necessary, interviewing the regulated debtor (or legal personal representative in the case of a deceased debtor) to clarify any matters in the statement of affairs;
- (d) identifying and making an assessment of realisable assets that could be expected to:
 - (i) provide, on a cost-benefit basis, a return to creditors; or
 - (ii) contribute to the payment of the costs and fees of the administration;
- (e) assessing the contribution that the regulated debtor is liable to pay in respect of a contribution assessment period, calculated in accordance with section 139S of the Act;
- (f) determining the likelihood of whether the estate of the regulated debtor includes property that can be realised to pay a dividend to creditors;
- (g) if the trustee has a genuine reason for believing that the regulated debtor (or legal personal representative in the case of a deceased debtor) may not have disclosed an interest in real or other registered property—conducting appropriate searches for such property;
- (h) if information obtained from a search mentioned in paragraph (g) shows that the regulated debtor (or legal personal representative of the deceased debtor) has not made full and true disclosure of his or her interest in property:
 - (i) making inquiries of third parties about the information; or

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- (ii) if further inquiries are not made, explaining to the creditors why further inquiries were considered unnecessary;
- (i) if the trustee considers that there may have been antecedent transactions—making inquiries of third parties to identify those transactions;
- (j) cooperating with the Inspector-General by, for example, responding to reasonable requests for information.

42-30 Investigations and inquiries of matters affecting administration

- (1) A registered trustee in relation to an administration must consider the views of creditors regarding the extent to which investigations are undertaken in the administration.
- (2) A registered trustee in relation to an administration must inform creditors, as soon as practicable, of the outcomes of any inquiries undertaken in the administration.

42-35 Realising assets

A registered trustee in relation to an administration must realise only those assets:

- (a) that will give a cost-effective return to creditors; or
- (b) that contribute to the payment of the costs of the administration; or
- (c) that may be realised in accordance with a personal insolvency agreement.

42-40 Ownership or interests in assets

In determining the ownership of, or an interest in, an asset that is part of divisible property, a registered trustee must act reasonably and claim only the amount that fairly represents the interest in, or value of, the asset.

42-45 Obtaining advice about interest or value

If the value of divisible property is likely to have a material impact on the administration of a regulated debtor's estate, the registered trustee must obtain advice from an independent expert in assessing:

- (a) the extent of the trustee's interest in any realisable asset; and
- (b) the value of the property or offers for the property.

42-50 Disposal of property

A registered trustee must act independently and impartially in undertaking transactions and dealings relating to the disposal of the property of a regulated debtor.

42-55 Costs incurred to be necessary and reasonable

In conducting an administration, a registered trustee must:

- (a) incur only those costs that are necessary and reasonable; and

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Part 2 Registering and disciplining practitioners

Division 42 Standards for registered trustees

Section 42-60

- (b) before deciding whether it is appropriate to incur a cost, compare the amount of the cost likely to be incurred with the value and complexity of the administration.

42-60 Rate for tasks undertaken by trustee's staff

A registered trustee must ensure that time billed for a task undertaken in conducting an administration is charged at the appropriate rate for the level of staff who would be reasonably expected to undertake the task.

42-65 Keeping proper records in relation to work done

A registered trustee must ensure that proper records are kept that:

- (a) provide evidence of the time spent on work done in conducting an administration; and
- (b) adequately describe the nature of the work.

42-75 Need for meeting

A registered trustee must consider whether the matters sought to be addressed at a meeting of creditors:

- (a) require the holding of a meeting; or
- (b) could be addressed more cost effectively by another form of communication with creditors.

42-80 Matters to be considered when holding a meeting

In deciding whether the proposed time and place for a meeting of creditors is convenient for the creditors, a registered trustee must consider the following:

- (a) the requirements for meetings set out in the Act, the Regulations and these Rules;
- (b) the location of creditors;
- (c) the ability of creditors to return proxies and statements of debt;
- (d) the complexity of issues to be considered by creditors before the meeting.

42-85 Attendance at meetings

A registered trustee, or a person appointed under section 75-25 of the Insolvency Practice Schedule (Bankruptcy) to represent the trustee at a meeting of creditors, must attend meetings of creditors.

42-90 Verifying payments and transfers

A registered trustee must verify all payments from an administration, and transfers between estates, by reference to appropriate supporting vouchers and original documents kept with the books relating to the administration.

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42-95 Separate accounts and records

A registered trustee must ensure that bank accounts and records maintained in respect of all transactions relating to the regulated debtor's property are kept separate from records relating to any later administration that takes place in relation to the regulated debtor.

42-100 Voting at creditors' meeting

In deciding whether a creditor is entitled to vote at a meeting of creditors, a registered trustee must:

- (a) have regard to the merits of the creditor's claim; and
- (b) act impartially and independently, without regard to the regulated debtor's wishes.

Subdivision B—Standards for trustees other than controlling trustees

42-120 Application of this Subdivision

This Subdivision applies in relation to registered trustees in the administration of the following:

- (a) the estate of a bankrupt;
- (b) a personal insolvency agreement;
- (c) the estate of a deceased person in respect of which an order has been made under Part XI of the Act.

42-125 Notification of administration

Notice of the administration of a regulated debtor's estate given by the registered trustee to the creditors of the regulated debtor must include the following information:

- (a) the name, date of birth, address and occupation of the regulated debtor;
- (b) in the case of a deceased debtor—the legal personal representative of the debtor;
- (c) the business name or name of any associated entity or related entity of the regulated debtor;
- (d) the date and type of administration;
- (e) an outline of matters investigated by the trustee up to the date of the notification;
- (f) in relation to a bankrupt—advice about any possible contributions that the bankrupt is liable to pay in respect of a contribution assessment period, calculated in accordance with section 139S of the Act;
- (g) any matters the trustee has identified as needing further investigation.

42-130 Provable debts in a joint administration

In conducting an administration in relation to joint regulated debtors, the registered trustee must ensure that a debt is proved in the appropriate estate.

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Part 2 Registering and disciplining practitioners

Division 42 Standards for registered trustees

Section 42-135

42-135 Evidence relating to proof of debt

A registered trustee must ensure that each creditor's claim or proof of debt in relation to an administration bears evidence of:

- (a) its admission or rejection; and
- (b) the reason for its admission or rejection; and
- (c) the amount for which the claim or proof of debt has been admitted.

42-140 Evidence of liability for debt

- (1) If necessary, a registered trustee must ask a creditor to give evidence in writing in relation to a debt claimed by the creditor:
 - (a) to establish the liability of a regulated debtor for the debt; or
 - (b) to identify the estate against which the claim should be admitted.
- (2) If the registered trustee considers that the evidence is insufficient for the purposes of paragraph (1)(a) or (b), the trustee, before asking for further information, must have regard to the expected dividend rate and the materiality of the issue requiring clarification.
- (3) A registered trustee must keep a copy of any evidence or information relied on in deciding, for the purposes of voting or distributing dividends, whether to accept or reject a creditor's claim.

42-145 Creditors' views to be considered

A registered trustee must consider the views of creditors in relation to whether money held by the trustee should be:

- (a) applied to conduct further investigations in relation to the administration; or
- (b) distributed as a dividend.

42-150 Distribution of estate funds

- (1) A registered trustee must distribute estate funds in a timely manner, having regard to:
 - (a) the complexity of the administration and the claims of creditors; and
 - (b) the amount of funds available for distribution; and
 - (c) the need to retain funds in the estate to meet existing or expected commitments.
- (2) A registered trustee must make an interim distribution of dividends to creditors unless an existing or expected commitment is likely to account for a significant level of the available funds from the estate.

42-155 Advice relating to dividends and administration

A registered trustee must, when distributing dividends to the creditors of a regulated debtor, advise creditors about whether:

- (a) further dividends are expected to be distributed; or

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- (b) the administration is finalised.

Subdivision C—Standards for trustees of bankrupt estates

42-170 Application of this Subdivision

This Subdivision applies in relation to registered trustees in the administration of the following:

- (a) the estate of a bankrupt;
- (b) the estate of a deceased person in respect of which an order has been made under Part XI of the Act.

42-175 Identifying assets for vesting

A registered trustee must take appropriate steps to identify the assets of the estate of a regulated debtor that will vest in the trustee, including the following:

- (a) obtaining and reviewing the statement of affairs of the regulated debtor;
- (b) considering the size of the deficiency in the estate for the purpose of finding possible assets or determining whether an issue needs to be investigated;
- (c) considering the activities and circumstances of the regulated debtor to decide whether assets disclosed by the regulated debtor (or legal personal representative in the case of a deceased debtor) are consistent with what would be expected of a regulated debtor having a similar background or undertaking a similar activity;
- (d) if the regulated debtor is or was involved in significant corporate or trust activity—making inquiries of third parties (for example, solicitors, accountants, creditors, associated entities and financial institutions) to establish whether there is any divisible property or antecedent transactions.

42-180 Protecting certain assets

A registered trustee must take appropriate steps to protect assets with a commercial value that have vested in him or her, including doing any or all of the following:

- (a) ensuring that the assets are adequately insured;
- (b) taking possession of the assets;
- (c) perfecting legal ownership of the assets.

42-185 Income and contribution assessment

- (1) Despite section 42-170, this section does not apply to a registered trustee in relation to the estate of a deceased person in respect of which an order has been made under Part XI of the Act.
- (2) The registered trustee must, as soon as possible after all necessary information has been made available, make an assessment of:
 - (a) the income of a bankrupt in respect of a contribution assessment period;
and

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Division 42 Standards for registered trustees

Section 42-190

- (b) the contribution that the bankrupt is liable to pay.
- (3) The registered trustee must:
 - (a) act fairly and reasonably in determining the time for payment of any contribution (*contributions liability*) that a bankrupt is liable to pay in respect of a contribution assessment period, calculated in accordance with section 139S of the Act; and
 - (b) if full payment within the contribution assessment period or before discharge would cause hardship to the bankrupt, consider giving the bankrupt an extension of the time for payment of contributions liability.
- (4) The registered trustee must give the bankrupt a copy of the assessment of income and contributions liability, setting out and explaining the basis on which the amount of any contributions liability has been calculated.

42-190 Monitoring payment of contributions

- (1) Despite section 42-170, this section does not apply to a registered trustee in relation to the estate of a deceased person in respect of which an order has been made under Part XI of the Act.
- (2) The registered trustee must:
 - (a) monitor the payment of contributions by a bankrupt to ensure the contributions liability is discharged; and
 - (b) if necessary, take appropriate steps to recover contributions that remain unpaid after the time for payment has passed.

Subdivision D—Standards for controlling trustees

42-210 Application of this Subdivision

This Subdivision applies in relation to registered trustees in the administration of a debtor's property that has become subject to control under Division 2 of Part X of the Act.

42-215 Notification of administration

Notice of the administration given to the creditors by the registered trustee of a regulated debtor must include the debtor's name, date of birth, address and occupation.

42-220 Investigating debtor's property and income

- (1) As soon as practicable after an authority under section 188 of the Act becomes effective, the registered trustee must conduct appropriate investigations of the regulated debtor's property and income.
- (2) If the regulated debtor's property includes significant real estate, company structures or motor vehicles, the registered trustee must:
 - (a) search the appropriate registries for information about the property; and
 - (b) obtain advice from an independent expert about the value of the property.

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Standards for registered trustees **Division 42**

Section 42-225

- (3) If the regulated debtor was or is involved in significant corporate or trust activity, the registered trustee must take appropriate steps to identify the assets of the debtor that will be subject to the personal insolvency agreement, including making inquiries of third parties (for example, solicitors, accountants, creditors, associated entities and financial institutions) to establish whether there is any divisible property or antecedent transactions.

42-225 Report to creditors

A registered trustee's report under section 189A of the Act must also include the following:

- (a) information about each matter mentioned in subsection 188A(2) of the Act;
- (b) the basis on which the regulated debtor's property has been valued;
- (c) the kind of investigations the controlling trustee has carried out and whether any other matters need to be investigated;
- (d) the reasons for the registered trustee's opinion about whether creditors' interests would be better served by accepting the debtor's proposal for dealing with the debtor's affairs under Part X of the Act or by the bankruptcy of the debtor.

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Division 50 Part 2 committees

Section 50-1

Division 50—Part 2 committees

50-1 Authority

Unless otherwise stated, a provision of this Division is made for the purposes of section 50-25 of the Insolvency Practice Schedule (Bankruptcy).

50-3 Part 2 committee may generally determine its own procedures

Subject to the Insolvency Practice Schedule (Bankruptcy) and these Rules, a Part 2 committee may determine its own procedures.

50-5 ARITA may appoint a member of a Part 2 committee

For the purposes of the following provisions of the Insolvency Practice Schedule (Bankruptcy), the prescribed body is ARITA:

- (a) paragraph 20-10(2)(b) (applications for registration);
- (b) paragraph 20-45(2)(b) (applications to vary etc. conditions of registration);
- (c) paragraph 40-45(2)(b) (disciplinary action);
- (d) paragraph 40-75(2)(b) (applications to lift or shorten a suspension).

50-10 Knowledge and experience required of a member of a Part 2 committee appointed by ARITA

- (1) This section is made for the purposes of paragraph 50-5(2)(a) of the Insolvency Practice Schedule (Bankruptcy).
- (2) A person appointed by ARITA as a member of a committee convened under Part 2 of the Insolvency Practice Schedule (Bankruptcy) must have at least 5 years' experience as a registered trustee.

50-15 Chair of a Part 2 committee

The Chair of a Part 2 committee is:

- (a) the Inspector-General; or
- (b) if the Inspector-General appoints a delegate to the committee—the Inspector-General's delegate.

50-20 Resignation of Part 2 committee members

- (1) A member of a Part 2 committee may resign from the committee by giving notice in writing of that fact to the Chair.
- (2) The resignation takes effect on the later of:
 - (a) the day on which the notice is given; and
 - (b) a day specified in the notice.

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50-25 Part 2 committee to be reconstituted—removing ARITA members

- (1) This section applies if the Chair of a Part 2 committee is satisfied that a member of the committee chosen by ARITA:
 - (a) is unable to perform the duties of a member because of physical or mental incapacity; or
 - (b) has neglected his or her duties as a member; or
 - (c) is unable to carry out the duties of a member because of a material personal interest in a matter to be considered by the committee; or
 - (d) has been convicted of an offence involving fraud or dishonesty.
- (2) The Chair must give ARITA notice of that fact as soon as reasonably practicable after becoming satisfied.
- (3) If ARITA is given notice under subsection (2), the person ceases to be a member of the committee on the day on which the notice is given.

50-27 Part 2 committee to be reconstituted—removing members appointed by the Minister

- (1) This section applies if the Minister is satisfied that a member of a Part 2 committee appointed by the Minister:
 - (a) is unable to perform the duties of a member because of physical or mental incapacity; or
 - (b) has neglected his or her duties as a member; or
 - (c) is unable to carry out the duties of a member because of a material personal interest in a matter to be considered by the committee; or
 - (d) has been convicted of an offence involving fraud or dishonesty.
- (2) The Minister must give the Chair notice of that fact as soon as reasonably practicable after becoming satisfied.
- (3) If the Chair is given notice under subsection (2), the person ceases to be a member of the committee on the day on which the notice is given.

50-30 Part 2 committee to be reconstituted—replacing members

- (1) If a person chosen by ARITA to be a member of a Part 2 committee ceases to be a member of the committee, ARITA must choose a replacement in accordance with the Act.
- (2) If a person appointed by the Minister to be a member of a Part 2 committee ceases to be a member of the committee, the Minister must choose a replacement in accordance with the Act.

50-35 Termination of consideration, and transfer, of a matter

- (1) If the Chair of a Part 2 committee is satisfied that a matter could more efficiently or fairly be dealt with by terminating the consideration of the matter by the committee and transferring the matter to another committee, the Chair may do so.

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Section 50-40

- (2) If a matter is transferred under subsection (1), the new committee must deal with the matter afresh.

50-40 Duty to disclose interests

- (1) A member of a Part 2 committee who has a material personal interest that relates to a matter to be considered by the committee under Part 2 of the Insolvency Practice Schedule (Bankruptcy), must disclose details of that interest to the Chair.
- (2) The member must disclose the details of the interest as soon as practicable after the member becomes aware that the member has the material personal interest that relates to the matter.

50-45 Natural justice and rules of evidence

- (1) A Part 2 committee must observe natural justice.
- (2) A Part 2 committee is not bound by any rules of evidence but may inform itself on any matter as it sees fit.

50-50 Decisions made at a meeting

- (1) A Part 2 committee may make a decision in relation to a matter at a meeting, provided each member of the committee is either present at the meeting, or takes part in the meeting by electronic means.
- (2) Any member of a Part 2 committee may participate in a meeting of the committee by electronic means.
- (3) At a meeting of a Part 2 committee, a matter is to be decided by a majority of the votes of the members.
- (4) A committee must keep minutes of proceedings at its meetings.
- (5) The committee may keep those minutes in electronic form.

50-55 Decisions made without a meeting

- (1) A Part 2 committee may make a decision in relation to a matter without a meeting.
- (2) A Part 2 committee makes a decision in relation to a matter without a meeting if a majority of the members of the committee sign a document that:
 - (a) sets out the terms of the decision; and
 - (b) states that each member signing the document is in favour of the decision.
- (3) A decision under this section is taken to have been made:
 - (a) on the day on which the document is signed; or
 - (b) if the members sign the document on different days—on the day on which the document is signed by the last member to sign the document who makes up the majority.

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- (4) Two or more separate documents that are identical in all material respects (apart from signatures), each of which is signed by one or more members of a Part 2 committee, are taken for the purposes of subsection (2) to constitute a single document.

50-57 Keeping records of decisions

A Part 2 committee must keep a written record of its decisions.

50-60 Inquiries by a Part 2 committee

- (1) A Part 2 committee considering a matter under Part 2 of the Insolvency Practice Schedule (Bankruptcy) may make inquiries of any person for the purposes of making a decision in relation to the matter.
- (2) Inquiries made must be inquiries:
 - (a) that are reasonable, for the purpose of making an informed decision; or
 - (b) that the Chair of the committee believes are appropriate in order for the committee to have sufficient information to make the decision.

50-65 Interviewing applicants

- (1) This section applies if a Part 2 committee is required to interview an applicant under one of the following provisions of the Insolvency Practice Schedule (Bankruptcy):
 - (a) paragraph 20-20(2)(a) (application for registration as a trustee);
 - (b) subsection 20-55(2) (application to vary etc. conditions of registration);
 - (c) subsection 40-85(2) (application to lift or shorten a suspension).
- (2) The Chair of the committee must, after consultation with the other members of the committee:
 - (a) fix a date and time for the interview; and
 - (b) fix the manner of the interview (for example, how those communicating by electronic means are to do so); and
 - (c) give written notice of the date, time and manner of the interview to the applicant and the other members of the committee.
- (3) A Part 2 committee must interview the applicant as soon as practicable and, for that purpose:
 - (a) any member of the committee may participate in the interview by electronic means; and
 - (b) the applicant may participate in the interview by electronic means.
- (4) At an interview, the committee may ask the applicant any question that the committee reasonably believes to be related to:
 - (a) the application; or
 - (b) a reference accompanying the application; or
 - (c) any matter that is relevant to the committee's decision in relation to the application.

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Part 2 Registering and disciplining practitioners

Division 50 Part 2 committees

Section 50-67

50-67 Interviewing trustees—proposed cancellation of registration

- (1) This section applies if:
 - (a) a Part 2 committee is convened under subsection 40-45(1) of the Insolvency Practice Schedule (Bankruptcy); and
 - (b) the committee is proposing to decide, under paragraph 40-55(1)(c) of the Schedule, that the trustee's registration should be cancelled.
- (2) The Chair of the Part 2 committee must, after consultation with the other members of the committee:
 - (a) fix a date and time to interview the trustee; and
 - (b) fix the manner of the interview (for example, how those communicating by electronic means are to do so); and
 - (c) give written notice of the date, time and manner of the interview to the trustee and the other members of the committee.
- (3) A Part 2 committee must interview the trustee as soon as practicable and, for that purpose:
 - (a) any member of the committee may participate in the interview by electronic means; and
 - (b) the trustee may participate in the interview by electronic means.
- (4) At an interview, the committee may ask the trustee any question that the committee reasonably believes to be related to any matter that is relevant to the committee's proposed decision to cancel the trustee's registration.

50-70 Decisions on disciplinary matters

If a matter is referred to a Part 2 committee under section 40-50 of the Insolvency Practice Schedule (Bankruptcy), the committee must use its best endeavours to decide the matter within 60 days after the matter is referred to it.

50-75 Reports of a Part 2 committee

- (1) This section applies if a Part 2 committee is required to give a report under one of the following provisions of the Insolvency Practice Schedule (Bankruptcy):
 - (a) section 20-25 (registration);
 - (b) section 20-60 (varying etc. conditions of registration);
 - (c) section 40-60 (disciplinary action);
 - (d) section 40-90 (lifting or shortening suspension).
- (2) The committee must prepare the report in writing.
- (3) The report must include a statement of the reasons of any minority in the decision.
- (4) Each member of the committee must sign the report.

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Registering and disciplining practitioners **Part 2**

Part 2 committees **Division 50**

Section 50-80

50-80 Industry disciplinary bodies to which a Part 2 committee may disclose information

The following bodies are prescribed for the purposes of subparagraph 50-35(2)(b)(iv) of the Insolvency Practice Schedule (Bankruptcy):

- (a) ARITA;
- (b) CPA Australia;
- (c) Chartered Accountants Australia and New Zealand;
- (d) the Institute of Public Accountants;
- (e) the New South Wales Bar Association;
- (f) the Law Society of New South Wales;
- (g) the Victorian Bar Inc.;
- (h) the Law Institute of Victoria;
- (i) the Bar Association of Queensland;
- (j) the Queensland Law Society;
- (k) the Legal Practice Board of Western Australia;
- (l) the Law Society of South Australia;
- (m) the Law Society of Tasmania;
- (n) the Law Society of the Australian Capital Territory;
- (o) the Law Society Northern Territory.

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Part 3 General rules relating to estate administrations

Division 60 Remuneration and other benefits received by the trustee

Section 60-1

Part 3—General rules relating to estate administrations

Division 60—Remuneration and other benefits received by the trustee

60-1 Authority

Unless otherwise stated, a provision of this Division is made for the purposes of section 60-11 of the Insolvency Practice Schedule (Bankruptcy).

60-5 Circumstances in which the Inspector-General may determine remuneration

The Inspector-General may make a determination specifying remuneration that a trustee of a regulated debtor's estate is entitled to receive for necessary work properly performed by the trustee in relation to the administration of the estate if:

- (a) an application by the trustee is properly made by the trustee for the remuneration to be determined by the Inspector-General; and
- (b) the remuneration has not been determined by the creditors under section 60-10 of the Insolvency Practice Schedule (Bankruptcy) because:
 - (i) a proposal to determine the remuneration of the trustee has been put to creditors (either in a meeting or in accordance with section 75-40 of the Insolvency Practice Schedule (Bankruptcy)) and no resolution determining the remuneration of the trustee has been passed; or
 - (ii) it is not cost effective to seek a determination by the creditors specifying the remuneration of the trustee under section 60-10 of the Insolvency Practice Schedule (Bankruptcy); or
 - (iii) it is not practicable to seek a determination by the creditors specifying the remuneration of the trustee under section 60-10 of the Insolvency Practice Schedule (Bankruptcy); and
- (c) the remuneration has not been determined by a committee of inspection under section 60-10 of the Insolvency Practice Schedule (Bankruptcy) because:
 - (i) the committee has rejected, or failed to vote, on a proposal to determine the remuneration; or
 - (ii) it is not cost effective to seek a determination by the committee specifying the remuneration of the trustee under section 60-10 of the Insolvency Practice Schedule (Bankruptcy); or
 - (iii) it is not practicable to seek a determination by the committee specifying the remuneration of the trustee under section 60-10 of the Insolvency Practice Schedule (Bankruptcy).

60-10 Application to the Inspector-General to determine remuneration

- (1) A trustee of a regulated debtor's estate may apply to the Inspector-General to make a determination specifying remuneration that the trustee is entitled to

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receive for necessary work properly performed by the trustee in relation to the administration of the estate.

- (2) The application:
- (a) must be in a form approved by the Inspector-General; and
 - (b) must:
 - (i) identify which of subparagraphs 60-5(b)(i), (ii) or (iii) or (c)(i), (ii) or (iii) the applicant believes is satisfied; and
 - (ii) include evidence that the relevant subparagraph is satisfied; and
 - (c) must contain a single proposal about the trustee's proposed remuneration; and
 - (d) must explain:
 - (i) why any work already performed by the trustee was necessary; and
 - (ii) why any work proposed to be performed by the trustee will be necessary; and
 - (iii) why the proposed remuneration for the work, or proposed work, is appropriate for the particular administration; and
 - (e) if the work was or is likely to be complex—details of the complexity; and
 - (f) if the work includes or is likely to include extraordinary issues—details of those issues; and
 - (g) must be accompanied by any notices given by the trustee or the creditors under this Division.

60-15 Matters to which the Inspector-General must have regard

In making a remuneration determination under subsection 60-11(1) of the Insolvency Practice Schedule (Bankruptcy), the Inspector-General must have regard to whether the remuneration is reasonable, taking into account any or all of the following matters:

- (a) the extent to which the work by the trustee was necessary and properly performed;
- (b) the extent to which the work likely to be performed by the trustee is likely to be necessary and properly performed;
- (c) the period during which the work was, or is likely to be, performed by the trustee;
- (d) the quality of the work performed, or likely to be performed, by the trustee;
- (e) the complexity (or otherwise) of the work performed, or likely to be performed, by the trustee;
- (f) the extent (if any) to which the trustee was, or is likely to be, required to deal with extraordinary issues;
- (g) the extent (if any) to which the trustee was, or is likely to be, required to accept a higher level of risk or responsibility than is usually the case;
- (h) the value and nature of any property dealt with, or likely to be dealt with, by the trustee;
- (i) the number, attributes and conduct, or the likely number, attributes and conduct, of the creditors;

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Part 3 General rules relating to estate administrations

Division 60 Remuneration and other benefits received by the trustee

Section 60-20

- (j) if the remuneration is worked out wholly or partly on a time-cost basis—the time properly taken, or likely to be properly taken, by the trustee in performing the work;
- (k) whether the trustee has followed the procedure in the Insolvency Practice Schedule (Bankruptcy) and these Rules for estimating remuneration, including whether the trustee has adequately described to creditors the work performed or to be performed;
- (l) whether the trustee has given the regulated debtor and the creditors the notices required to be given under these Rules;
- (m) any other relevant matters.

60-20 Remuneration on a percentage basis—maximum percentage

For the purposes of subsection 60-12(3) of the Insolvency Practice Schedule (Bankruptcy), the percentage specified in a remuneration determination must not exceed:

- (a) if the money received by the trustee does not exceed \$30,000—20%; or
- (b) if the money received by the trustee exceeds \$30,000 but does not exceed \$50,000—20% for the first \$30,000 and 17.5% for the balance of the money received; or
- (c) if the money received by the trustee exceeds \$50,000—20% for the first \$30,000, 17.5% for the next \$20,000 and 15% for the balance of the money received.

60-25 Trustee administrator must not derive profit or advantage from the administration of the estate—exceptions

- (1) This section is made for the purposes of subsection 60-20(5) of the Insolvency Practice Schedule (Bankruptcy).
- (2) A payment made for the purposes of administering claims for financial assistance from the Commonwealth in relation to unpaid employment entitlements is prescribed.

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Division 65—Funds handling

Subdivision A—General rules

65-1 Administration account

The following requirements are prescribed in relation to administration accounts of regulated debtors' estates for the purposes of paragraph 65-10(b) of the Insolvency Practice Schedule (Bankruptcy):

- (a) the account must be held with an ADI;
- (b) the account must be an interest-bearing account.

65-5 Penalty interest

- (1) This section:
 - (a) is made for the purposes of paragraph 65-50(a) of the Insolvency Practice Schedule (Bankruptcy); and
 - (b) applies if:
 - (i) the trustee of a regulated debtor's estate pays money out of the administration account in contravention of subsection 65-25(1) of the Insolvency Practice Schedule (Bankruptcy); and
 - (ii) the amount exceeds \$50; and
 - (iii) the trustee does not have a reasonable excuse for doing so.
- (2) The trustee must, by way of penalty, pay interest to the Commonwealth at the rate of 20% per annum on the amount for the period:
 - (a) beginning at the start of the day that the amount was paid out of the administration account; and
 - (b) ending at the end of the day that an amount equal to that amount is paid into the administration account by the trustee.

Subdivision B—Review of third party bill of costs

65-20 Application for review of third party bill of costs

- (1) This section is made for the purposes of section 65-46 of the Insolvency Practice Schedule (Bankruptcy).
- (2) The trustee of the regulated debtor's estate may apply to the Inspector-General to review a bill of costs for services provided by a person (a *third party*) in relation to the administration of the regulated debtor's estate.

Note: See Subdivision B of Division 90 for rules about how a review must be conducted.
- (3) The application must be in writing.
- (4) The application must, subject to subsection (5), be made within 28 days after the trustee receives the bill of costs from the third party, but before the bill of costs is paid.

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Section 65-20

- (5) The Inspector-General may, before or after the end of the 28 days mentioned in subsection (4), extend the period in which an application for review may be made if the Inspector-General is satisfied that:
 - (a) the trustee and the third party have been engaged in an alternative dispute resolution process to try to resolve the matter; or
 - (b) it is appropriate, in all the circumstances, to extend the period.
- (6) The Inspector-General may extend the period for any period the Inspector-General considers appropriate in all the circumstances.
- (7) The trustee may apply to the Administrative Appeals Tribunal for review of a decision by the Inspector-General under subsection (5) to refuse to extend the period in which an application for review may be made.
- (8) The third party may apply to the Administrative Appeals Tribunal for review of a decision by the Inspector-General under subsection (5) to extend the period in which an application for review may be made.

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Division 70—Information

70-1 Time for complying with reasonable requests

- (1) This section is made for the purposes of section 70-50 of the Insolvency Practice Schedule (Bankruptcy).
- (2) Subject to subsections (3) and (5), if a trustee of a regulated debtor's estate receives a request for information or a report or document under Division 70 of the Insolvency Practice Schedule (Bankruptcy), the trustee must send the information, report or document within:
 - (a) 5 business days after receiving the request; or
 - (b) such later period as agreed with the person or body making the request.
- (3) If the trustee is reasonably satisfied that, due to the nature of the request, an extension of time is required to comply with it, the trustee may, by written notice, extend the period for compliance.
- (4) The notice must:
 - (a) be given to the person or body making the request; and
 - (b) specify the period within which the request will be complied with; and
 - (c) specify the reasons for the extension.
- (5) This section does not apply if, under the Act or these Rules, it is not reasonable for the trustee of a regulated debtor's estate to comply with the request.

70-3 Notice requirements for unreasonable requests

- (1) This section is made for the purposes of section 70-50 of the Insolvency Practice Schedule (Bankruptcy) and applies if:
 - (a) a request for information or a report or document is made to the trustee of a regulated debtor's estate under Division 70 of the Insolvency Practice Schedule (Bankruptcy); and
 - (b) under the Act or these Rules, it is not reasonable for the trustee to comply with the request.
- (2) The trustee must:
 - (a) notify the person or body making the request that it is not reasonable for the trustee to comply with the request, and of the reasons why it is not reasonable; and
 - (b) make a written record in the books required to be kept under section 70-10 of the Insolvency Practice Schedule (Bankruptcy) of the fact that the request was not complied with, and of the reasons.

70-5 Right of creditors to request information etc. from trustee

- (1) This section is made for the purposes of section 70-40 of the Insolvency Practice Schedule (Bankruptcy).

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Part 3 General rules relating to estate administrations

Division 70 Information

Section 70-10

Unreasonable requests

- (2) It is not reasonable for the trustee of a regulated debtor's estate to comply with a request to give information, provide a report or produce a document to the creditors if the trustee, acting in good faith, is of the opinion that:
 - (a) complying with the request would substantially prejudice the interests of one or more creditors or a third party and that prejudice outweighs the benefits of complying with the request; or
 - (b) the information, report or document would be privileged from production in legal proceedings on the ground of legal professional privilege; or
 - (c) disclosure of the information, report or document would found an action by a person for breach of confidence; or
 - (d) there is not sufficient available property to comply with the request; or
 - (e) the information, report or document has already been provided; or
 - (f) the information, report or document is required to be provided under the Act (including regulations made under the Act) within 20 business days of the request being made; or
 - (g) the request is vexatious.
- (3) Without limiting paragraph (2)(g), a request may be taken to be vexatious if the trustee receives the request within 15 business days of receiving a similar request from the creditors.

Reasonable requests

- (4) It is reasonable for the trustee of a regulated debtor's estate to comply with a request to give information, provide a report or produce a document to the creditors if subsection (2) does not apply to the request.
- (5) Despite paragraph (2)(d), (e) or (f), it is also reasonable for the trustee of a regulated debtor's estate to comply with a request to give information, provide a report or produce a document to the creditors if:
 - (a) the creditors agree to bear the cost of complying with the request; and
 - (b) if required to do so by the trustee—security for the cost of complying with the request is given to the trustee before the request is complied with.

70-10 Right of individual creditor to request information etc. from trustee

- (1) This section is made for the purposes of section 70-45 of the Insolvency Practice Schedule (Bankruptcy).

Unreasonable requests

- (2) It is not reasonable for the trustee of a regulated debtor's estate to comply with a request to give information, provide a report or produce a document to a creditor if the trustee, acting in good faith, is of the opinion that:
 - (a) complying with the request would substantially prejudice the interests of one or more creditors or a third party and that prejudice outweighs the benefits of complying with the request; or

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- (b) the information, report or document would be privileged from production in legal proceedings on the ground of legal professional privilege; or
 - (c) disclosure of the information, report or document would found an action by a person for breach of confidence; or
 - (d) there is not sufficient available property to comply with the request; or
 - (e) the information, report or document has already been provided; or
 - (f) the information, report or document is required to be provided under the Act (including regulations made under the Act) within 20 business days of the request being made; or
 - (g) the request is vexatious.
- (3) Without limiting paragraph (2)(g), a request may be taken to be vexatious if the trustee receives the request within 15 business days of receiving a similar request from the creditor.

Reasonable requests

- (4) It is reasonable for the trustee of a regulated debtor's estate to comply with a request to give information, provide a report or produce a document to a creditor if subsection (2) does not apply to the request.
- (5) Despite paragraph (2)(d), (e) or (f), it is also reasonable for the trustee of a regulated debtor's estate to comply with a request to give information, provide a report or produce a document to a creditor if:
- (a) the creditor agrees to bear the cost of complying with the request; and
 - (b) if required to do so by the trustee—security for the cost of complying with the request is given to the trustee before the request is complied with.

70-15 Right of regulated debtor to request information etc. from trustee

- (1) This section is made for the purposes of section 70-56 of the Insolvency Practice Schedule (Bankruptcy).

Unreasonable requests

- (2) It is not reasonable for the trustee of a regulated debtor's estate to comply with a request to give information, provide a report or produce a document to the regulated debtor if the trustee, acting in good faith, is of the opinion that:
- (a) complying with the request would substantially prejudice the interests of one or more creditors or a third party and that prejudice outweighs the benefits of complying with the request; or
 - (b) the information, report or document would be privileged from production in legal proceedings on the ground of legal professional privilege; or
 - (c) disclosure of the information, report or document would found an action by a person for breach of confidence; or
 - (d) there is not sufficient available property to comply with the request; or
 - (e) the information, report or document has already been provided; or
 - (f) the information, report or document is required to be provided under the Act (including regulations made under the Act) within 20 business days of the request being made; or

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(g) the request is vexatious.

- (3) Without limiting paragraph (2)(g), a request may be taken to be vexatious if the trustee receives the request within 15 business days of receiving a similar request from the regulated debtor.

Reasonable requests

- (4) It is reasonable for the trustee of a regulated debtor's estate to comply with a request to give information, provide a report or produce a document to the regulated debtor if subsection (2) does not apply to the request.
- (5) Despite paragraph (2)(d), (e) or (f), it is also reasonable for the trustee of a regulated debtor's estate to comply with a request to give information, provide a report or produce a document to the regulated debtor if:
- (a) the regulated debtor agrees to bear the cost of complying with the request; and
 - (b) if required to do so by the trustee—security for the cost of complying with the request is given to the trustee before the request is complied with.

70-20 Initial information and declarations required to be given to creditors

- (1) This section is made for the purposes of section 70-50 of the Insolvency Practice Schedule (Bankruptcy).

Information about creditors' rights to be given

- (2) The trustee of a regulated debtor's estate must give information about the following to as many creditors as reasonably practicable:
- (a) the fact that the trustee has been appointed in relation to the regulated debtor's estate;
 - (b) the right of creditors to request information, reports and documents under sections 70-40 and 70-45 of the Insolvency Practice Schedule (Bankruptcy);
 - (c) the right of creditors to direct that a meeting of the creditors be held under section 75-15 of the Insolvency Practice Schedule (Bankruptcy);
 - (d) the right of creditors to give directions to the trustee under section 85-5 of the Insolvency Practice Schedule (Bankruptcy);
 - (e) the right of creditors to apply to the Inspector-General for a review of the remuneration received by the trustee under section 90-21 of the Insolvency Practice Schedule (Bankruptcy);
 - (f) the right of creditors to remove and replace the trustee under section 90-35 of the Insolvency Practice Schedule (Bankruptcy).

Declarations about relevant relationships

- (3) The trustee must also give a declaration to as many creditors as reasonably practicable:
- (a) stating whether any of the following:
 - (i) the trustee;

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- (ii) if the trustee's firm (if any) is a partnership—a partner in that partnership;
 - (iii) if the trustee's firm (if any) is a body corporate—that body corporate or an associate of that body corporate;
- has, or has had within the preceding 24 months, a relationship with:
- (iv) the regulated debtor; or
 - (v) a former trustee of the regulated debtor; and
- (b) if so, stating the trustee's reasons for believing that none of those relationships result in the trustee having a conflict of interest or duty.

Time for giving information etc.

- (4) The information and declaration must be given:
- (a) in writing; and
 - (b) at the same time as the trustee first communicates with the creditors in relation to the administration of regulated debtor's estate.

70-25 Initial remuneration notice

- (1) This section is made for the purposes of section 70-50 of the Insolvency Practice Schedule (Bankruptcy).
- (2) The trustee of a regulated debtor's estate must give to the regulated debtor and as many of the creditors as reasonably practicable a notice (an ***initial remuneration notice***) specifying the following:
 - (a) the method by which the trustee seeks to be remunerated;
 - (b) the rate of remuneration;
 - (c) an estimate of the expected amount of the trustee's remuneration;
 - (d) the method by which disbursements will be calculated.
- (3) The initial remuneration notice must:
 - (a) include a brief explanation of the types of methods that could be used to calculate remuneration; and
 - (b) specify the method the trustee proposes to use to calculate remuneration; and
 - (c) explain why the method is appropriate.
- (4) If the trustee proposes to receive remuneration worked out wholly or partly on a time-cost basis, the notice must include details about the respective rates at which the remuneration of the trustee and the other persons who will be assisting, or will be likely to assist, the trustee in the performance of his or her duties are to be calculated.
- (5) The initial remuneration notice must be in writing and must be given to the regulated debtor and the creditors:
 - (a) in the case of a trustee of a personal insolvency agreement who was not the controlling trustee for a debtor under section 188 or 192 of the Act before the agreement for the debtor was executed—within 28 days after the day the agreement is executed as required by section 216 of the Act; and

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- (b) in any other case:
 - (i) within 28 days after the day the trustee receives the regulated debtor's statement of affairs; or
 - (ii) if the trustee does not receive the regulated debtor's statement of affairs within 60 days after the date of the bankruptcy—within 7 days after the end of the 60 day period.

70-30 Reports about remuneration to be given before remuneration determinations are made

- (1) This section is made for the purposes of section 70-50 of the Insolvency Practice Schedule (Bankruptcy).

Reporting requirements when remuneration to be determined by committee of inspection

- (2) Before a remuneration determination for a trustee is made by a committee of inspection under section 60-10 of the Insolvency Practice Schedule (Bankruptcy), the trustee must:
 - (a) prepare a report setting out:
 - (i) such matters as will enable the committee of inspection to make an informed assessment as to whether the proposed remuneration is reasonable; and
 - (ii) the right of the regulated debtor and creditors to elect to receive a remuneration claim notice under section 70-35; and
 - (b) give a copy of the report to each member of the committee of inspection and the regulated debtor at the same time as notification is given of the relevant meeting of the committee.

Reporting requirements when remuneration to be determined by creditors

- (3) Before a remuneration determination for a trustee is made by resolution of the creditors under section 60-10 of the Insolvency Practice Schedule (Bankruptcy), the trustee must prepare a report setting out:
 - (a) such matters as will enable the creditors to make an informed assessment as to whether the proposed remuneration is reasonable; and
 - (b) the right of the regulated debtor and creditors to elect to receive a remuneration claim notice under section 70-35.
- (4) A copy of the report referred to in subsection (3) must be given to each of the creditors and the regulated debtor:
 - (a) if the proposed remuneration determination will be put to the creditors at a meeting—at the same time as notice of the meeting is given; or
 - (b) if the proposed remuneration determination will be put to the creditors in accordance with section 75-40 of the Insolvency Practice Schedule (Bankruptcy) (proposals without meeting)—at the same time as notice of the proposal under that section is given.

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Contents of report

- (5) Without limiting paragraph (2)(a) or subsection (3), the report must set out the following:
 - (a) a summary description of the major tasks performed, or likely to be performed, by the trustee;
 - (b) the costs associated with each of those major tasks;
 - (c) specify the rates at which the remuneration of the trustee and any other persons assisting, or likely to assist, the trustee will be calculated;
 - (d) if the trustee proposes to charge on the basis of a commission on money received by the administrator—the rate of the commission;
 - (e) the periods at which the trustee proposes to withdraw funds from the regulated debtor's estate in respect of the trustee's remuneration;
 - (f) an estimate of the total amount of the trustee's remuneration;
 - (g) an explanation of the likely impact of that remuneration on the dividends (if any) to creditors.

70-35 Remuneration claim notice

- (1) This section is made for the purposes of section 70-50 of the Insolvency Practice Schedule (Bankruptcy).
- (2) A regulated debtor or a creditor may elect to receive a remuneration claim notice. The election must be made within 28 days after receiving a report under section 70-30.
- (3) If:
 - (a) a regulated debtor or a creditor has elected under subsection (2) to receive a remuneration claim notice; and
 - (b) the total remuneration claimed by the trustee of the regulated debtor's estate is greater than the maximum default amount for the trustee;the trustee must give such a notice to the regulated debtor or creditor before finalising the administration.
- (4) A **remuneration claim notice** is a notice specifying the following:
 - (a) the total amount of remuneration claimed by the trustee;
 - (b) details of:
 - (i) the work performed for which remuneration is claimed; and
 - (ii) the method of calculating the amount of remuneration claimed; and
 - (iii) the amount of disbursements claimed; and
 - (iv) the method of calculating the amount of disbursements claimed;
 - (c) an explanation of any variation from the amounts set out in any report under section 70-30 in relation to:
 - (i) the remuneration claimed; and
 - (ii) the method of calculating the amount of remuneration claimed.
- (5) A **remuneration claim notice** must also include a statement advising the regulated debtor and the creditors that they may, within 28 days after receiving

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the notice, request the Inspector-General to review the amount of remuneration claimed by the trustee.

70-40 Declarations of relevant relationships must be kept up to date

- (1) This section is made for the purposes of section 70-50 of the Insolvency Practice Schedule (Bankruptcy).
- (2) If, after the trustee of a regulated debtor's estate has given a declaration under subsection 70-20(3):
 - (a) the declaration becomes out of date; or
 - (b) the trustee becomes aware of an error in the declaration;the trustee must, as soon as practicable, give a replacement declaration to as many of the creditors as reasonably practicable.

70-45 Requests for information by the Commonwealth

- (1) This section is made for the purposes of subsection 70-55(4) of the Insolvency Practice Schedule (Bankruptcy).
- (2) The Commonwealth must bear the cost of providing the information, report or document if, in the opinion of the trustee of a regulated debtor's estate, there is not sufficient property available to comply with the request for information, report or document.

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Division 75—Meetings

Subdivision A—Preliminary

75-1 Authority

Unless otherwise specified, this Division is made for the purposes of section 75-50 of the Insolvency Practice Schedule (Bankruptcy).

Subdivision B—Convening meetings

75-10 Persons to whom notice of meetings to be given

The trustee of a regulated debtor's estate must give notice in writing to a person of any meeting of the regulated debtor's creditors if:

- (a) the trustee is aware that the person is a creditor of the regulated debtor; and
- (b) the trustee is aware of one or more of the following:
 - (i) the address of a place of business of the person;
 - (ii) the address of a place of residence of the person or, in the case of a company, the address of its registered office;
 - (iii) an address to which notices may be sent to the person;
 - (iv) an email address to which notices may be sent to the person;
 - (v) any other method by which notices may be sent to the person.

75-15 How notice of meetings to be given

- (1) Notice of a meeting of creditors must:
 - (a) specify the date, time and place of the meeting; and
 - (b) specify the purpose for which the meeting is called; and
 - (c) state the effect of section 75-90 (entitlement to vote as creditor at meetings of creditors); and
 - (d) be in the approved form.
- (2) In the absence of evidence to the contrary, a statement in accordance with the approved form by the person convening a meeting (or a person acting on his or her behalf) is sufficient proof of the notice having been sent to a person at the address specified for that person in that notice.

75-20 Time for giving notice of meetings

The trustee must give notice of a meeting of creditors not less than 10 business days before the day of the meeting.

75-25 Notice about voting by proxy and appointment of attorney

- (1) When a notice of a meeting of creditors is given, the trustee must:
 - (a) include with the notice a form for use in appointing a proxy; and

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- (b) ensure that neither the name or description of any proxy is printed or inserted in the body of the form before it is sent out; and
 - (c) include in the notice a statement that, if a creditor wishes to be represented at the meeting by an attorney, the creditor must arrange for the power of attorney to be produced to the trustee at or before the meeting.
- (2) The form mentioned in paragraph (1)(a) must be in the approved form.

75-30 Time and place of meetings

- (1) The trustee must convene a meeting of creditors at the time and place that the trustee thinks are most convenient for the majority of persons entitled to receive notice of the meeting.
- (2) Subsection (1) does not prevent a meeting from taking place at separate venues provided that technology is available at the venues to give all persons attending the meeting a reasonable opportunity to participate.

75-35 Notice of electronic facilities for meetings

- (1) This section applies if:
 - (a) facilities for participating in meetings by electronic means are expected to be available at the place where a meeting is to be held; and
 - (b) the trustee considers that, having regard to all the circumstances, it will be appropriate to use those facilities.
- (2) The notice of the meeting must:
 - (a) set out the arrangements for using the facilities; and
 - (b) indicate that a person, or the proxy or attorney of a person, who wishes to participate in the meeting using such facilities must give to the trustee, not later than the second-last working day before the day on which the meeting is to be held, a written statement setting out:
 - (i) the name of the person and of the proxy or attorney (if any); and
 - (ii) an address to which notices to the person, proxy or attorney may be sent; and
 - (iii) a method by which the person, proxy or attorney may be contacted for the purposes of the meeting.

75-40 Notification of meetings to be lodged with Inspector-General

- (1) This section applies in relation to a meeting of creditors called under section 73 or Part X of the Act.
- (2) The trustee of a regulated debtor's estate must lodge, with the Inspector-General, a notice of the meeting of creditors in accordance with the approved form.
- (3) The notice must state at least the following information:
 - (a) the name of the regulated debtor;
 - (b) the purpose for which the meeting is being convened;
 - (c) the time, date and place for the meeting;

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- (d) the time and date by which proofs of debt, and proxies for the meeting, are to be submitted;
- (e) the name and contact details of the trustee.

Subdivision C—Procedures at meetings

75-50 Presiding at meetings

The trustee of a regulated debtor's estate must preside at meetings of creditors.

75-55 Agenda

The agenda for a meeting of creditors must deal with the following items:

- (a) opening of the meeting and introduction of the trustee and the regulated debtor (or legal personal representative in the case of a deceased debtor);
- (b) announcement of appointment of proxies and attorneys and circulation of instruments appointing proxies and copies of powers of attorney for inspection by the persons present;
- (c) determination of whether a quorum exists;
- (d) if the meeting is the first meeting—tabling of the regulated debtor's statement of affairs;
- (e) statements by the trustee and by creditors, their proxies or attorneys;
- (f) questions to the trustee and to the regulated debtor (or legal personal representative in the case of a deceased debtor);
- (g) summary of matters raised in statements and questions by the trustee;
- (h) proposed resolutions (if any);
- (i) appointment of committee of inspection (if required);
- (j) any other business;
- (k) fixing of time, date and place for another meeting;
- (l) closure of meeting.

75-60 Tabling of regulated debtor's statement of affairs

- (1) If the meeting is the first meeting of the creditors, the trustee must table the regulated debtor's statement of affairs at the meeting.
- (2) If any of the creditors or their representatives request that a creditor be given a copy of the statement of affairs, the trustee must comply with the request as soon as reasonably practicable.

75-65 Conducting meetings

- (1) The trustee must open a meeting of creditors and introduce himself or herself and, if the regulated debtor is present, introduce the regulated debtor.
- (2) If the regulated debtor is not present, the trustee must announce that fact and, if the trustee is aware of any reason why the regulated debtor is not present, must state that reason.

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- (3) If the regulated debtor's statement of affairs is tabled under section 75-60, the trustee:
 - (a) may make statements to the meeting in relation to the statement; and
 - (b) must invite the persons participating and entitled to vote at the meeting to make statements to the meeting in relation to the statement.
- (4) After the statements (if any) have been made, the trustee must invite the persons participating and entitled to vote at the meeting to ask questions of the trustee and, if the regulated debtor is present, of the regulated debtor.

75-70 Proposed resolutions and amendments of proposed resolutions

- (1) The trustee must invite the persons participating and entitled to vote at a meeting to propose any relevant resolutions.
- (2) The only persons who may propose resolutions, or amendments of proposed resolutions, at a meeting are:
 - (a) the trustee; and
 - (b) the persons participating and entitled to vote at the meeting.
- (3) A proposed resolution or amendment does not need to be seconded.
- (4) If a resolution is proposed, the trustee must allow a reasonable time for debate on the proposed resolution and on any amendment to the proposed resolution.
- (5) After a reasonable time for debate has elapsed, the trustee must:
 - (a) if no amendment has been proposed—put the proposed resolution to a vote; or
 - (b) if an amendment or amendments have been proposed, put the amendment or amendments to a vote; and
 - (i) if the amendment or amendments are defeated—put the resolution as originally proposed to a vote; or
 - (ii) if an amendment or amendments are passed—put the proposed resolution as amended to a vote.

75-75 Participating in meetings by electronic means

- (1) This section applies if:
 - (a) facilities for participating in a meeting of creditors by electronic means will be available for the meeting; and
 - (b) a person, or a person's proxy or attorney has given the trustee a statement in accordance with paragraph 75-35(2)(b).
- (2) The trustee must take all reasonable steps to ensure that the facilities are available and operating during the meeting.
- (3) The person, or the person's proxy or attorney, is responsible for accessing the facilities during the meeting.
- (4) A person who, or whose proxy or attorney, participates in the meeting using the facilities is taken to be present in person at the meeting.

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75-80 Statement by creditor as to amount of debt

If a meeting of creditors of a regulated debtor's estate is convened, notice of the meeting must state that each creditor must give to the trustee of the regulated debtor's estate, at or before the meeting, a written statement setting out:

- (a) the amount in respect of which the creditor claims that the regulated debtor is indebted to the creditor; and
- (b) if the creditor has been assigned a debt that the regulated debtor owes to the creditor—the value of the consideration that the creditor gave for the assignment of the debt; and
- (c) if the meeting is the first meeting of the creditors:
 - (i) whether the creditor holds a security in respect of the debt and, if so, the value of the security as estimated by the creditor and the amount of the creditor's debt after deducting that value; and
 - (ii) brief particulars of the transaction and circumstances that gave rise to the debt.

75-90 Entitlement to vote at meetings of creditors

- (1) A person other than a creditor (or the creditor's proxy or attorney) is not entitled to vote at a meeting of creditors.
- (2) Subject to subsections (3) and (4), each creditor is entitled to vote and has one vote.
- (3) If a creditor is a secured creditor, the creditor is not entitled to vote unless the debt, or the total amount of the debts, owed to the creditor exceeds the amount estimated by the creditor in the statement given to the trustee under section 75-80 to be the value of the security.
- (4) A creditor who has failed to give to the trustee a statement in accordance with section 75-80 is not entitled to vote.
- (5) The trustee of the regulated debtor's estate may determine any question that arises as to the entitlement of a person to vote.
- (6) If the trustee needs a period in which to determine a question referred to in subsection (5), the meeting is to be adjourned to such time, date and place as the meeting resolves (being a date not later than 10 business days after the date of the original meeting) for the purpose of enabling the trustee to determine the question.

75-95 Quorum

- (1) A quorum consists of:
 - (a) the trustee; and
 - (b) if the number of persons entitled to vote exceeds 2—at least 2 of those persons present in person or by proxy or attorney; and
 - (c) if the number of persons entitled to vote does not exceed 2—that person or those persons present in person or by proxy or attorney.

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- (2) A meeting is sufficiently constituted if:
 - (a) the trustee is present; but
 - (b) only one person entitled to vote is present in person at the meeting; if the person entitled to vote represents personally or by proxy or otherwise a number of persons sufficient to constitute a quorum.
- (3) If within 30 minutes after the time appointed for a meeting:
 - (a) a quorum is not present; or
 - (b) the meeting is not otherwise sufficiently constituted;the meeting is adjourned:
 - (c) to the same day in the next week at the same time and place; or
 - (d) to the day (not being less than 5 or more than 15 business days after the day on which the meeting is adjourned) and at the time and place that the person presiding appoints.
- (4) The trustee must give notice of the adjournment by the end of the next business day to the persons to whom notice of the meeting must be given under section 75-10.
- (5) A meeting on the date and at the place to which the meeting is adjourned is not to be taken to be incompetent to act only because of a failure to comply with subsection (4) unless the Court, on the application of the trustee, or of a creditor or contributory, otherwise declares.
- (6) If within 30 minutes after the time appointed for the adjourned meeting:
 - (a) a quorum is not present; or
 - (b) the meeting is not otherwise sufficiently constituted;the adjourned meeting lapses.

75-100 Voting on resolutions

- (1) A resolution put to the vote at a meeting is to be decided:
 - (a) if a poll is requested by a person participating and entitled to vote at the meeting—by a poll; or
 - (b) otherwise—on the voices.
- (2) Unless a poll is requested, the trustee must declare that a resolution has been:
 - (a) passed; or
 - (b) passed unanimously; or
 - (c) passed by a particular majority; or
 - (d) lost;on the voices.
- (3) If a poll is requested:
 - (a) the poll must be taken at the same meeting; and
 - (b) the trustee may determine the manner in which the poll is to be taken.
- (4) For the purposes of determining whether a resolution put to the meeting is passed, the value of a creditor who:

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- (a) has been assigned a debt; and
- (b) is present at the meeting personally, by telephone, by attorney or by proxy; and
- (c) is voting on the resolution;

is to be worked out by taking the value of the assigned debt to be equal to the value of the consideration that the creditor gave for the assignment of the debt.

75-105 When a resolution is passed at a meeting of creditors

- (1) A **resolution** is passed at a meeting of creditors of a regulated debtor if:
 - (a) a majority of the creditors voting (whether in person, by attorney or by proxy) vote in favour of the resolution; and
 - (b) a majority in value of the creditors voting (whether in person, by attorney or by proxy) vote in favour of the resolution.
- (2) A **resolution** is not passed at a meeting of creditors of a regulated debtor if:
 - (a) a majority of the creditors voting (whether in person, by attorney or by proxy) vote against the resolution; and
 - (b) a majority in value of the creditors voting (whether in person, by attorney or by proxy) vote against the resolution.
- (3) If no result is reached under subsection (1) or (2) and the resolution does not relate to the remuneration or the removal of the trustee:
 - (a) the trustee may exercise a casting vote in favour of the resolution, in which case the resolution is passed; or
 - (b) the trustee may exercise a casting vote against the resolution, in which case the resolution is not passed; or
 - (c) if the trustee does not exercise a casting vote, the resolution is not passed.
- (4) If no result is reached under subsection (1) or (2) and the resolution relates to remuneration, the resolution is not passed.
- (5) If no result is reached under subsection (1) or (2) and the resolution relates to the removal of the trustee:
 - (a) the trustee may exercise a casting vote in favour of the resolution, in which case the resolution is passed; or
 - (b) if paragraph (a) does not apply—the resolution is not passed.
- (6) If no result is reached under subsection (1) or (2), the trustee must:
 - (a) inform the meeting of the trustee's reasons for exercising, or not exercising, as the case may be, a casting vote under subsection (3); and
 - (b) include those reasons in the minutes of the meeting.

75-120 When a resolution is passed without a meeting of creditors

- (1) This section is made for the purposes of paragraphs 75-40(5)(a) and (b) of the Insolvency Practice Schedule (Bankruptcy).

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- (2) A proposal put to the creditors of a regulated debtor by giving notice under section 75-40 of the Insolvency Practice Schedule (Bankruptcy) is taken to have been passed as a **resolution** if:
 - (a) a majority of the creditors whose replies to the notice are received by the trustee within the time specified in the notice (the **responding creditors**) vote Yes; and
 - (b) a majority in value of the responding creditors vote Yes; and
 - (c) not more than 25% in value of the responding creditors notify the trustee within the time specified in the notice that they object to the proposal being resolved without a meeting of creditors.
- (3) Otherwise, the proposal is not taken to have been passed as a resolution.
- (4) The trustee must make a written record of the outcome of the proposal in the books required to be kept under section 70-10 of the Insolvency Practice Schedule (Bankruptcy).

75-125 When a special resolution is passed at a meeting of creditors

- (1) A **special resolution** is passed at a meeting of creditors of a regulated debtor if:
 - (a) 75% of the creditors voting at the meeting vote in favour of the resolution; and
 - (b) 75% in value of the creditors voting at the meeting vote in favour of the resolution.
- (2) Otherwise, the special resolution is not passed.

75-130 When a special resolution is passed without a meeting of creditors

- (1) This section is made for the purposes of paragraphs 75-40(5)(a) and (b) of the Insolvency Practice Schedule (Bankruptcy).
- (2) A proposal put to the creditors of a regulated debtor by giving notice under section 75-40 of the Insolvency Practice Schedule (Bankruptcy) is passed as a **special resolution** if:
 - (a) 75% of the creditors whose replies to the notice are received by the trustee within the time specified in the notice (the **responding creditors**) vote Yes; and
 - (b) 75% in value of the responding creditors vote Yes; and
 - (c) none of the responding creditors notify the trustee within that time that they object to the proposal being resolved without a meeting of creditors.
- (3) Otherwise, the special resolution is not passed.
- (4) The trustee must make a written record of the outcome of the proposal in the books required to be kept under section 70-10 of the Insolvency Practice Schedule (Bankruptcy).

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75-135 Adjournment of meetings of creditors

- (1) A meeting of creditors may be adjourned from time to time and from place to place:
 - (a) by resolution; or
 - (b) by the trustee of the regulated debtor's estate.
- (2) The meeting must not be adjourned to a day that is more than 15 business days after the first day on which the original meeting was held.
- (3) Unless otherwise provided by the resolution by which it is adjourned, the adjourned meeting must be held at the same place as the original meeting.
- (4) The trustee must immediately give notice of the adjournment to the persons to whom notice of the meeting must be given under section 75-10.
- (5) If a meeting is adjourned to a day more than 6 business days after the passing of the resolution by which it is adjourned, the trustee must cause notice of the day, time and place of the resumption of the meeting to be published at least 5 days before that day.
- (6) A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.

75-140 Minutes of meetings

- (1) The trustee must, within 10 business days after the end of a meeting of creditors:
 - (a) cause minutes of the proceedings to be drawn up and entered in a record kept for the purpose; and
 - (b) sign the minutes after they have been entered in the record.
- (2) If the trustee:
 - (a) dies without having complied with paragraph (1)(b); or
 - (b) otherwise becomes incapable of complying with paragraph (1)(b);a creditor who attended the meeting may sign the minutes as required by that paragraph.
- (3) A record of the persons present in person, by proxy or by attorney at a meeting must be prepared and kept in the approved form.
- (4) The trustee must cause the minutes and the record of persons present at the meeting to be made available for inspection by creditors at the principal place at which the trustee practises.

Subdivision D—Rules about proxies and attorneys

75-150 Appointment of proxies

- (1) A person entitled to vote at a meeting may, in writing, appoint an individual as the person's proxy to attend and vote at the meeting.

Note: The appointment of a proxy must be in the approved form: see section 75-25.

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Division 75 Meetings

Section 75-165

- (2) Subject to subsection (3) and to the instrument of appointment, a proxy appointed under this section has the same right to speak and vote at the meeting as the person who appointed the proxy.
- (3) A person is not entitled to speak or vote as proxy at the meeting unless the instrument of appointment (or a copy) has been given to:
 - (a) the trustee; or
 - (b) the person named in the notice convening the meeting as the person who is to receive the instrument.

75-165 Person may attend and vote by attorney

- (1) A person entitled to attend and vote at a meeting may attend and vote at a meeting by the person's attorney.
- (2) A person claiming to be the attorney of a person entitled to attend and vote at a meeting is not entitled to speak or vote as attorney at the meeting unless:
 - (a) the instrument by which the person was appointed as attorney has been produced to the trustee; or
 - (b) the trustee is otherwise satisfied that the person claiming to be the attorney of the person entitled to vote is the duly authorised attorney of that person.

Subdivision E—Additional rules for particular kinds of estates

75-207 Joint bankruptcies

- (1) At a meeting of the creditors in relation to the following kinds of bankruptcy, the trustee must explain to the persons participating and entitled to vote at a meeting and their representatives the likely effect of section 110 of the Act with respect to the distribution of dividends:
 - (a) a bankruptcy that occurs as the result of a sequestration order made under section 52 of the Act, being an order made on a petition presented under section 46 of the Act;
 - (b) a bankruptcy that occurs by force of section 56E or 57 of the Act;
 - (c) bankruptcies in respect of which an order under section 53 of the Act has been made;
 - (d) bankruptcies that occur under section 55 of the Act if:
 - (i) the date of each bankruptcy is the same; and
 - (ii) immediately before the bankruptcies occurred, the bankrupts were joint debtors or partners who owned property jointly.
- (2) At a meeting of the creditors in a bankruptcy to which section 141 of the Act applies, the trustee must explain to the persons participating and entitled to vote at the meeting the likely effect of that section with respect to the distribution of dividends.

Subdivision F—Other rules about meetings

75-250 Directions to trustee to convene a meeting—when reasonable and not reasonable

- (1) This section is made for the purposes of section 75-15 of the Insolvency Practice Schedule (Bankruptcy).

Unreasonable directions

- (2) A direction to the trustee of a regulated debtor's estate to convene a meeting of the creditors is not reasonable if the trustee, acting in good faith, is of the opinion that:
- (a) complying with the direction would substantially prejudice the interests of one or more creditors or a third party and that prejudice outweighs the benefits of complying with the direction; or
 - (b) there is not sufficient available property to comply with the direction; or
 - (c) a meeting of the creditors dealing with the same matters covered by the direction has already been held, or will be held within 15 business days after the direction is given; or
 - (d) the direction for the meeting is vexatious.
- (3) Without limiting paragraph (2)(d), a direction may be taken to be vexatious if it is given within 20 business days after a similar direction was given.

Reasonable directions

- (4) A direction to the trustee of a regulated debtor's estate to convene a meeting of the creditors is reasonable if subsection (2) does not apply to the direction.
- (5) Despite paragraph (2)(b) or (c), a direction to the trustee of a regulated debtor's estate to convene a meeting is also reasonable if:
- (a) the creditors agree to bear the cost of complying with the direction; and
 - (b) if required to do so by the trustee—security for the cost of complying with the direction is given to the trustee before the meeting is convened.

75-255 Duties of trustee when presiding at meeting

When presiding at a meeting of creditors, the trustee must:

- (a) ensure that proper meeting procedures are followed; and
- (b) ensure that the requirements relating to meetings set out in the Act, the regulations and these Rules are complied with; and
- (c) ensure that all persons attending the meeting who are entitled to ask questions of the trustee, the regulated debtor or, in the case of a deceased debtor, the legal personal representative of the regulated debtor are given an opportunity to do so; and
- (d) take reasonable steps to establish whether there is sufficient evidence to support a creditor's statement under section 75-80 in relation to the amount of liability of the regulated debtor to the creditor.

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Division 75 Meetings

Section 75-260

75-260 Requirements relating to meetings to remove trustee of a regulated debtor's estate

- (1) This section applies if the creditors, by resolution at a meeting, propose to:
 - (a) remove the trustee (the *outgoing trustee*) of a regulated debtor's estate; and
 - (b) appoint another person (the *incoming trustee*) as the trustee of the regulated debtor's estate;under section 90-35 of the Insolvency Practice Schedule (Bankruptcy).
- (2) The outgoing trustee and the incoming trustee have a right to speak at the meeting at which the trustee is proposed to be removed or appointed, as the case may be.
- (3) A written consent to act as trustee signed by the incoming trustee must be tabled at the meeting at which the incoming trustee is proposed to be appointed.
- (4) The incoming trustee must also table a written declaration:
 - (a) stating whether any of the following:
 - (i) the incoming trustee;
 - (ii) if the trustee's firm (if any) is a partnership—a partner in that partnership;
 - (iii) if the trustee's firm (if any) is a body corporate—that body corporate or an associate of that body corporate; has, or has had within the preceding 24 months, a relationship with:
 - (iv) the regulated debtor; or
 - (v) a former trustee of the regulated debtor; and
 - (b) if so, stating the incoming trustee's reasons for believing that none of those relationships result in the trustee having a conflict of interest or duty.

75-265 Substantial compliance with Division is sufficient

A meeting, or anything done at a meeting, is not invalid because a requirement of this Division has not been strictly complied with, if the requirement has been substantially complied with.

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Division 80—Committees of inspection

80-10 Resignation, removal and vacancies

- (1) This section is made for the purposes of subsection 80-30(2) of the Insolvency Practice Schedule (Bankruptcy).
- (2) A member of a committee of inspection may resign by notice in writing signed by the member and delivered to the trustee of the regulated debtor's estate.
- (3) The office of a member of a committee of inspection becomes vacant if the member:
 - (a) becomes an insolvent under administration; or
 - (b) is absent from 5 consecutive meetings of the committee without the leave of those members who together with himself or herself represent the creditors.
- (4) A member of the committee of inspection may be removed by a resolution at a meeting of creditors of which 7 days' notice has been given stating the object of the meeting.
- (5) If:
 - (a) there is a vacancy in the membership of a committee of inspection; and
 - (b) there are at least 2 remaining members of the committee;the remaining members may continue to act despite the vacancy and may appoint a person to fill the vacancy.
- (6) If:
 - (a) there is a vacancy in the membership of a committee of inspection; and
 - (b) there is not at least 2 remaining members of the committee;one or more creditors may request the trustee to convene a meeting of creditors to fill the vacancy and the trustee must convene a meeting accordingly.

80-15 Reasonable requests for information etc.

- (1) This section is made for the purposes of section 80-40 of the Insolvency Practice Schedule (Bankruptcy).

Unreasonable requests

- (2) It is not reasonable for the trustee of a regulated debtor's estate to comply with a request to give information, provide a report or produce a document to the committee of inspection if the trustee, acting in good faith, is of the opinion that:
 - (a) complying with the request would substantially prejudice the interests of one or more creditors or a third party and that prejudice outweighs the benefits of complying with the request; or
 - (b) the information, report or document would be privileged from production in legal proceedings on the ground of legal professional privilege; or

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Division 80 Committees of inspection

Section 80-20

- (c) disclosure of the information, report or document would found an action by a person for breach of confidence; or
 - (d) there is not sufficient available property to comply with the request; or
 - (e) the information, report or document has already been provided; or
 - (f) the request is vexatious.
- (3) Without limiting paragraph (2)(f), a request may be taken to be vexatious if it is made within 15 business days of a similar request being made by the committee of inspection.

Reasonable requests

- (4) It is reasonable for the trustee of a regulated debtor's estate to comply with a request to give information, provide a report or produce a document to the committee of inspection if subsection (2) does not apply to the request.
- (5) Despite paragraph (2)(d) or (e), it is also reasonable for the trustee of a regulated debtor's estate to comply with a request to give information, provide a report or produce a document to the committee of inspection debtor if:
- (a) the committee agrees to bear the cost of complying with the request; and
 - (b) if required to do so by the trustee—security for the cost of complying with the request is given to the trustee before the request is complied with.

80-20 Time for complying with reasonable requests

- (1) This section is made for the purposes of section 80-45 of the Insolvency Practice Schedule (Bankruptcy).
- (2) If a request for information or a report or document is made by a committee of inspection under section 80-40 of the Insolvency Practice Schedule (Bankruptcy), the trustee must give the information, report or document within 5 business days after the request was made.
- (3) Subsection (2) does not apply if, under the Act or these Rules, it is not reasonable for the trustee to comply with the request.

80-25 Notice requirements for unreasonable requests

- (1) This section applies if:
- (a) a request for information or a report or document is made by a committee of inspection under section 80-40 of the Insolvency Practice Schedule (Bankruptcy); and
 - (b) under the Act or these Rules, it is not reasonable for the trustee to comply with the request.
- (2) The trustee must:
- (a) notify the committee of inspection that it is not reasonable for the trustee to comply with the request, and of the reasons why it is not reasonable; and
 - (b) make a written record in the books required to be kept under section 70-10 of the Insolvency Practice Schedule (Bankruptcy) of the fact that the request was not complied with, and of the reasons.

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Division 90—Review of the administration of a regulated debtor's estate

Subdivision A—Review by Inspector-General

90-1 Authority

Unless otherwise stated, a provision of this Subdivision is made for the purposes of section 90-22 of the Insolvency Practice Schedule (Bankruptcy).

90-5 Review of trustee remuneration on application

- (1) An application for a review of remuneration by the regulated debtor or a creditor under paragraph 90-21(2)(b) of the Insolvency Practice Schedule (Bankruptcy) must be made:
 - (a) in writing; and
 - (b) if the regulated debtor or creditor has elected to receive a remuneration claim notice—within 28 days after the notice is received; and
 - (c) if paragraph (b) does not apply—within 28 days after the end of the administration of the estate.

Note: See Subdivision B of this Division for rules about how a review must be conducted.

- (2) The Inspector-General may, before or after the end of the 28 days mentioned in subsection (1), extend the period in which an application for review may be made if the Inspector-General is satisfied that:
 - (a) the applicant and the trustee have been engaged in an alternative dispute resolution process to try to resolve the matter; or
 - (b) it is otherwise appropriate, in all the circumstances, to extend the period.
- (3) The Inspector-General may extend the period for any period the Inspector-General considers appropriate in all the circumstances.
- (4) The applicant may apply to the Administrative Appeals Tribunal for review of a decision by the Inspector-General under subsection (2) to refuse to extend the period in which an application for review may be made.
- (5) The trustee may apply to the Administrative Appeals Tribunal for review of a decision by the Inspector-General under subsection (2) to extend the period in which an application for review may be made.

90-10 Application threshold

- (1) This section applies if an application for review of the remuneration received by the trustee of a regulated debtor's estate is made under paragraph 90-21(2)(b) of the Insolvency Practice Schedule (Bankruptcy).
- (2) The Inspector-General must refuse to accept the application:
 - (a) unless the Inspector-General is satisfied on reasonable grounds that one or more of the following apply:

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- (i) the trustee's remuneration may have been fixed in a manner that is inconsistent with the requirements of the Act, the regulations or these Rules;
 - (ii) the trustee may have acted improperly, or without due care and diligence, in the administration of the estate; or
- (b) if the Inspector-General is satisfied on reasonable grounds that:
 - (i) the applicant does not have an interest in the outcome of the review; or
 - (ii) the applicant has not adequately particularised the issue giving rise to the review; or
 - (iii) the application is frivolous or vexatious.
- (3) However, the Inspector-General may accept an application if the Inspector-General is satisfied that there are exceptional circumstances to justify the review.
- (4) The Inspector-General may refuse to accept an application if the Inspector-General is satisfied on reasonable grounds that:
 - (a) it was appropriate in all the circumstances for the applicant to attempt to resolve the matter without seeking a review under this Subdivision; and
 - (b) the applicant did not do so; and
 - (c) the applicant did not provide a reasonable explanation for not doing so.
- (5) If the Inspector-General refuses to accept the application, the Inspector-General must give the applicant and the trustee written notice of the refusal.
- (6) The notice of refusal must be given to the applicant and the trustee within 14 days after the day the Inspector-General refuses the application and must include the reasons for the refusal.

Subdivision B—Conduct of reviews by Inspector-General

90-50 Preliminary

- (1) Unless otherwise stated, a provision of this Subdivision is made for the purposes of sections 65-46 and 90-22 of the Insolvency Practice Schedule (Bankruptcy).
- (2) If the Inspector-General:
 - (a) accepts an application for review under:
 - (i) section 65-20 of these Rules; or
 - (ii) paragraph 90-21(2)(b) of the Insolvency Practice Schedule (Bankruptcy); or
 - (b) decides, under paragraph 90-21(2)(a) of the Insolvency Practice Schedule (Bankruptcy) to carry out a review on his or her own initiative;the Inspector-General must conduct the review in accordance with this Subdivision.

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90-55 Conduct of review and powers

- (1) The Inspector-General must conduct the review with as little formality and technicality, and with as much expedition, as the Act, the regulations, these Rules, and a proper consideration of the matter, permit.
- (2) In conducting the review, the Inspector-General:
 - (a) is not bound by legal technicalities, legal forms or rules of evidence; and
 - (b) may inform himself or herself on any matter relevant to the review in such manner as he or she thinks appropriate.
- (3) In conducting the review, the Inspector-General may do any of the following:
 - (a) conduct the review:
 - (i) with the parties present; or
 - (ii) on the papers; or
 - (iii) in part with the parties present and in part on the papers;
 - (b) adjourn or discontinue the review if the Inspector-General considers it necessary or appropriate to do so;
 - (c) engage an expert to assist in the review and arrange for payment to be made to the expert;
 - (d) direct the trustee to provide an itemised invoice in a form, and within the time, specified in the direction for work undertaken by the trustee;
 - (e) direct a third party to give an itemised bill of costs in a form, and within the time, specified in the direction in relation to work undertaken by the third party;
 - (f) interview any party to the review and allow the other party or their representative to question that party;
 - (g) direct a person to give a written statement, in a specified form and signed by the person, about a matter relevant to the review;
 - (h) direct the trustee to produce to the Inspector-General or to a party to the review, all or part of the trustee's files or documents in relation to the administration of the regulated debtor's estate;
 - (i) copy documents, or arrange for copies to be made and delivered to the Inspector-General or a party to the review;
 - (j) direct a party seeking inspection, production or copies of documents to comply with conditions (including conditions relating to payment) in relation to the inspection, production or copying;
 - (k) proceed with the review in the absence of a party if the Inspector-General considers it necessary or appropriate to do so;
 - (l) direct the trustee to take particular action for the administration of the estate, including refunding any remuneration not properly claimed or supported.

Note: This section does not exclude the need for the Inspector-General to provide procedural fairness when conducting the review.

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Division 90 Review of the administration of a regulated debtor's estate

Section 90-60

90-60 Non-compliance with directions

- (1) If a person to whom the Inspector-General gives a direction under subsection 90-55(3) does not comply with the direction, the Inspector-General may conduct the review on the basis of the information available to the Inspector-General.
- (2) If the trustee does not comply with a direction of the Inspector-General under paragraph 90-55(3)(d), (h) or (l), the Inspector-General may direct that the trustee is not entitled to the remuneration, or part of the remuneration, that is the subject of the review.
- (3) If a third party does not comply with a direction of the Inspector-General under paragraph 90-55(3)(e), the Inspector-General may order that the trustee may declare and distribute a final dividend in the administration of the regulated debtor's estate without regard to any claim of the third party.
- (4) If the Inspector-General makes an order under subsection (3), the estate of the regulated debtor has no liability to the third party for the bill of costs that is the subject of the review.

90-65 Decision of Inspector-General on review

- (1) The Inspector-General must complete, and make a decision on, the review:
 - (a) if the review was conducted on application—within 60 days after the day the Inspector-General accepts the application; or
 - (b) if the review was conducted on his or her own initiative—within 60 days after commencing the review.
- (2) The Inspector-General may decide to:
 - (a) affirm the amount claimed by the trustee or the person who provided services in relation to the administration of the regulated debtor's estate (a **third party**); or
 - (b) disallow all or part of the trustee's claim for remuneration and substitute another amount for the amount claimed; or
 - (c) disallow all or part of the third party's bill of costs and substitute another amount for the amount claimed.
- (3) If the Inspector-General is satisfied that a withdrawal by the trustee of funds from the regulated debtor's estate for payment of the trustee's remuneration exceeds the amount of remuneration the trustee is entitled to under the Act, the Inspector-General may require the trustee to repay the excess to the estate.
- (4) When the Inspector-General makes his or her decision, the Inspector-General must prepare a written statement that:
 - (a) sets out the decision of the Inspector-General; and
 - (b) sets out the reasons for the decision; and
 - (c) sets out the findings on any material questions of fact; and
 - (d) refers to evidence or other material on which the findings of fact are based; and

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(e) sets out the effect of subsection 90-21(3) of Insolvency Practice Schedule (Bankruptcy) in relation to the Inspector-General's decision.

Note: Subsection 90-21(3) of the Insolvency Practice Schedule (Bankruptcy) allows the trustee, the regulated debtor or a creditor of the regulated debtor to apply to the Court for an order in relation to the Inspector-General's decision in relation to the review.

(5) The Inspector-General must give each party to the review a copy of the statement within 14 days after making the decision.

Subdivision C—Application to Court for review of administration

90-80 Time limit on certain applications to Court for review

- (1) This section applies in relation to an application for an order under section 90-15 of the Insolvency Practice Schedule (Bankruptcy) if the application:
 - (a) is made other than by the Inspector-General; and
 - (b) relates to an act, omission or decision of the trustee.
- (2) The application must be made no later than 60 days after the day on which the person making the application became aware of the trustee's act, omission or decision.