

# Insolvency practice rules

Proposal Paper  
November 2014

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# CONSULTATION PROCESS

## REQUEST FOR FEEDBACK AND COMMENTS

We invite interested parties to lodge written submissions on the design of the insolvency practice rules.

While submissions may be lodged electronically, by post or by facsimile, electronic lodgement is preferred.

Submissions will be made available on the Treasury website unless you clearly indicate that you would like all or part of your submission to remain confidential. Automatically generated confidentiality statements in emails do not suffice for this purpose. A request made under the *Freedom of Information Act 1982* for access to a submission marked confidential will be determined in accordance with that act.

## Closing date for submissions: 19 December 2014

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# 1. BACKGROUND

1. An efficient insolvency system is an essential component of Australia's economic health and is critical for fostering commercial confidence and predictability. While Australia currently possesses a world-standard insolvency system, a number of recent reviews have pointed to areas where reform is necessary.
2. The Government has today released draft legislation to strengthen and streamline Australia's personal bankruptcy and corporate insolvency regimes. The reforms aim to align, simplify and strengthen Australia's insolvency framework in order to remove unnecessary costs from the insolvency industry. The reform package is expected to result in savings of around \$215 million over the first four years of operation.
3. In order to provide the community with a full understanding of how the package will impact on stakeholders to corporate and personal insolvency administrations, this paper sets out the details of the Government's Insolvency Practice Rules (IPRs), as well as amendments to the *Corporations Regulations 2001* (the Corporations Regulations) and the *Bankruptcy Regulations 1996* (the Bankruptcy Regulations), necessary to implement the package of reforms.
4. The draft reforms have been designed to improve outcomes for business, and individual creditors, as well as insolvency practitioners by:
  - improving efficiencies in insolvency administrations;
  - increasing competition within the market for insolvency services;
  - empowering stakeholders to better protect their own interests by enhancing communication and transparency between insolvency practitioners and creditors;
  - increasing confidence in the professionalism and competency of insolvency practitioners; and
  - Improving the supervision of the insolvency industry.
5. Unless otherwise noted references in the paper to sections are references to sections of the Insolvency Law Reform Bill 2014 (ILRB).

## 1.1 DELEGATED LEGISLATION UNDER THE INSOLVENCY LAW REFORM BILL

6. Under section 105-1 the Minister can make IPRs. Section 5-5 provides that if the ILRB provides that 'prescribed' means prescribed in the IPRs.

## 1.2 STRUCTURE OF THE PAPER

7. The paper is divided into two parts. Part 1 sets out the changes to delegated legislation that the Government is proposing to make in the personal insolvency sphere. Part 2 sets out the changes to delegated legislation that the Government is proposing to make in the corporate insolvency sphere.

8. The separate parts are designed to be self-contained. As such if a stakeholder is only interested in the proposed changes in the corporate insolvency sphere they can limit themselves to reading the section concerning corporate insolvency.

## 2. PART 1 – PERSONAL INSOLVENCY

### 2.1 DIVISION 15 – REGISTER OF TRUSTEES

9. Under section 15-1, the Inspector-General is required to establish and maintain a Register of Trustees. The IPRs will provide guidance to the Inspector-General on what information should be kept on the Register.
10. This information supports the new registration framework by ensuring that accurate and timely information regarding insolvency practitioners is maintained by the Inspector-General. For the purposes of these reforms, it is proposed that the Inspector-General should record the following information when registering persons as a trustee on the Register:
  - name of the person;
  - the day of the beginning of the registration of that person as a trustee;
  - the address of the principal place where the person practices as a trustee and the addresses of the other places (if any) at which he or she so practices;
  - if the person practices as a trustee as a member of a firm or under a name or style other than his or her own name – the name of that firm/name/style under which he or she so practices;
  - particulars of any past disciplinary action or suspension;
  - a statement or summary of any conditions applying to the person’s entitlement to practise as a registered trustee; and
  - any other information that the regulator considers appropriate.
11. It is proposed that all information on the Register of trustees be public.

### 2.2 DIVISION 20 – REGISTERING TRUSTEES

#### 2.2.1 Application for registration

12. Under subsection 20-5(3), an applicant’s fee is payable before a Committee is established to consider their application for registration.
13. In personal insolvency the fee will continue to be set through an instrument made by the Attorney-General under subsection 316(1) of the Bankruptcy Act.

#### 2.2.2 Committee members

14. The Committee formed under section 20-10 must include a registered trustee chosen by a prescribed body. It is proposed that the Australian Restructuring, Insolvency and Turnaround Association (ARITA) (ARITA was formerly the Insolvency Practitioners’ Association of Australia) be prescribed. It is proposed that the representative of ARITA appointed to a Committee must have at least five years industry experience (see paragraph 50-5(2)(a)). This reflects the current approach adopted in regulation 8.05B of the Bankruptcy Regulations.
15. The IPRs will clarify that the appointee of ARITA is to be appointed in their personal capacity and not as an agent of ARITA.

### 2.2.3 Applicant's qualifications, experience, knowledge and abilities

16. Subsection 20-20(4) sets out the factors the Committee will consider in deciding whether the applicant should be registered. A factor that the Committee is required to consider is whether the applicant satisfies the prescribed qualification, experience, knowledge and abilities (subsection 20-20(4)(a)).
17. The proposed reforms would provide a harmonised set of entry standards for insolvency practitioners.
18. Matters which the Committee should take into account will be broadly based on the current personal insolvency regime.
19. The IPRS will include rules reflecting the policy settings in Regulation 8.02 of the Bankruptcy Regulations with the following changes:
  - The applicant must hold one or more degrees that represent three years of full time study in commercial law and accounting, but with no less than one year of equivalent full time study in either;
  - The applicant must be engaged in relevant employment on a full-time basis for a total of not less than three years in the preceding five years. The definition of 'relevant employment' would be the same as is currently used in Regulation 8.02(1)(b) of the Bankruptcy Regulations.
20. Similarly, the IPRs will include a provision that reflects the policy in Regulation 8.02(1)(c) of the Bankruptcy Regulations and that will require possession of the ability to perform satisfactorily the duties of a registered trustee.
21. The IPRs will also require that the applicant has completed a prescribed level of formal tertiary study in insolvency administration. The study must be the equivalent of at least two course units or three months study. The prescribed level would be at least equivalent to that currently provided under the ARITA Insolvency Education Program provided by the Queensland of Technology. This study must be in addition to the legal and accounting studies outlined above.

### 2.2.4 Registration fee

22. Under section 20-30 a proposed registration fee will be payable. In personal insolvency this fee will continue to be set through an instrument made by the Attorney-General under subsection 316(1) of the Bankruptcy Act.

### 2.2.5 Industry wide conditions

23. Section 20-35 provides that the IPRS can impose conditions on all trustees, or trustees of a prescribed class. The following conditions are contemplated in personal insolvency:
  - A trustee whose registration is suspended for any reason would be required to maintain adequate and appropriate insurance to cover potential actions against the trustee in relation to matters for which they were responsible before the suspension. The trustee would also be required to inform AFSA if their insurance will, or has, lapsed during the suspension period.

### 2.2.6 Renewal

24. Once a practitioner is registered the registration has effect for three years in accordance with subsection 20-30(6). This reflects the current position under the Bankruptcy Act. Upon the expiration of the three-year period, a renewal fee is payable before the Inspector-General can renew the registration of the applicant as a trustee (section 20-70). In personal insolvency the renewal fees will continue to be set through an instrument made by the Attorney-General under subsection 316(1) of the Bankruptcy Act.
25. Under section 20-75, renewals will only occur where evidence of adequate and appropriate insurance is provided.
26. What is adequate and appropriate in the personal insolvency sphere will be determined by an instrument issued by the Inspector-General (section 25-1). Therefore Regulation 8.04 of the Bankruptcy Regulations will be repealed.

## 2.3 DIVISION 35 – NOTICE REQUIREMENTS

27. A notice requirement under Division 35 will be imposed on practitioners to provide the Inspector-General with a notice, in the approved form, if a prescribed event occurs. This ensures that the Register is accurate and reflects the state of the profession at any point in time. The following events are to be prescribed:
  - a trustee ceases to practice;
  - the trustee changes their name;
  - there is a change in the address of the principal place where the person practises as a trustee or the addresses of the other places (if any) at which he or she so practises;
  - the trustee practises as a member of a firm or under a name or style other than his or her own name and there is a change to the name of that firm or the name or style under which he or she practices.

## 2.4 DIVISION 40 – DISCIPLINARY AND OTHER ACTION

28. Subsections 40-25(d) and 40-30(d) provides the Inspector-General with the power to suspend or deregister a trustee respectively where the trustee owes more than the prescribed amount of notified estate charges under the Bankruptcy Act. The proposed amount to be prescribed is \$500.
29. Subsection 40-40(4) provides for the IPRs to prescribe standards applicable to the exercise of powers, or the carrying out of duties, of a registered practitioner. This section replaces subsection 155H(5) of the Bankruptcy Act.
30. Currently Schedule 4A of the Bankruptcy Regulations sets out performance standards for trustees (which are made under subsection 155H(5) of the Bankruptcy Act). Schedule 4A will be repealed and rules will be included in the IPRs reflecting the policy settings in Schedule 4A (with some adaptations as some of the standards will be redundant in light of the ILRB).
31. Subdivision G of Division 40 provides a mechanism for prescribed industry bodies to provide information about potential breaches of the Bankruptcy Act and Corporations Act 2001 (Corporations Act) by a trustee/liquidator to the regulators, and for the regulators to be

obligated to respond in relation to the allegations. It is proposed that the following industry bodies be prescribed:

- ARITA;
- CPA Australia;
- Institute of Chartered Accountants in Australia; and
- Institute of Public Accountants.

## 2.5 DIVISION 50 – COMMITTEES UNDER THIS PART

32. Section 50-25 provides that the IPRs may provide for procedures and rules relating to Committees convened under the Bankruptcy Act. It is proposed that the IPRs contain rules that reflect the current policy settings in the Bankruptcy Regulations for registration committees.

33. Subsection 50-35(2)(d) provides that a committee may disclose information to industry bodies prescribed for the purposes of the section. It is proposed that the following industry bodies be prescribed:

- ARITA;
- CPA Australia;
- Institute of Chartered Accountants in Australia;
- Institute of Public Accountants;
- a State or Territory law society.

## 2.6 DIVISION 60 – REMUNERATION AND OTHER BENEFITS RECEIVED BY THE TRUSTEE

34. Currently the rules relating to remuneration are contained in Part VIII of the Bankruptcy Act and Division 4 of the Bankruptcy Regulations. However most of the details concerning the existing remuneration regime are in Division 4 of the Bankruptcy Regulations rather than Part VIII of the Bankruptcy Act.

### 2.6.1 Remuneration determined by the Inspector-General

35. Under section 60-11 the Inspector-General may, in prescribed circumstances, make a determination specifying remuneration that a trustee of a regulated debtor's estate is entitled to receive for necessary and proper work performed by the trustee in relation to the administration of the estate.

36. Section 60-11 essentially replaces subsection 162(4) of the Bankruptcy Act. The provisions in the Bankruptcy Regulations that were made under subsection 162(4) (Subdivision 2 of Division 4 of Part 8) will be repealed and the substance of those provisions will be reflected in the IPRs.

### 2.6.2 Prescribed maximum percentage commission payable

37. Subsection 60-12(3) provides that if a remuneration determination specifies that the trustee is entitled to receive remuneration worked out wholly or partly on the basis of a specified

percentage of money received by the trustee in respect of the regulated debtor's estate then the specified percentage must not be greater than the prescribed amount.

38. It is proposed that the prescribed rates that are currently found in Regulation 8.07 of the Bankruptcy Regulations will be prescribed for the purposes of subsection 60-12(3). It is proposed that Regulation 8.07 be repealed.

### 2.6.3 Prohibition on extra benefits

39. Section 60-20 prohibits a trustee from entering into an arrangement for receiving or accepting from any person, any gift, remuneration, consideration or benefit in connection with the administration of the estate or company. The following payments from the Commonwealth would be prescribed as exempt from the rule under sub-paragraph 60-20(5)(b):

- payments made to the trustee for the purposes of administering Commonwealth payments to former employees of the externally administered company in relation to unpaid employment entitlements.

## 2.7 DIVISION 65 – FUNDS HANDLING

### 2.7.1 Paying money into administration account

40. Section 65-5 requires an insolvency practitioner to deal with administration funds as prescribed.
41. It is proposed that an account that holds administration funds must be an interest bearing account in an authorised deposit taking institution.

### 2.7.2 Review of a Bill of costs

42. Section 65-46 provides that the IPRs may provide for and in relation to the review by the Inspector-General of a bill of costs for services provided by a person in relation to the administration of a regulated debtor's estate.
43. Section 65-46 essentially replaces subsection 167(2) of the Bankruptcy Act. The provisions in the Bankruptcy Regulations that were made under subsection 167(2) of the Bankruptcy Act (Subdivision 5 of Division 4 of Part 8) will be repealed and the substance of those provisions will be moved to the IPRs.

### 2.7.3 Penalty Interest

44. Under subsection 65-50 the IPRs may make provision in relation to the payment by the trustee of a regulated debtor's estate of interest at such rate, in such amount and in respect of such period as is prescribed in cases where the trustee of a regulated debtor's estate contravenes or fails to comply with Division 65 (or with IPRs made under Division 65).
45. It is proposed that the IPRs provide that where:
- a trustee fails to comply with section 65-25 in relation to an amount of money, and
  - the amount exceeds \$50, and

- the trustee did not have reasonable excuse for failing to comply with the section.

... then the trustee must pay interest to the creditors at the rate of 20 per cent annually until the contravention of section 65-25 is rectified.

## 2.8 DIVISION 70 – INFORMATION

### 2.8.1 Giving information to creditors

46. Under section 70-40 the trustee must provide information to creditors if requested to do so by a resolution. The trustee is not required to comply with the request if it is 'not reasonable for the trustee to comply with the request'.
47. Under section 70-45 a trustee must provide information to an individual creditor if requested to do so. The trustee is not required to comply with the request if it is 'not reasonable for the trustee to comply with the request'.
48. Section 70-40 and subsection 70-45(3) respectively provide that the IPRs may prescribe circumstances in which a request for information under section 70-40 or section 70-45 is or is not reasonable.
49. It is proposed that for the purposes of subsection 70-40(3) and subsection 70-45(3) the IPRs should prescribe that the following are reasonable requests:
  - current creditor lists (including names, amounts owed and contact details);
  - detailed Work in Progress reports including descriptions of work completed, work underway and work still to be undertaken;
  - transaction reports(including receipts and payments made in relation to the administration account during a specified period); and
  - minutes of meetings of creditors.
50. It is proposed that for the purposes of subsection 70-40(3) and subsection 70-45(3) the IPRs should prescribe that the following are unreasonable requests:
  - where a trustee acting in good faith could reasonably conclude there is not sufficient available property to comply with the request; or
  - where a trustee acting in good faith could reasonably conclude that the cost of complying with the request would have a material financial impact on the administration (based on the size of the administration), including any dividend payable to unsecured creditors and employee entitlements; or
  - where a trustee acting in good faith could reasonably conclude that the interests of the bankrupt estate, a particular creditor or a third party would be seriously prejudiced if the requested information, report or document was made available to the public; or
  - where the information, report or document had already been provided to creditors or would shortly be provided to creditors in another document, notice or report required by the Bankruptcy Act, the IPRs or the Bankruptcy Regulations to be provided to the creditors; or

- the request for information is vexatious. A repeat request would be deemed to be vexatious if it is made within 10 business days of the previous request being received by the trustee, unless the trustee decides that the request is reasonable in the context of the circumstances of the particular administration.
51. It is proposed that where the request for information is not reasonable because there is not sufficient property available or because of the material financial impact on the administration, the trustee may agree to comply with the request provided that:
- the creditor/creditors pay the reasonable costs of providing the information, report or document; and
  - if the trustee requires a security for the payment of costs before providing the information, report or document – the deposit of that sum by the person making the information request with the trustee.

### 2.8.2 Notices to creditors

52. Section 70-50 provides for the IPRs to require trustees to provide creditors with information, reports and documents. Subdivision 3 of Division 4 of the Bankruptcy Regulations sets out notice requirements in relation to the remuneration of trustees.
53. It is proposed that Subdivision 3 of Division 4 be repealed and rules reflecting the policy settings in Subdivision 3 of Division 4 be included in the IPRs.

### 2.8.3 Commonwealth may request information

54. Employees who are owed certain employee entitlements after losing their job because their employer has become insolvent may be able to have their entitlements (or at least a portion of them) paid by the Commonwealth under the Fair Entitlements Guarantee Act 2012 or the General Employment Entitlements and Redundancy Scheme (GEERS).
55. Section 70-55 is designed to facilitate the operation of the Fair Entitlements Guarantee Act 2012 and GEERS by empowering the Commonwealth to request information from a trustee where a former employee of the company has made a claim for financial assistance from the Commonwealth in relation to unpaid employment entitlements or the Commonwealth considers that such a claim is likely to be made.
56. Subsection 70-55(3) provides that the trustee must comply with the request.
57. However, in order to address stakeholder concerns raised about who would be responsible for bearing the costs of complying with the request, subsection 70-55(4) has been included to provide that the IPRs may make provide for who is to bear the cost of providing the information requested.
58. It is proposed that the IPRs should provide that for the purposes of subsection 70-55(4) where in the opinion of the trustee:
- there is not sufficient property available to comply with the request; or
  - the cost of complying with the request would have a material financial impact on the administration (based on the size of the administration), including any dividend payable to unsecured creditors and employee entitlements
- ... then the Commonwealth would be responsible for bearing the reasonable costs of providing the information.

#### 2.8.4 Right of regulated debtor to request information

59. Under section 70-56 the trustee must provide information to the regulated debtor if requested to do so. The trustee is not required to comply with the request if it is 'not reasonable for the trustee to comply with the request'.
60. Subsection 70-56(3) provides that the IPRS may prescribe circumstances in which a request for information under section 70-56 is or is not reasonable.
61. For the purposes of section 70-56 it is proposed the IPRs should prescribe that the following are reasonable requests:
  - current creditor lists (including names, amounts owed and contact details);
  - detailed Work in Progress reports including descriptions of work completed, work underway and work still to be undertaken;
  - transaction reports (including receipts and payments made in relation to the administration account during a specified period); and
  - minutes of meetings of creditors.
62. It is proposed that for the purposes of subsection 70-56(3) the IPRs should prescribe that the following are unreasonable requests:
  - where a trustee acting in good faith could reasonably conclude there is not sufficient available property to comply with the request; or
  - where a trustee acting in good faith could reasonably conclude that the cost of complying with the request would have a material financial impact on the administration (based on the size of the administration), including any dividend payable to unsecured creditors and employee entitlements; or
  - where a trustee acting in good faith could reasonably conclude that the interests of the bankrupt estate, a particular creditor or a third party would be seriously prejudiced if the requested information, report or document was made available to the public; or
  - where the information, report or document had already been provided to the regulated or would shortly be provided to the regulated debtor in another document, notice or report required by the Bankruptcy Act, the IPRs or the Bankruptcy regulations to be provided to the regulated debtor; or
  - the request for information is vexatious. A repeat request would be deemed to be vexatious if it is made within 10 business days of the previous request being received by the trustee, unless the trustee decides that the request is reasonable in the context of the circumstances of the particular administration.

#### 2.8.5 Reporting to the Inspector-General

63. Section 70-60 provides that the IPRs may provide for trustees to be obliged to report certain information to the Inspector-General.
64. At this point in time it is not proposed that any IPRs be made under section 70-60.

## 2.9 DIVISION 75 – MEETINGS OF CREDITORS

### 2.9.1 Creditor or creditors' request for a meeting

65. Section 75-15 requires a trustee to convene a meeting of creditors where a request is made by a creditor or the creditors in certain circumstances. However, under subsection 75-15(2), the trustee need not comply with the request or direction if the request is not reasonable. A request will be deemed unreasonable under the IPRs, where a trustee acting in good faith could reasonably conclude that:

- there is insufficient available property to comply with the request; or
- the cost of complying with the request would have a material financial impact on the administration, including any dividend payable to unsecured creditors and employee entitlements; or
- the financial cost of complying with the request would materially impact on the dividend payable to unsecured creditors and would affect employee entitlements; or
- a meeting of creditors that dealt with the same matters covered by the request has already been held or would shortly be held in accordance with a requirement under the Act, Schedule 2 or the IPRs; or
- the request for the meeting was vexatious:
  - a repeat request would be deemed to be vexatious if it is made within 10 business days of the previous request, unless the liquidator decides that the request is reasonable in the context of the circumstances of the particular administration.

66. Where the trustee has formed an opinion that the request is not reasonable because there is insufficient available property or because of the material financial impact on the administration, the trustee may agree to comply with the request provided that:

- the creditors pay the costs of convening the meeting; and
- if the trustee requires a security for the payment of costs before the meeting is convened - deposit with the liquidator the sum agreed.

### 2.9.2 Meeting rules

67. Section 75-50 provides that the IPRs may provide 'for and in relation to meetings of creditors'.

68. Part IV of Division 5 of the Bankruptcy Act sets out rules for procedures at meetings. It is proposed that Part IV of Division 5 be repealed. While some provisions that are currently contained in Part IV of Division 5 have analogous provisions in the ILRB it is proposed that the vast bulk of rules about meetings be moved to the IPRs.

69. In relation to Part XI bankruptcies (bankruptcies for deceased estates), subsection 248(1) of the Bankruptcy Act provides that Division 5 of Part IV applies with any modifications prescribed by the Bankruptcy Regulations in relation to proceedings relating to the administration of deceased estates. Schedule 7 of the Bankruptcy Regulations contains modifications made pursuant to subsection 248(1).

70. In relation to compositions and schemes of arrangements, section 76A of the Bankruptcy Act provides that Division 5 of Part IV applies, so far as it is capable of applying and with such modifications (if any) as are prescribed by the regulations, to meetings of creditors under the Division'. Schedule 2 of the Bankruptcy Regulations contains modifications made pursuant to section 76A.
71. With respect to personal insolvency agreements section 196 of the Bankruptcy Act provides that 'Division 5 of Part IV applies, with any modifications prescribed by the regulations in relation to a meeting called under section 188 as if:
- (a) the debtor who signed the authority were bankrupt; and
  - (b) the controlling trustee were the trustee in the bankruptcy.'
- Part 2 of Schedule 6 of the Bankruptcy Regulations contains modifications made pursuant to section 196 of the Bankruptcy Act.
72. It is proposed that the policy settings governing meetings that are currently extant in the Bankruptcy Act would be reflected in the IPRs.

## 2.10 DIVISION 80 – COMMITTEES OF INSPECTION

73. Under section 80-30 the IPRs may provide for and in relation to a number of matters concerning committees of inspection.
74. It is proposed that rules reflecting the policy settings in subsections 71(1), 71(2), 71(3), 71(4), and 71(5) of the Bankruptcy Act will be included in the IPRs.

### 2.10.1 Committee of Inspection may request information

75. Under section 80-40 the trustee must provide information to the Committee of Inspection if requested to do so. The trustee is not required to comply with the request if it is 'not otherwise reasonable for the trustee to comply with the request'.
76. Subsection 80-40(3) provides that the IPRs may prescribe circumstances in which a request for information under subsection 80-40(1) is or is not reasonable.
77. It is proposed that for the purposes of subsection 80-40(3) the IPRs should prescribe that the following are reasonable requests:
- current creditor lists (including names, amounts owed and contact details);
  - detailed Work in Progress reports including descriptions of work completed, work underway and work still to be undertaken;
  - transaction reports (including receipts and payments made in relation to the administration account during a specified period); and
  - minutes of meetings of creditors.
78. It is proposed that for the purposes of subsection 80-40(3) the IPRs should prescribe that the following are unreasonable requests:

- where a trustee acting in good faith could reasonably conclude there is not sufficient available property to comply with the request; or
- where a trustee acting in good faith could reasonably conclude that the cost of complying with the request would have a material financial impact on the administration (based on the size of the administration), including any dividend payable to unsecured creditors and employee entitlements; or
- where a trustee acting in good faith could reasonably conclude that the interests of the bankrupt estate, a particular creditor or a third party would be seriously prejudiced if the requested information, report or document was made available to the public; or
- where the information, report or document had already been provided to the regulated or would shortly be provided to the regulated debtor in another document, notice or report required by the Bankruptcy Act, the IPRs or the Bankruptcy regulations to be provided to the regulated debtor; or
- the request for information is vexatious. A repeat request would be deemed to be vexatious if it is made within 10 business days of the previous request being received by the trustee, unless the trustee decides that the request is reasonable in the context of the circumstances of the particular administration.

### 2.10.2 Reporting to Committee of Inspection

79. Under section 80-45 the IPRs may provide for and in relation to the obligations of trustees of regulated debtors' estates to provide information, reports and to produce documents to a Committee of Inspection.
80. At this point in time we are not proposing that any IPRs be made under section 80-45.

## 2.11 DIVISION 90 – REVIEW OF THE ADMINISTRATION OF A REGULATED DEBTOR'S ESTATE

81. Subdivision C of Division 90 provides for the Inspector-General to carry out a review of decisions of the trustee of a regulated debtor's estate to withdraw, or to propose to withdraw, funds from the estate for payment for the trustee's remuneration. Section 90-22 provides for the IPRs to contain rules about such reviews.
82. Subdivision C of Division 90 essentially replicates section 167 of the Bankruptcy Act (however Subdivision C of Division 90 provides for an own motion investigation unlike section 167). Subdivision 4 of Division 4 of Part 8 and Subdivision 6 of Division 4 of Part 8 of the Bankruptcy Regulations contains Regulations that were made under section 167 concerning remuneration reviews.
83. It is proposed that these Regulations will be repealed and replicated in the IPRs.

### 2.11.1 Own motion review

84. It is proposed that new IPRs will be made concerning the new own motion investigation power.
85. The new proposed IPRs will provide that upon deciding to conduct an own motion review the Inspector-General must notify the trustee, creditors and the regulated debtor of their intention

to conduct a review. The Inspector-General would be required to complete the review within 60 days of the notification being sent to the trustee, creditors and the regulated debtor.

86. The proposed powers of the Inspector-General with regards to an own motion review would be the same as the powers detailed in Regulations 8.12L and 8.12M of the Bankruptcy Regulations.
87. It is proposed that the possible outcomes of an own motion review would be as follows:
  - the Inspector-General could decide to make no findings against the trustee; or
  - disallow all or part of the trustee's claim for remuneration and substitute another amount for the amount claimed.
88. It is proposed that when the Inspector-General makes their decision they would be required to issue a written statement that sets out:
  - the decision of the Inspector-General; and
  - sets out the reasons for the decision; and
  - sets out the findings on any material questions of fact.
89. It is proposed that the Inspector-General would be required to give the trustee, creditors and the regulated debtor a copy of the written statement.

## 2.12 DEFINITIONS

90. The new subsection 5(1) of the Bankruptcy Act provides that 'resolution' and 'special resolution' have the meaning given in the IPRs.
91. It is proposed that 'resolution' would:
  - have the same meaning as provided for in Corporations Regulation 5.5.19 where a meeting of creditors is held under the Bankruptcy Act;
  - if passed without a meeting under section 75-40, be taken to be passed by a resolution of creditors at a meeting if, within the time specified in the notice sent under subsection 75-40(2)):
    - there is a Yes vote by a majority in number;
    - at least one creditor votes in writing; and
    - no other creditor objects in writing to the proposal being resolved without a meeting of creditors.

In any other case - the proposal is taken not to have been passed.

92. It is proposed that 'Special resolution' would:
  - have the same meaning as provided for under section 9 of the Corporations Act where a meeting of creditors is held under the Bankruptcy Act
  - if passed without a meeting under section 75-40, be taken to be passed by a resolution of creditors at a meeting if, within the time specified in the notice sent under subsection 75-40(2):

- there is a Yes vote by a majority in number, and
- there is a Yes vote by at least 75 per cent in value of those who voted within the required time; and
- no other creditor objects in writing to the proposal being resolved without a meeting of creditors;

In any other case - the proposal is taken not to have been passed.

## 3. PART 2 – CORPORATE INSOLVENCY

### 3.1 DIVISION 15 – REGISTER OF PRACTITIONERS

93. Under section 15-1, the Australian Security and Investments Commission (ASIC) is required to establish and maintain a register of liquidators. The IPRs will provide guidance to ASIC on what information should be kept on the register.
94. ASIC would be required to record the following information when registering persons as an external administrator on the Register:
- Name of the person;
  - The day of the beginning of the registration of that person as an external administrator or trustee;
  - The address of their principal place where the person practices as an external administrator or trustee and the addresses of the other places (if any) at which he or she so practices;
  - If the person practices as an external administrator or trustee as a member of a firm or under a name or style other than his or her own name – the name of that firm/name/style under which he or she so practices;
  - Particulars of any past disciplinary action or suspension;
  - A statement or summary of any conditions applying to the person’s entitlement to practise as a registered liquidator; and
  - Any other information that the regulator considers appropriate.

It is proposed that all information on the Register be available publically.

### 3.2 DIVISION 20 – REGISTERING LIQUIDATORS

#### 3.2.1 Corporate insolvency practice rules (corporations)

##### **Application for registration**

95. It is proposed that regulations be made under the Corporations (Fees) Act 2001 to require an applicant to pay a fee for lodgement. Section 20-5 sets out the process for application to ASIC for registration as a liquidator. Under section 20-5, a registration fee for lodging documents may be imposed under the Corporations (Fees) Act 2001.
96. The fee for applying for lodging documents for registration will be set at \$2,000<sup>1</sup>.

##### **Committee members**

97. When such a Committee is formed (under section 20-10), it must include a person chosen by a prescribed body. It is proposed that the prescribed body will be ARITA. It is proposed that this

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1 This amount is set in line with the current fee payable under the Bankruptcy Act for an application.

person must have at least 5 years industry experience. This reflects the current approach adopted under the personal insolvency framework<sup>2</sup>.

98. The person chosen by ARITA will be appointed in their personal capacity and not as an agent of ARITA.

### **Applicant’s qualifications, experience, knowledge and abilities**

99. The proposed reforms would provide a harmonised set of entry standards for insolvency practitioners.

100. A person applying for registration as a liquidator must satisfy the following prescribed qualification, experience, knowledge and abilities under section 20-20(4)(a).

101. An applicant must:

- hold one or more degrees that represent three years of full time study in commercial law and accounting, but with no less than one year of equivalent full time study in either;
- the completion of formal tertiary studies in insolvency administration specific study. The study must be the equivalent of at least two course units or 3 months study<sup>3</sup>. This study must be in addition to the legal and accounting studies outlined above.
- have been engaged in relevant employment at a full-time basis for a total of not less than three years in the preceding five years; and
- the applicant must have demonstrated the capacity to perform satisfactorily the duties of a practitioner.

102. The ‘experience’ component for purposes of determining relevant employment would differ depending on the registration sought. For example:

- Where a person wishes to be registered without a requested limitation, the relevant work experience would encompass: assisting an external administrator in the performance of his or her duties as an external administrator in relation to a broad range of external administrations, involves the provision of advice in relation to external administration matters and experience in insolvency administrations outside of corporate insolvency.
- Where a person wishes to be registered with a limitation to only do receivership work, the relevant work experience would encompass: assisting an external administrator in the performance of his or her duties as a receiver; involves the provision of advice in relation to receivership matter; and experience in external administrations outside receivership.
- Where a person wishes to be registered with a limitation to only do receivership work, and receiver and management work, the relevant work experience would encompass: assisting an external administrator in the performance of his or her duties as a receiver and receiver and manager; involves the provision of advice in relation to receivership matter; and experience in external administrations outside receivership.

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<sup>2</sup> Regulation 8.05B of the Bankruptcy Regulations.

<sup>3</sup> The prescribed level would be at least equivalent to that currently provided under the ARITA Insolvency Education Program provided by the Queensland of Technology.

## Conditions on practitioner

103. Section 20-20(6) provides the Committee with power to impose conditions on all registered liquidators or a class of registered liquidators at the time of accepting their registration.

- A person would be able to apply to ASIC by completing the approved form, and stating that they want a condition imposed on their registration that would limit the work that they are able to undertake as a registered external administrator to:
  - work as a receiver; or
  - work as a receiver, and receiver and manager.
- Where a practitioner wishes only to act as a liquidator in relation to receivership work:
  - the person will only act as a registered liquidator where the person is appointed as a receiver under the Act; and
  - the person will not be taken to be a registered liquidator except for when the person is appointed as a receiver.
- Where a practitioner wishes only to act as a registered liquidator in relation to receivership, and receiver and manager work:
  - the person will only act as a registered liquidator where the person is appointed as a receiver, or as a receiver and manager under the Act; and
  - the person will not be taken to be registered as a registered liquidator except for when the person is appointed as a receiver, or a receiver and manager.

## Registration fee

104. It is proposed that regulations be made under the Corporations (Fees) Act 2001 to require an applicant to pay a fee for registration. The registration fee will be set at \$1,200, consistent with the amount currently required under the personal insolvency regime.

## Industry wide conditions

105. Section 20-35 provides that the IPRs can impose conditions on all registered liquidators, or registered liquidators of a prescribed class.

106. A condition will be imposed on the registration of all liquidators requiring that a practitioner whose registration is suspended for any reason would be required to maintain adequate and appropriate insurance to cover potential actions against the practitioner in relation to matters for which they were responsible before the suspension. The practitioner would also be required to inform ASIC if their insurance will, or has, lapsed during the suspension period.

## Renewal

107. It is proposed that regulations be made under the Corporations (Fees) Act 2001 to require an applicant to pay a fee for lodgement. Once a practitioner is registered the registration has effect for three years in accordance with section 20-30(6). This reflects the current position under the Bankruptcy Act 1966. Upon the expiration of the three-year period, a renewal fee is payable before ASIC can renew the registration of the applicant as an external administrator (section 20-70). The proposed fees will be:

- \$1,600 for applications received one month before the renewal date; or
- \$1,920 for applications received after one month before the renewal date.

108. Under section 20-75(1)(b), renewals will only occur where evidence of adequate and appropriate insurance is provided<sup>4</sup>.

### Notice Requirements

109. An external administrator must provide ASIC with a notice, in the approved form, if a prescribed event occurs<sup>5</sup> under section 35-1. This ensures that the Register is accurate and reflects the state of the profession at any point in time. The following events are to be prescribed:

- A practitioner ceases to practice;
- The practitioner has a name change;
- The practitioner's address of the principal place where the person practises as a practitioner and the addresses of the other places (if any) at which he or she so practises;
- The practitioner practises as a member of a firm or under a name or style other than his or her own name - the name of that firm or the name or style under which he or she so practices.

## 3.3 DIVISION 40 – DISCIPLINARY AND OTHER ACTION

110. Subdivision G of Division 40 provides that an industry body will be able to provide information about potential breaches of the law by a liquidator, and also be able to expect a response from ASIC on the outcome of that information provision. The following industry bodies are proposed to be prescribed bodies:

- ARITA;
- CPA Australia;
- Institute of Chartered Accountants in Australia; and
- Institute of Public Accountants.

## 3.4 DIVISION 50 – COMMITTEES UNDER THIS PART

111. Section 50-25 provides that the IPRs may provide for procedures and rules relating to registration or disciplinary Committees convened under the Corporations Act. It is proposed that the current rules for registration and disciplinary Committees in the Bankruptcy Regulations be replicated in the IPRs.

112. Section 50-35 provides that a committee may disclose information to industry bodies prescribed for the purposes of the section. It is proposed that the following industry bodies be prescribed:

- ARITA;
- CPA Australia;
- Institute of Chartered Accountants in Australia;

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<sup>4</sup> What is adequate and appropriate may be determined through an ASIC legislative instruments (section 25-1).

<sup>5</sup> This requirement is set out in Division 14 of the draft Bill.

- Institute of Public Accountants;
- a State or Territory law society.

## 3.5 DIVISION 60 – REMUNERATION AND OTHER BENEFITS RECEIVED BY EXTERNAL ADMINISTRATORS

### 3.5.1 Disbursements

113. Section 60-20 prohibits an external administrator from entering into an arrangement for receiving or accepting from any person, any gift, remuneration, consideration or benefit in connection with the administration of the estate or company. The following payments from the Commonwealth would be prescribed as exempt from the rule:

- payments made by ASIC to the external administrator out of ASIC's Assetless Administration Fund; and
- payments made to the external administrator for the purposes of administering Commonwealth payments to former employees of the externally administered company in relation to unpaid employment entitlements.

### 3.5.2 Remuneration reports

114. The ILRB repeals all obligations on practitioners to provide information to creditors as part of the approval process for remuneration. The current obligations to provide remuneration reports as part of the approval process provided for in section 449E, section 473, section 495, and section 499 of the Corporations Act will be replicated in the IPRs.

115. Before a proposal dealing with remuneration is put to creditors or a committee of inspection, with or without a meeting, the external administrator must prepare a report setting out the details below:

- (i) such matters as will enable the company's creditors to make an informed assessment as to whether the proposed remuneration is reasonable; and
- (ii) a summary description of the major tasks performed, or likely to be performed, by the administrator; and
- (iii) the costs associated with each of those major tasks; and

give a copy of the report to each of the members of the Committee of Inspection or the company's creditors, as the case may be, at the same time as the creditor is notified of the relevant meeting of creditors. Section 70-50 provides powers for these rules.

116. To be effective, a resolution made by the creditors must deal exclusively with remuneration of the administrator. This means that the resolution must not be bundled with any other resolution<sup>6</sup>.

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6 This reflects the current situation as provided for under section 449E of the Corporations Act.

### 3.5.3 Casting votes on remuneration

117. Currently, in order for a resolution to pass it must be supported by a majority of creditors both in number and value. Where a resolution is split between the majority by number and majority by value, the chair will have the casting vote<sup>7</sup>.
118. The current rules will be amended to ensure that where a resolution for approval of a practitioner's remuneration (or on the removal of the practitioner from an administration) is split between the majority by number and majority by value, the Chair will not have a casting vote. The motion for approval of the resolution would therefore be taken to be defeated.
- The chair would still be able to retain a casting vote on other (non-remuneration or removal) matters.

## 3.6 DIVISION 65 – FUNDS HANDLING

### 3.6.1 Penalty Interest

119. Section 65-50 provides that the IPRs may make provisions in relation to the payment by the external administrator of interest at such rate, in such amount and in respect of such period as is prescribed in cases where the external administrator contravenes or fails to comply with Division 65 (or with IPRs made under Division 65).

120. It is proposed that where:

- an external administrator breaches section 65-20 in relation to an amount of money, and
- the amount exceeds \$50, and
- the external administrator did not have reasonable excuse for failing to comply with the section

then the external administrator must pay interest to the creditors at the rate of 20 per cent annually until the contravention of section 65-20 is rectified.

121. Where penalty interest is incurred, the penalty interest would only be able to be applied to:

- meet disbursements where funds would otherwise not be available to pay them;
- be distributed to creditors or members where practicable;
- where it is not possible or practicable to pay the money to creditors or members, it shall be paid into the Companies and Unclaimed Monies Special Account.

At no time would penalty interest be able to be used to meet practitioner remuneration claims.

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<sup>7</sup> Regulation 5.6.21(4) of the Corporations Regulations.

## 3.7 DIVISION 70 – INFORMATION

122. The purpose of the reforms governing the provision of information to stakeholders is to address information asymmetries between creditors and insolvency practitioners that interfere with the ability of creditors to inform themselves of the course of insolvency administrations and, where appropriate, exercise their rights in relation to the administration or the practitioner.

### 3.7.1 Unreasonable request for information from liquidator

123. The ILRB provides the creditors as a whole, as well as a Committee of Inspection, of a company in an administration with the power to pass a resolution requesting the external administrator to give information, provide a report or produce a document to the creditors<sup>8</sup>. An external administrator would be required to comply with this request, unless it fails the requirements of sections 70-40, 70-45, 70-46, 70-47 or 90-15 or is otherwise not reasonable. The IPRs may prescribe the circumstances in which a request by creditors is, or is not, reasonable. A request would not be considered reasonable when:

- there is not sufficient resources available to comply with the request;
- the cost of complying with the request would have a disproportionate financial impact on the administration as compared to potential benefits for the creditors; or
- the interests of the company, a particular creditor or a third party would be disproportionately prejudiced, as compared to the potential benefits, if the requested information, report or document was made available to the public; or
- the information, report or document had already been provided to creditors or would shortly be provided in another report; or
- the request for information is deemed vexatious (a repeated request made within 10 business days of the last received request, unless the external administrator decides that the request is reasonable in the context of the circumstances).

124. Should an external administrator form an opinion that a request for convening a meeting is not reasonable because there are insufficient resources or because of the material financial impact on the administration, the external administrator would be able to agree to comply with the request provided that:

- the creditor pay the costs of convening the meeting; and
- if the external administrator requires security for the payment of costs before the meeting is convened – the deposit with the external administrator of that sum of money.

### 3.7.2 Inherently reasonable request for information

125. Under section 70-40 and section 70-45, the IPRs may prescribe the circumstances in which a request by an individual creditor or creditors is inherently reasonable. The following request for information will be deemed to be a reasonable request at all times (unless the request is vexatious):

- Current creditor lists (including names, amounts owed and contact details);

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8 26-50 (creditors by resolution) and 32-20 (COI).

- Detailed Work in Progress reports including description of work completed, work underway and work still to be undertaken;
- An external administrator's reasons for not complying with a direction of creditors;
- Transaction reports providing receipts and payments made in relation to the administration account during a specified period; and
- Minutes of meetings of creditors.

126. An external administrator will be obligated to comply with these reasonable requests as soon as practicable and in no longer than five business days after the request has been communicated to the liquidator.

### 3.7.3 Commonwealth may request information

127. Employees who are owed certain employee entitlements after losing their job because their employer has become insolvent may be able to have their entitlements (or at least a portion of them) paid by the Commonwealth under the Fair Entitlements Guarantee Act 2012 or GEERs.

128. Section 70-55 is designed to facilitate the operation of the Fair Entitlements Guarantee Act 2012 and GEERs by empowering the Commonwealth to request information from an external administrator where a former employee of the company has made a claim for financial assistance from the Commonwealth in relation to unpaid employment entitlements or the Commonwealth considers that such a claim is likely to be made.

129. Section 70-55 provides that the external administrator must comply with the request. However, in order to address stakeholder concerns raised about who would be responsible for bearing the costs of complying with the request, the IPRs may provide who is to bear the cost of providing the information requested.

130. It is proposed that the IPRs should provide that for the purposes of section 26-65(4) where in the opinion of the liquidator:

- there is not sufficient property available to comply with the request; or
- the cost of complying with the request would have a material financial impact on the administration, including any dividend payable to employee creditors,

then the Commonwealth would be responsible for bearing the cost of providing the information.

### 3.7.4 Default reporting obligations

131. The current default information provision obligations placed upon liquidators to hold initial, annual and final meetings, as well as provide reports to creditors are repealed by the ILRB. A more streamlined set of default information provision obligations will be provided for under the IPRs. While the information provision obligations have been substantively aligned across the various forms of corporate external administration, there will be some divergence to account for the particular functions of certain types of administration.

### Notice and publication of first meeting

132. Subsections 436E(3) and (3A) of the Corporations Act have been repealed under the ILRB and these provisions would be replicated in the IPRs.

### 3.7.5 Winding up in insolvency or by the court

#### Initial notification of appointment to creditors

133. A liquidator in a Court winding up will be required to notify creditors of his or her appointment within five business days after the liquidator has received the report as to the affairs of the company. The notice must include information about:

- the creditors' rights to make reasonable requests for information;
- the creditors' rights to request the liquidator to convene a meeting; and
- the creditor's rights to remove and replace the administrator.

#### Initial report to creditors

134. A new regulation is proposed under section 70-50 which would require the liquidator in a Court ordered liquidation to provide creditors with an initial report which would also be lodged with ASIC in the approved form.

135. The initial report to creditors would serve a similar purpose as the mandatory report that is required under section 19 of the Bankruptcy Act.

### 3.7.6 Voluntary winding up

#### Initial notification of appointment to creditors

136. A liquidator in a creditor's winding up will be required to notify creditors of his or her appointment within five business days after the liquidator has received the report as to the affairs of the company. The notice must include information about:

- the creditors' rights to make reasonable requests for information;
- the creditors' rights to request the liquidator to convene a meeting; and
- the creditor's rights to remove and replace the administrator.

#### Initial report to creditors

137. It is proposed that the IPRs would provide under section 70-50 for the liquidator in a creditors' voluntary winding up to be required to provide creditors with an initial report which would also be lodged with ASIC in the approved form.

138. The initial report to creditors would serve a similar purpose as the mandatory report that is required under section 19 of the Bankruptcy Act.

## 3.8 DIVISION 75 – MEETINGS

### 3.8.1 Creditor or creditors' request for a meeting

139. Section 75-15 requires an external administrator to convene a meeting of creditors where a request is made by a creditor or the creditors in certain circumstances. However, under section 75-15(2), the external administrator need not comply with the request or direction if the request is not reasonable. A request will be deemed unreasonable under the regulations, where in the liquidator's opinion:

- there is insufficient available property to comply with the request; or
- the cost of complying with the request would have a material financial impact on the administration, including any dividend payable to unsecured creditors and employee entitlements; or
- the financial cost of complying with the request would materially impact on the dividend payable to unsecured creditors and would particularly affect employee entitlements; or
- a meeting of creditors that dealt with the same matters covered by the request has already been held or would shortly be held in accordance with a requirement under the Act, Schedule 2 or the regulations; or
- the request for the meeting was vexatious:
  - a repeat request would be deemed to be vexatious if it is made within 10 business days of the previous request, unless the liquidator decides that the request is reasonable in the context of the circumstances of the particular administration.

140. Where the liquidator has formed an opinion that the request is not reasonable because there is insufficient available property or because of the material financial impact on the administration, the liquidator may agree to comply with the request provided that:

- the creditors pay the costs of convening the meeting; and
- if the liquidator requires a security for the payment of costs before the meeting is convened – deposit with the liquidator the sum agreed.

141. Under section 75-50, the IPRs will provide for rules in relation to the meeting of directors. Further information on this will be released closer to the introduction of the IPRs into Parliament.

## 3.9 DIVISION 80 – COMMITTEES OF INSPECTION

### 3.9.1 Reporting to committee of inspection

142. Section 80-45 provides rule making powers for the IPRs in relation to reporting to the committee of inspection. Further information on this will be released closer to the introduction of the IPRs into Parliament.

## 3.10 DIVISION 90 – REVIEW OF THE EXTERNAL ADMINISTRATION OF A COMPANY

143. Subdivision D of Division 90 provides for the appointment of a reviewer by ASIC or the Court to report on external administrator remuneration, costs or any other matters. It also provides for the creditors to resolve to appoint, or otherwise agree with the liquidator, to appoint a reviewer to report on external administrator remuneration or costs only. Section 90-27 provides for the IPRs to contain rules about such reviews.

### 3.10.1 Giving of a notice

144. It is proposed that IPRs will be made regarding the notice required to be given to the external administrator before appointing, or making an application for the appointment of a reviewer.

145. The new IPRs will provide that before appointing a reviewer under section 90-23, ASIC must notify the external administrator that it intends to make the appointment at least 10 business days before the appointment commences.

146. Where ASIC receives an application for the appointment of a reviewer, it would be required to notify the external administrator that the application has been made.

### 3.10.2 Who may be appointed as a cost assessor

147. Only a registered external administrator would be able to be appointed as a reviewer.

148. Before a person accepts an appointment to undertake a review, the person would be required to provide the appointing body a declaration of relevant relationships. As soon as practicable after being appointed, the reviewer would also be required to give a copy of the declaration to as many of the company creditors as practicable.

149. If at a particular time, the reviewer makes a declaration of relevant relationships, and at a later time:

- the declaration has become out-of-date; or
- the reviewer becomes aware of an error in the declaration;
- then the reviewer must as soon as practicable, make a replacement declaration of relevant relationships.

### 3.10.3 Power and duties of cost assessors

150. In conducting a review of remuneration and/or costs, the reviewer will be empowered to do any of following:

- conduct the review;
- direct the external administrator to provide an itemised invoice in a form, and within the time, specified in the direction for work undertaken by the liquidator;
- 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;
- interview any party to the review and allow that party to be questioned by any other party to the review;
- direct a person to give a written statement, in a specified form and signed by the person, about a matter relevant to the review;
- direct the external administrator to produce all or part of the liquidator's files or documents in relation to the administration of the estate.

151. It is proposed that the new rules would also stipulate that:

- if the reviewer gives a person a direction, and the person does not comply with the direction, the reviewer may conduct the assessment on the basis of the information available to the reviewer; and
- the reviewer will have a duty to act independently, in the interests of creditors and to avoid actual and apparent conflicts of interest.

152. The report to be prepared by the reviewing practitioner would be required to be provided in the form, and with the content, as agreed between the reviewer and the appointing body.
153. Once the report is completed, it would be required to be provided to the external administrator responsible for the administration, the committee of inspection (if applicable) and ASIC.

### 3.10.4 Review Period

154. Section 90-26 provides that a reviewing external administrator must not review costs or remuneration incurred during a period other than that period determined by the Court or as prescribed by the IPRs. The IPRs would provide that the review period is:
- if the remuneration is approved on a fee cap basis –within six months of the practitioner notifying the creditor that the cap has been reached;
  - If the remuneration is approved retrospectively – within six months of that resolution; and
  - If the remuneration is a flat fee – within six months of the end of the administration.

## 3.11 DEFINITIONS

155. It is proposed that ‘resolution’ would:

- have the same meaning as provided for in Corporations Regulation 5.5.19 where a meeting of creditors is held under the Bankruptcy Act;
- if passed without a meeting under section 75-40, be taken to be passed by a resolution of creditors at a meeting if, within the time specified in the notice sent under section 75-40(2):
  - there is a Yes vote by a majority in number;
  - at least one creditor votes in writing; and
  - no other creditor objects in writing to the proposal being resolved without a meeting of creditors.

In any other case - the proposal is taken not to have been passed.

156. It is proposed that ‘Special resolution’ would:

- have the same meaning as provided for under section 9 of the Corporations Act where a meeting of creditors is held under the Bankruptcy Act
- if passed without a meeting under section 75-40, be taken to be passed by a resolution of creditors at a meeting if, within the time specified in the notice sent under section 75-40(2):
  - there is a Yes vote by a majority in number, and
  - there is a Yes vote by at least 75 per cent in value of those who voted within the required time; and
  - no other creditor objects in writing to the proposal being resolved without a meeting of creditors;

In any other case - the proposal is taken not to have been passed.