

**EXPOSURE DRAFT EXPLANATORY STATEMENT**

*Corporations Act 2001*

*Insolvency Practice Rules (Corporations) Amendment (Corporate Insolvency Reforms) Rules 2020*

Schedule 2 (the Insolvency Practice Schedule) to the *Corporations Act 2001* (the Corporations Act) regulates the external administration of companies, including by providing for requirements for registration as a liquidator.

Section 105–1 of the Insolvency Practice Schedule provides that the Minister may make rules providing for matters required or permitted by the Insolvency Practice Schedule to be provided, or necessary or convenient to be provided for carrying out or giving effect to the Insolvency Practice Schedule. These rules are contained in the *Insolvency Practice Rules (Corporations) 2016* (the Insolvency Practice Rules).

The economic consequences of the Coronavirus known as COVID-19 highlight the need for a system of external administration that can accommodate the needs of small businesses. In these situations, complex, lengthy and rigid procedures can be unsuitable.

In response to these challenges, the Australian Government announced a package of reforms to the corporate insolvency framework, including major changes to accommodate eligible small businesses. These new additions to the framework are designed to meet the needs of small businesses by reducing the complexity and costs in insolvency processes.

The framework of the reforms is being established through the Insolvency Reforms Bill. The framework provides for a formal debt restructuring process for eligible companies, extended temporary relief for eligible companies intending to undertake a formal debt restructuring process, a simplified liquidation process for eligible companies in a creditors' voluntary winding up, refinements to the requirements for registration as a liquidator, and greater use of electronic documents and electronic signatures in an external administration.

The Insolvency Reforms Bill also allows documents required or permitted to be given or signed under the external administration provisions in the Corporations Act and related subordinated legislation to be given or signed electronically. In this way, it makes permanent and expands upon some of the temporary modifications that were made to the corporations law using the temporary power to amend the Corporations Act in section 1362A.

The purpose of the *Insolvency Practice Rules (Corporations) Amendment (Corporate Insolvency Reforms) Rules 2020* (the Rules) is to amend the conditions and requirements relating to the registration of liquidators, and to make other amendments to give effect to the new small business restructuring practitioner to be established by the Insolvency Reforms Bill. The purpose of the Rules is also to allow meetings relating to the external administration of a company to be held using alternative technology.

## EXPOSURE DRAFT

Details of the proposed Rules are set out in Attachment A.

The Corporations Act specifies no conditions that need to be satisfied before the power to make the Rules may be exercised.

The Rules are a legislative instrument for the purposes of the *Legislation Act 2003*.

Schedule 1 to the Rules commences on the day after this instrument is registered or the day on which Schedule 3 to the Insolvency Reforms Bill, once enacted, commences, whichever occurs later. Schedule 2 to the Rules commences on the day after this instrument is registered or the day on which Schedule 4 to the Insolvency Reforms Bill, once enacted, commences, whichever occurs later.

**ATTACHMENT A**

**Details of the *Insolvency Practice (Consequential Amendments) Rules (Corporations) 2020***

**Section 1 – Name of the Instrument**

This section provides that the name of the instrument is the *Insolvency Practice Amendment Rules (Corporations) Amendment (Corporate Insolvency Reforms) Rules 2020* (the Rules).

**Section 2 – Commencement**

Schedule 1 to the Rules commences on the day after this instrument is registered or the day on which Schedule 3 to the Insolvency Reforms Bill, once enacted, commences, whichever occurs later.

Schedule 2 to the Rules commences on the day after this instrument is registered or the day on which Schedule 4 to the Insolvency Reforms Bill, once enacted, commences, whichever occurs later.

**Section 3 – Authority**

The Rules are made under the *Corporations Act 2001* (the Corporations Act), subject to passage of the *Corporations Amendment (Corporate Insolvency Reforms) Bill 2020* (the Insolvency Reforms Bill).

**Section 4 – Schedules**

This section provides that each instrument that is specified in the Schedules to the Rules will be amended or repealed as set out in the applicable items in the Schedules, and any other item in the Schedules to this instrument has effect according to its terms.

## **Schedule 1 - Corporate insolvency reforms**

Schedule 1 to the Rules amends the Insolvency Practice Rules in relation to the conditions and requirements relating to the registration of liquidators, as well as other amendments to give operational effect to the new small business restructuring practitioner established by the Insolvency Reforms Bill.

### **Small business restructuring practitioners**

The Insolvency Reforms Bill establishes a new formal debt restructuring process. In this process, a practitioner – a small business restructuring practitioner – supports the company to develop a debt restructuring plan and review its financial affairs, certifies the plan to creditors, and manages disbursements once the plan is in place.

In order to support the registration of suitably qualified small business restructuring practitioners, the Rules amend the requirements for registration as a liquidator in Division 20 of the Insolvency Practice Rules to allow for practitioners to be registered as a liquidator who only practises as a restructuring practitioner for a company or a restructuring plan, should they choose to do so. *[Schedule 1, item 5, section 20-2(1) of the Insolvency Practice Rules]*

Specifically, a registration committee may decide to impose a condition on a person's registration such that the person, once registered, may act only in the capacity of a restructuring practitioner for a company or for a restructuring plan made by a company. If this condition is imposed on a person's registration, that person must not carry out work as an external administrator of a company otherwise than in that capacity. This means that a small business restructuring practitioner must not carry out another form of administration, such as a voluntary administration or a liquidation. *[Schedule 1, item 5, section 20-5(3) of the Insolvency Practice Rules]*

In order to encourage practitioners into the industry to undertake the role of a small business restructuring practitioner, the Rules also amend the qualifications required to be registered solely as a restructuring practitioner. The qualification requirements are in line with the streamlined requirements of the role. Particularly, for an applicant who wishes to be registered to practise only as a restructuring practitioner, the applicant must be a recognised accountant. *[Schedule 1, item 5, section 20-2(2)(a) of the Insolvency Practice Rules]*

A recognised accountant has an established meaning in the Corporation Regulations (see regulation 7.6.04(3)) and requires that a person is:

- a member of Chartered Accountants Australia and New Zealand (CAANZ) who holds a Certificate of Public Practice issued by CAANZ, is entitled to use the letters "ACA", "CA" or "FCA", and is subject to, and complies with, CAANZ's continuing professional education requirements; or
- a member of CPA Australia who holds a Public Practice Certificate issued by CPA Australia Ltd, is entitled to use the letters "CPA" or "FCPA", and is subject to, and complies with, CPA Australia's continuing professional education requirements; or

- a member of Institute of Public Accountants (IPA) who holds a Public Practice Certificate issued by IPA, is entitled to use the letters “FIPA” or “MIPA”, and is subject to, and complies with, IPA’s continuing professional education requirements.

*[Schedule 1, item 5, section 20-2(3) of the Insolvency Practice Rules]*

In addition to being a recognised accountant, a person who wishes to be registered to practise only as a restructuring practitioner for a company or for a restructuring plan must:

- have demonstrated the capacity to perform satisfactorily the functions and duties of a registered liquidator (in the capacity of a registered liquidator who practices solely as a small business restructuring practitioner); and
- be able to satisfy any conditions to be imposed under the Insolvency Practice Schedule if the applicant is registered as a liquidator.

*[Schedule 1, item 5, section 20-2(2) of the Insolvency Practice Rules]*

These requirements reflect those required of applicants seeking to be registered as a liquidator generally (see section 20-1 of the Insolvency Practice Rules). The requirement that the applicant has demonstrated the capacity to perform satisfactorily the functions and duties of a registered liquidator allows the registration committee to consider, for example, relevant work experiences or qualifications that indicate the applicant’s suitability.

The requirement that the applicant is able to satisfy any conditions imposed on the registration is necessary to require that the applicant would be capable of complying with the condition that, once registered, they act only in the capacity of a restructuring practitioner for a company or for a restructuring plan made by a company.

### **Remuneration of restructuring practitioners**

Section 60-18 of the Insolvency Practice Schedule enables the Insolvency Practice Rules to provide for the remuneration of a restructuring practitioner for a company and a restructuring practitioner for a restructuring plan. *[Schedule 1, item 7, section 60-1A of the Insolvency Practice Rules]*

The Rules specify that remuneration is to be determined under section 60-1C for restructuring practitioner for a company and section 60-1D for restructuring practitioner for a restructuring plan. *[Schedule 1, item 7, section 60-1B of the Insolvency Practice Rules]*

The remuneration that a restructuring practitioner for a company is to receive, to cover necessary work properly performed in relation to restructuring, may be determined by a resolution of the board of the company. The determination must be made on or before the appointment of the restructuring practitioner by the company and specify the amount of remuneration. *[Schedule 1, item 7, section 60-1C of the Insolvency Practice Rules]*

Remuneration for a restructuring practitioner for a restructuring plan must be specified in the restructuring plan, for necessary work properly performed in relation to the restructuring plan once made. The proposed restructuring plan may only specify remuneration by specifying a percentage of the payments to be made to creditors in accordance with the plan. *[Schedule 1, item 7, section 60-1D) of the Insolvency Practice Rules]*

### **Relevant employment**

Section 20-1 of the Insolvency Practice Rules sets out the qualifications, experience, knowledge and abilities required by applicants for registration as a liquidator. Sections 20-1(2)(c) and (d) of the Insolvency Practice Rules provide that for an applicant who wishes to be registered to practise as an external administrator of companies, receiver and receiver and manager (or to practise only as a receiver or receiver and manager)—the applicant must have engaged in at least 4,000 hours of relevant employment at a senior level during the past 5 years.

The Rules amend the meaning of ‘relevant employment’ so that it can take into account an applicant’s experience with the new debt restructuring process established by the Insolvency Reforms Bill, as well as providing registration committees scope generally to take into account employment that it considers relevant.

In particular, for an applicant who wishes to be registered to practise as an external administrator of companies, receiver and receiver and manager, ‘relevant employment’ means:

- employment that involves:
  - assisting a registered liquidator in the performance of the registered liquidator’s duties as external administrator of companies, receiver or receiver and manager;
  - providing advice in relation to the external administration of companies, receivership or receivership and management;
  - providing advice in relation to Subdivision C of Division 3 of Part 5.7B of the Corporations Act (relating to the safe harbour from breach of duties);
  - providing advice in relation to the restructuring of company debt outside the external administration of companies, receivership or receivership and management;
  - having direct or indirect exposure to processes (including bankruptcy) under the *Bankruptcy Act 1966*; and
- any other employment that the committee considers relevant.

*[Schedule 1, item 4, section 20-1(3) of the Insolvency Practice Rules]*

Similarly, for an applicant who wishes to be registered to practise only as a receiver, and receiver and manager, relevant employment’ means:

- employment that involves:
  - involves assisting a registered liquidator in the performance of the registered liquidator’s duties as receiver and receiver and manager;
  - involves providing advice in relation to receivership or receivership and management;
  - involves providing advice in relation to Subdivision C of Division 3 of Part 5.7B of the Corporations Act (relating to the safe harbour from breach of duties);
  - involves providing advice in relation to the restructuring of company debt outside the external administration of companies, receivership or receivership and management;
  - having direct or indirect exposure to the external administration of companies and processes (including bankruptcy) under the *Bankruptcy Act 1966*; and
- any other employment that the committee considers relevant.

*[Schedule 1, item 4, section 20-1(4) of the Insolvency Practice Rules]*

The inclusion of employment that involves restructuring a company or providing advice in relation to the restructuring of a company is intended to capture work outside the formal external administration processes. In this way, experience with advising companies on restructuring options (as distinct from the new formal debt restructuring process) is intended to be relevant employment for the purposes of assessing a person’s application for registration as a liquidator.

### **Continuing professional education**

It is a condition of registration as a liquidator to undertake continuing professional education. When assessed on an annual basis, the requirement for a registered liquidator to complete continuing professional education can produce undesirable outcomes – for instance, where a person is registered as a liquidator for only part of a year. This particularly affects practitioners returning to the profession from parental leave – and most particularly affects women.

To address this issue, the Rules amend the requirement for continuing professional education so that the required hours are spread over periods of three years, where the registered person must undertake at least 120 hours of continuing professional education during:

- the period of three years starting on the day the person is first registered as a liquidator and
- each subsequent period of three years during which the person is registered as a liquidator.

*[Schedule 1, item 6, section 20-5(2)(a) of the Insolvency Practice Rules]*

At least 30 hours of the 120 hours of continuing professional education must be capable of being objectively verified by a competent source. *[Schedule 1, item 6, sections 20-5(2)(b) of the Insolvency Practice Rules]*

### **Report about dividends to be given in certain external administrations**

Section 70-40 of the Insolvency Practice Rules requires a liquidator to provide a report to creditors containing specified information. The purpose of the report is to update creditors regarding the status of the liquidation, and whether there are any potential dividends that may be distributed. The Rules amend section 70-40 to specify particular reporting requirements for a liquidator for a company under a simplified liquidation process.

In particular, for a liquidator following the simplified liquidation process, the report must contain information about:

- anything relating to the winding up of the company that has been done by the liquidator to date;
- the date on which, in the liquidator's opinion, the winding up of the company is likely to end; and
- the likelihood of creditors receiving a dividend before the affairs of the company are fully wound up.

*[Schedule 1, item 8, section 70-40(1) and (2) of the Insolvency Practice Rules]*

The report must be provided to creditors within three months after the date of the liquidator's appointment. A copy of the report must be lodged with ASIC at the same time as it is provided to the creditors. *[Schedule 1, item 8, section 70-40(2)(b) and (c) of the Insolvency Practice Rules]*

If the company is not following the simplified liquidation process, or has ceased to follow the simplified liquidation process, the liquidator's report must contain the information currently required by the Rule. That is, information about:

- the estimated amounts of assets and liabilities of the company;
- inquiries relating to the winding up of the company that have been undertaken to date;
- further inquiries relating to the winding up of the company that may need to be undertaken by the liquidator;
- what happened to the business of the company to cause it to wind up;
- the likelihood of creditors receiving a dividend before the affairs of the company are fully wound up; and
- any possible recovery actions.

*[Schedule 1, item 8, section 70-40(1) and (3) of the Insolvency Practice Rules]*



Ordinarily, the report must be provided to creditors within three months after the date of the liquidator's appointment. However, where a liquidation was previously proceeding under the simplified liquidation process (but ceases to do so for whatever reason), the report may be provided to creditors within a longer period. This is to allow time for the liquidator to investigate the matters required to be included in the report under the regular liquidation process that were not required to be included in the report under the simplified liquidation process. In these circumstances, the report must be provided by the later of:

- the end of the period of three months after the date of the liquidator's appointment; or
- the end of the period of one month after the date on which the company ceased to follow the simplified liquidation process.

*[Schedule 1, item 8, section 70-40(3)(b) of the Insolvency Practice Rules]*

A copy of the report must be lodged with ASIC at the same time as it is provided to the creditors. *[Schedule 1, item 8, section 70-40(3)(c) of the Insolvency Practice Rules]*

### **Notice requirements for the restructuring process**

Section 70-60 of the Insolvency Practice Rules provides circumstances in which an external administrator must give information, provide reports and produce documents to ASIC.

The Rules amend section 70-60 to provide that where ASIC requests a copy of a restructuring plan, the restructuring practitioner for the plan must provide a copy of the plan as soon as reasonably practicable. *[Schedule 1, item 9, section 70-60(2A) of the Insolvency Practice Rules]*

### **Minor amendments**

The Rules makes a minor amendment to the heading in section 20-1 and amendments to section 20-1(1) (relating to qualifications, experience, knowledge and abilities required by applicants for registration as a liquidator generally). The amendments are consequential to the amendments made to create the new subclass of restructuring practitioner. *[Schedule 1, items 1, 2 and 3, sections 20-1 of the Insolvency Practice Rules]*

### **Application of amendments relating to liquidator registration conditions**

The Rules provide that the amendment of section 20-5 (relating to the condition imposed on liquidators wishing to practise as a restructuring practitioner, and continuing professional education) applies in relation to a person whose registration as a liquidator begins on or after the commencement of Schedule 1 to the Rules. *[Schedule 1, item 10, section 115-1 of the Insolvency Practice Rules]*

## **Schedule 2 – Virtual meetings**

### **Item 1**

Item 1 inserts section 50-6 which allows meetings of Part 2 committees (including meetings convened for the purposes of interviewing an applicant) to be held using ‘virtual meeting technology’ if all members of the committee have a reasonable opportunity to participate.

This means that meetings may now be held:

- virtually, that is, wholly by using electronic means;
- by inviting persons to physically attend at a designated location;
- by inviting persons to physically attend at different locations and using electronic means to connect the different locations together; or
- by using a combination of the above methods.

Each member of the committee participating by using the virtual meeting technology is taken to be physically present at the meeting and is included in the quorum.

#### *Voting at a virtual meeting*

Voting at a virtual meeting may either occur in real time or, where practicable, in advance of the meeting. In situations where it is practicable for committee members to record a vote in advance of the meeting, each member may separately elect to exercise their right to vote in real time or in advance of the meeting.

Other aspects relating to the voting procedure may continue to be determined by the committee in accordance with section 50-5 of the existing Rules.

#### *Place and time of a virtual meeting*

Where all members of the Part 2 committee attend a meeting virtually, the place of the meeting is taken to be the address of the ASIC delegate. This means the address of the ASIC office to which the delegate is attached. The time for such a meeting is taken to be the time at that place.

If the meeting is a hybrid meeting where some members physically attend and others attend using virtual meeting technology, the place and time for the meeting are taken to be the place where the attendees physically attend and the time at that location. If there are two such locations, the place of the meeting is the primary location (as set out in the notice of the meeting). This ensures there is only one deemed place and time for the meeting.

### *Tabling of documents*

If a document is required or permitted to be tabled at a meeting, and that meeting is held using virtual meeting technology, the document is taken to have been tabled if it is given to the meeting attendees either before or at the meeting.

This document may be given using electronic communication in accordance with the new rules proposed in Schedule 4 to the *Corporations Amendment (Corporate Insolvency) Reforms Act 2020*.

### *Minutes*

Item 1 also inserts section 50-7 to facilitate the electronic recording and keeping of minutes of meetings of Part 2 committees.

An electronic record of a meeting may be kept if it was reasonable to expect that the record would be readily accessible so as to be usable for subsequent reference. This mirrors the condition that applies to the electronic recording of information in section 12 of the *Electronic Transactions Act 1999* (ETA 1999).

If minutes are required to be kept at a place under another provision in the corporations law, they may still be kept electronically and simply made available for inspection at that place. Again, there are two conditions which are based on those conditions that apply to the keeping of documents electronically in section 12 of the ETA 1999. First, the method of generating the record must provide a reasonable means of ensuring that the information in the minutes remains complete and unaltered (apart from the addition of any normal endorsements or immaterial changes). Second, it must be reasonable to expect that the minutes would be readily accessible so as to be usable for subsequent reference.

### **Item 2**

Item 2 makes a consequential amendment to repeal those provisions in section 50-60 that specifically allowed committee members to participate in meetings by electronic means. These provisions are repealed so as not to conflict with the new, more facilitative standard rules inserted by item 1. The requirements for Part 2 committees to decide matters at meetings by a majority of the votes of members and to keep minutes of proceedings at its meetings are retained.

### **Items 3-4**

Items 3 and 4 amend section 50-70 to facilitate the electronic recording and keeping of decisions of Part 2 committees. Electronic records may be maintained if, at the time of making the record, it was reasonable to expect that the record would be readily accessible so as to be useable for subsequent reference. Similarly, electronic records may be kept electronically if they are available for inspection at the place where they are required to be kept, the method of generating the electronic form provided a reasonable means of assuring its integrity and the information was expected to be readily accessible. These are the same as the conditions that applies to the electronic recording and keeping of minutes (refer to the explanation in item 1 above).

### Items 5-8

Item 5 amends the content requirements for notices for interviews of applicants in section 50-80. It does this to ensure that, if alternative technology is to be used, the notice contain sufficient information to allow persons to participate by means of the alternative technology. A minor modification is also made to ensure that if an interview is held at more than one location, the notice specifies the primary location. This specification is important as it dictates where the interview is taken to have been conducted as per the new rules relating to the place of meetings (see the discussion of item 1 above).

Items 5 and 6 also make consequential amendments to section 50-80 to remove references to electronic means, or where appropriate, replace them with references to virtual meeting technology. In some cases, the references to electronic means are not required as the situation is governed by the general rules relating to the use of virtual meeting technology inserted by item 1. In other cases, the provisions need to be retained as they are not covered by the general rules. In these cases, the reference to 'electronic means' is updated to use the term 'virtual meeting technology' to ensure the consistent use of terminology.

Items 7 and 8 make analogous changes to section 50-85 which relates to interviews which are conducted for the purposes of determining whether to cancel a liquidator's registration.

### Item 9

Item 9 amends the requirements for giving notice of a meeting in paragraph 75-15(1)(a) to account for the fact that meetings may be held virtually. Notices of meetings convened under Division 75 must now specify the following information:

- The notice must designate the primary location for the meeting if there are two or more physical locations, such as in a situation where the administrator and some creditors are in Sydney, but a venue is made available in Melbourne for other creditors to attend and link the two venues using virtual technology.
- When a meeting is to be held using virtual meeting technology, the notice of the meeting must include sufficient information to allow the persons entitled to attend the meeting to participate using virtual meetings technology. This information could consist of dial-in details or a link to the relevant website.
- If there is only one physical location where persons may attend in person – the notice must specify the date, time and place for the meeting.

### Item 10

Item 10 repeals a note in section 75-15. Formerly, section 600G of the Corporations Act applied only to a small number of listed provisions and those provisions included a note to alert the reader to the fact that they were covered by section 600G. The scope of section 600G of the Corporations Act was expanded by the Insolvency Act to cover any document required or permitted to be given under a provision relating to the

external administration. Accordingly, the note to section 75-15(1) is no longer required.

**Items 11 - 13**

Items 11 to 13 amend section 75-25 to account for the fact that proxy appointments may be made electronically. A new paragraph is inserted into subsection 75-25(1) to allow a creditor to appoint a proxy by means of an electronic communication.

The requirement for the proxy appointment to be in the approved form is repealed. This reflects the fact that the approved form for such an appointment was repealed in the 2016 Insolvency Law Reform package.

**Items 14 and 15**

Items 14 and 15 amend section 75-30 to specify that a meeting may take place at separate venues, provided all persons attending the meeting have a reasonable opportunity to participate in the meeting. The convenor still has an obligation to convene the meeting at a time and place that they think are most convenient for the majority of the persons entitled to receive notice of the meeting.

**Item 16**

Item 16 repeals section 75-35 and inserts a new rule regarding notice of meetings held using virtual meeting technology. As in item 9, where a meeting is to be held using virtual meeting technology, the notice must include sufficient information to allow a person entitled to attend the meeting sufficient information to participate in it by means of the technology.

The rule also applies in relation to a notice of adjournment of a meeting held using virtual technology.

**Item 17**

Item 17 amends the content requirements for notifications of meetings placed on the ASIC website. The same information must be included in the notice as outlined in the discussion of item 9 above.

**Item 18**

Item 18 repeals section 75-75 and inserts a new set of rules permitting and regulating the conduct of meetings held using virtual meeting technology.

These new rules apply in relation to meetings concerning a company under external administration, including meetings of committees of inspection under Division 80.

The rules inserted into section 75-75 permitting meetings to be held using virtual meeting technology, along with those regarding calculating quorum, voting at meetings and tabling of documents at a meeting are the same as those inserted by item 1.

## EXPOSURE DRAFT

The rules deeming the place and time of a virtual meeting under 75-75 differ from those inserted by item 1. The rules ensure there is only one deemed place and time of a meeting in the event of a dispute. In section 75-75:

- For a meeting concerning only one company under external administration, and where all of the participants attend using virtual meeting technology, the place of the meeting is taken to be the address of the registered office of the company under external administration.
- For a meeting concerning a pooled group in which all of the participants attend using virtual meeting technology, the liquidator may determine the place of the meeting under section 571 of the Corporations Act.

### **Items 19 and 20**

Items 19 and 20 amend subsections 75-105(4) and (5) and inserts new subsections 75-105(4A) and (4B) to account for the fact that meetings (including adjourned meetings) may now be held using virtual technology. This means that meetings (other than meetings convened under section 436E of the Corporations Act) that are adjourned because there is not a quorum or the meeting is otherwise insufficiently constituted are adjourned:

- to the same day in the next week;
- to the same time on that day; and
- to the same place or using the same technology.

Otherwise, the person presiding at the meeting may specify the day, time and place of the adjourned meeting.

### **Items 21-25**

Items 21, 22 and 23 amend section 75-110 to reflect the new requirement for votes on resolutions at virtual meetings to be decided on a poll.

Resolutions put to the vote at meetings must be taken on a poll if the meeting is held using virtual meeting technology, or if it is requested by someone participating and entitled to vote at the meeting.

Unless virtual meeting technology is held at a joint meeting of creditors and company members, votes taken at these meetings must be decided on the voices.

Where polls are required because virtual meeting technology is being used, the person presiding at the meeting may determine the manner in which the poll is to be taken. This provides flexibility to determine procedures where, for example, the outcome of a strict poll may be inaccurate because some attendees hold multiple proxies.

Items 24 and 25 update the headings in sections 75-115 and 75-120 to reflect that polls may sometimes be required as well as demanded.

### **Item 26**

Item 26 repeals subsection 75-140(4) and inserts a new provision. Adjourned meetings of creditors must be adjourned to the same place as the original meeting. Likewise, if the meeting is to be held using virtual meeting technology, information regarding participation in the resumed meeting must be provided in the same manner as for the original meeting. Otherwise, the creditors may by resolution adjourn the meeting to a different place or provide for the manner in which information about joining the meeting using technology may be given.

### **Item 27**

Item 27 inserts section 75-146 which establishes a new set of default rules for the electronic recording and keeping of information. The new rules apply to any information that is required or permitted to be recorded or kept under Chapter 5 of the Corporations Act, Schedule 2 to the Corporations Act, Chapter 5 of the Corporations Regulations and the Insolvency Practice Rules. This includes, but is not limited to, records of the minutes of proceedings at a meeting.

Information, including minutes, may be recorded electronically if at the time of recording the information it is reasonable to expect that the information would be readily accessible so as to be usable for subsequent reference.

The information may also be kept electronically if the method used to keep it provides a reliable means of assuring the maintenance of the integrity of the information and it was, at the time of generating the electronic form of the information, reasonable to expect that the information would be readily accessible so as to be usable for subsequent reference. 'Ensuring the maintenance of the integrity of the information' means that the electronic form of the information must remain complete and unaltered apart from the addition of any endorsement or any immaterial change which arises in the normal course of communication, storage or display.

If the information is stored electronically, it must be open for inspection at the same place where a hard copy would have been required to have been retained under a provision of the Corporations Act, the Corporations Regulations or the Insolvency Practice Rules.

These rules mirror the new requirements for when information can be recorded or stored electronically under Division 50 (refer to the discussion of items 1 and 3-4 above).

### **Item 28**

The new rules relating to virtual meetings apply if the meeting is held, and the relevant notices and other documents are given, on after the day that Schedule 2 to the Rules commences. They do not apply if the meeting is held after the commencement date but the notice was provided before commencement.

The new rules relating to the recording and keeping of information (including minutes and decisions of meetings) apply to information kept before, on or after the commencement of Schedule 2. This means that a Part 2 committee or another entity may choose to migrate physical minutes kept for meetings before the commencement of Schedule 2 into an electronic format.