

## EXPLANATORY STATEMENT

### Issued by the authority of the Minister for Revenue and Financial Services

*Bankruptcy Act 1966*

*Corporations Act 2001*

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

Section 1364 of the *Corporations Act 2001* (the Corporations Act) and section 315 of the *Bankruptcy Act 1966* (the Bankruptcy Act) provide that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 1634 of the Corporations Act, which will commence when the *Insolvency Law Reform Act 2016* (the Amending Act) commences, provides that the Governor-General may make regulations prescribing matters of a transitional nature, or modifying provisions, relating to Schedule 2 of the amending Act.

The Amending Act implemented the Australian Government's reforms to create common rules for the regulation of corporate insolvency and personal bankruptcy that will:

- Remove unnecessary costs and increase efficiency in insolvency administrations;
- align the registration and disciplinary frameworks that apply to registered liquidators and registered trustees;
- align a range of specific rules relating to the handling of personal bankruptcies and corporate external administrations;
- enhance communication and transparency between stakeholders;
- promote market competition on price and quality;
- improve the powers available to the corporate regulators to regulate the corporate insolvency market; and
- improve overall confidence in the professionalism and competence of insolvency practitioners.

A number of legislative instruments, including the *Corporations and Other Legislation Amendment (Insolvency Law Reform) Regulation 2016* (the Regulation), are required to fully implement the Australian Government's reforms.

The Regulation amends the *Corporations Regulations 2001* (the Principal Regulations) and the *Bankruptcy Regulations 1996* (the Bankruptcy Regulations) to:

- Delay the commencement of Part 3 of Schedule 2 - Insolvency Practice Schedule (Corporations) to the Amending Act and amendments to the Corporations Act consequential on this Part;
- repeal provisions made redundant as a result of the amending Act; and
- repeal provisions made redundant as a result of legislative instruments to be known as *Insolvency Practice Rules (Corporations)* and *Insolvency Practice Rules (Bankruptcy)*

that will be made by the Minister for Revenue and Financial Services and the Attorney-General respectively.

The Regulation also consequentially amends other legislative instruments, including the *Corporations (Aboriginal and Torres Strait Islander) Regulations 2007* (CATSI Regulations), as a result of the Amending Act and the delayed commencement of Part 3 of Schedule 2 - Insolvency Practice Schedule (Corporations) to the Amending Act.

Details of the Regulation are set out in the [Attachment](#).

The Regulation has been informed by public consultation on a proposals paper outlining the contents of the legislative instrument released in 2015 and on a draft of the instrument in 2016. As a result of industry feedback following the passage of the Amending Act, the Australian Government agreed to the partial delay of the commencement of the Amending Act to ensure an efficient transition to the new obligations. In particular, the delay will allow for the development and dissemination of insolvency firm software used by the majority of the industry.

The approval of the Legislative Governance Forum on Corporations has been obtained for the amendments in the Regulation in accordance with the *Corporations Agreement 2002*.

The Early Assessment Regulation Impact Statement prepared for the introduction of the Amending Act in December 2015, and published as part of the Explanatory Memorandum to that Act, has been updated. A Final RIS will be published when the Insolvency Practice Rules (Corporations) and Insolvency Practice Rules (Bankruptcy) are made.

The Regulation commences on the day that the Amending Act commences (which will be 1 March 2017), with Schedule 1, Part 2 of the Regulation commencing on 1 September 2017.

## Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

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

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### Overview of the Legislative Instrument

The *Corporations and Other Legislation Amendment (Insolvency Law Reform) Regulation 2016* amends the *Corporations Regulations 2001*, the *Bankruptcy Regulations 1996* and various other legislative instruments to:

- Repeal provisions made redundant as a result of the amending Act;
- repeal provisions made redundant as a result of legislative instruments to be known as *Insolvency Practice Rules (Corporations)* and *Insolvency Practice Rules (Bankruptcy)* that will be made by the Minister for Revenue and Financial Services and the Attorney-General respectively;
- delay the commencement of Part 3 of Schedule 2 - Insolvency Practice Schedule (Corporations) to the Amending Act and amendments to the Act consequential on this Part; and
- consequentially amend other legislative instruments, including the *Corporations (Aboriginal and Torres Strait Islander) Regulations 2007*, as a result of the amending Act and the delayed commencement of Part 3 of Schedule 2 - Insolvency Practice Schedule (Corporations) to the Amending Act.

### Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

### Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**Details of the Corporations and Other Legislation Amendment (Insolvency Law Reform) Regulation 2016**

This Attachment sets out further details of the *Corporations and Other Legislation Amendment (Insolvency Law Reform) Regulation 2016* (the Regulation). All references are to the Regulation unless otherwise stated.

**Part 1 – Preliminary**

*Section 1 – Name of Regulation*

This section provides that the title of the Regulation is the *Corporations and Other Legislation Amendment (Insolvency Law Reform) Regulation 2016*.

*Section 2 – Commencement*

This section provides that the Regulation will commence in two stages.

The following provisions of the Regulation will commence on the day that the *Insolvency Law Reform Act 2016* (the Amending Act) commences:

- Sections 1 to 4;
- Schedule 1, Part 1; and
- Schedule 2.

Schedule 1, Part 2 of the Regulation will commence on 1 September 2017.

*Section 3 – Authority*

This section provides that the Regulation is made under the authority of 15 separate pieces of legislation.

*Section 4 – Schedules*

This section provides that each instrument that is specified in a Schedule to the Regulation is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Regulation has effect according to its terms.

**Schedule 1, Part 1 – Amendments commencing at same time as Schedule 1 to the Insolvency Law Reform Act 2016**

**Amendments to miscellaneous legislative instruments**

*Items 1-4; 17-28; 42; 45-46; 48-51*

These items substitute references to an ‘externally-administered body corporate’ in the following provisions of a range of legislative instruments with ‘a Chapter 5 body corporate’ in order to reflect changes in terminology made through the Amending Act.

- Subparagraph 3.315(1)(c)(ii) of the *Agricultural and Veterinary Chemicals (Administration) Regulations 1995*.
- Subregulation 61(10) of the *Agricultural and Veterinary Chemicals Code Regulations 1995*.
- Subregulation 33-15.03(2) of *A New Tax System (Goods and Services Tax) Regulations 1999*.
- Subparagraph 11.072(1)(g)(i)(A) of the *Civil Aviation Safety Regulations 1998*.
- Paragraph 3(3)(a) of the *Coal Mining Industry (Long Service Leave) Administration Regulations 1993*.
- Subclause 4.2 of Schedule 1, Paragraphs 17(3)(g) and 29(1)(b) of Schedule 1, and Paragraph 4.2(c) of Annexure 1 of Schedule 1 to the *Competition and Consumer (Industry Codes – Franchising) Regulation 2014*.
- Subsection 4(2), Paragraphs 29(2)(j) and 36(1)(b) of Schedule 1, Paragraph 4.2(c) of Annexure 1 of Schedule 1, and Paragraph 3.2(c) of Annexure 2 of Schedule 1 to the *Competition and Consumer (Industry Codes – Oilcode) Regulation 2006*.
- Subparagraph 9.2A.01(c)(v) and Schedule 10D, table item 2 of the *Corporations Regulations*.
- Paragraph 2.01(2)(b) of the *Dairy Produce Regulations 1986*.
- Subparagraph 2.28(2)(f)(i) of the *National Greenhouse and Energy Reporting Regulations 2008*.
- Paragraphs 2.04(g) and 5.06(2)(f) of the *Product Stewardship (Televisions and Computers) Regulations 2011*.
- Subparagraph 3L(1)(f)(ii) of the *Renewable Energy (Electricity) Regulations 2001*.

#### *Item 5*

This section amends Regulation 8AA of the *Australian Securities and Investments Commission Regulations 2001* (the ASIC Regulations) to expand the number of professional disciplinary bodies able to receive confidential information from ASIC to include the Australian Restructuring Insolvency and Turnaround Association and any State or Territory law society, statutory board or commission that has disciplinary functions recognised under a law regulating legal practitioners in the State or Territory.

#### *Item 6*

This section amends subregulation 8AAA(2) of the ASIC Regulations to require ASIC to report on its use of coercive powers to request information and books from liquidators under new section 30B of the ASIC Act.

#### *Item 7*

This item amends Schedule 1 (Form 3) to replace the reference to the ‘Companies Auditors and Liquidators Disciplinary Board’ with a reference to the ‘Companies Auditors Disciplinary Board’.

#### *Item 29*

Item 29 replaces the reference to ‘deed of corporation arrangement’ with a reference to a ‘notice of execution of the deed of company arrangement’ in item 19, Part 4 of Schedule 2 of the CATSI Regulations. This change is necessary as a consequence of amendments made to

section 450B(c) of the Corporations Act through the Amending Act, which is applied to Aboriginal and Torres Strait Islander corporations (ATSI corporations) under section 418-10 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2007* (CATSI Act).

#### *Item 47*

The Amending Act repealed the concept of registration as an official liquidator. As a result, any registered liquidator can undertake administrations previously only available to individuals registered as official liquidators. The reference to official liquidator in subparagraph 2.84(3)(k)(iv) of the *Migration Regulations 1994* is therefore no longer operational and is amended to refer to a registered liquidator instead.

### **Amendments to the Bankruptcy Regulations 1996**

#### *Items 8-9*

The definitions of ‘working day’ and ‘taxing officer’ in subregulation 1.03(1) are repealed.

#### *Items 10-13, 15-16*

The following sections are amended to replace references to ‘working days’ with ‘business days’.

- Subregulations 4.05(1) and (3)
- Subregulations 10.03(2) and (3)
- Subregulations 11.01A(1) and (2)
- Item 2 of Schedule 8
- Item 22 of Schedule 8
- Item 24 of Schedule 8

#### *Item 14*

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

### **Amendments to the Corporations Regulations 2001**

#### *Items 30, 37, 38*

Under section 15-1 of the Amending Act, ASIC may keep a register of liquidators in any form it deems appropriate. Under section 15-1 of the Insolvency Practice Rules (Corporations) to be made by the Minister for Revenue and Financial Services, ASIC must make a wide range of details about registered liquidators publicly available including the individual’s name. As a result the permission for ASIC to place the name of insolvency practitioners on an electronically searchable register, currently provided through regulations 9.1.01 and 9.1.02, will no longer be required.

The definition of ‘registration number’ in subregulation 1.0.02(1) is also amended to remove the references to ‘registered liquidators’ and ‘official liquidators’ as a registration number is no longer required to be provided by ASIC upon registration.

#### *Item 31*

The requirement for registered liquidators to provide ASIC with an annual statement under section 1288 of the Corporations Act has been repealed and replaced with a similar obligation

in Schedule 2, section 30-1 of the Amending Act. This amendment will not result in any substantive change to the obligations on practitioners or ASIC.

*Item 34*

The requirement for registered liquidators to notify ASIC of a change of address will now be required under section 35-5 of the Insolvency Practice Rules (Corporations) to be made by the Minister for Revenue and Financial Services. The similar requirement under regulation 5.3A.04 is therefore repealed.

*Item 35*

The contents of Regulation 5.3A.07 have been replicated in the new section 446AA of the Corporations Act which was inserted by the Amending Act. Regulation 5.3A.07 is therefore repealed.

*Items 39-41*

Following the commencement of the Amending Act, the requirements and processes regarding the registration of liquidators will now be provided for under Schedule 2, Division 20 of the Corporations Act and Division 20 of the Insolvency Practice Rules (Corporations).

Regulation 9.2.02 is therefore amended to remove the reference to subparagraph 1282(2)(a)(ii) of the Corporations Act, as this provision will be repealed.

The heading to Part 9.2 is also amended to remove the reference to the registration of liquidators.

*Items 43-45*

Items 43-45 address a mistake in the numbering of the Regulations which has allowed for two schedules to be called Schedule 10D. The second Schedule 10D is therefore renumbered as Schedule 11.

**Schedule 1, Part 2 – Amendments commencing on 1 September 2017**

**Amendments to the Bankruptcy Regulations 1996**

*Item 52*

The Amending Act inserted the ability for the Inspector-General to disclose certain information to ‘a prescribed disciplinary body’. Item 52 specifies that the following disciplinary bodies are prescribed:

- Chartered Accountants Australia and New Zealand;
- CPA Australia;
- Institute of Public Accountants;
- Australian Restructuring Insolvency and Turnaround Association; and
- a State or Territory law society, statutory board or committee that has disciplinary functions recognised under a law regulating legal practitioners in the State or Territory.

*Item 53*

Regulations 4.15 and 4.16 relate to proxies for creditors’ meetings. Subdivision D of Division 75 of the Insolvency Practice Rules (Bankruptcy) relates to proxies making these regulations redundant. Item 53 repeals these regulations.

*Item 54*

The majority of Part 8 of the Bankruptcy Regulations relates to the registration, remuneration and disciplinary matters, which would be dealt with by the Insolvency Practice Rules (Bankruptcy). Item 54 preserves the regulations that are not covered by the Insolvency Practice Rules (Bankruptcy) but repeals the redundant regulations.

#### *Item 55*

Regulations 10.04, 10.05 and 10.09 relate to requirements in a creditors' meeting. Subdivision 75 of the Insolvency Practice Rules (Bankruptcy) will relate to rules around creditors' meetings making these regulations redundant. Item 55 repeals these regulations.

#### *Items 56, 59*

Schedule 2 and Part 2 of Schedule 6 to the Bankruptcy Regulations modify the meeting requirements for compositions and Personal Insolvency Agreements, respectively. Subdivision 75 of the Insolvency Practice Rules (Bankruptcy) relates to rules around creditors' meetings making these schedules redundant. Items 56 and 59 repeal these regulations.

#### *Item 57*

Item 8 of Schedule 3 currently refers to section 175 of the Bankruptcy Act, which relates to auditing of trustee accounts. The Amending Act repeals section 175 of the Bankruptcy Act and replaces it with section 70-15 of Schedule 2 to the Bankruptcy Act. Item 57 updates the reference in this item.

#### *Item 58*

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

#### *Item 60*

Items 8 and 10 modify the operation of sections 173 and 181 of the Bankruptcy Act for personal insolvency agreements. The Amending Act repeals sections 173 and 181 of the Bankruptcy Act making this modification unnecessary. Item 60 removes this part.

#### *Item 61*

Part 7 of Schedule 6 modifies the operation of subsection 173(1) of the Bankruptcy Act for personal insolvency agreements. The Amending Act repeals subsection 173(1) of the Bankruptcy Act making this modification unnecessary. Item 61 removes this part.

#### *Items 62-65*

Schedule 7 of the Bankruptcy Regulations modifies the operation of certain sections of the Bankruptcy Act for administration of a bankrupt estate where the debtor is deceased.

Items 3 to 14 and subitems 14.3 and 14.4 of Schedule 7 modify sections of the Bankruptcy Act that have been repealed by the Amending Act making these modifications unnecessary. Items 62 and 63 remove these items and subitems.

Subitem 15.1 refers to subsection 73(4) of the Bankruptcy Act. The Amending Act repeals this subsection. Item 64 updates this subitem to refer instead to subsection 74(1) of the Bankruptcy Act (as amended by the Amending Act).

The modification made by item 27 of Schedule 7 is not based on a statutory power and is therefore removed. Items 46, 47 and 48 of Schedule 7 modify sections of the Bankruptcy Act

that have been repealed by the Amending Act making these modifications unnecessary. Item 65 repeals these items accordingly.

### **Amendments to the Corporations (Aboriginal and Torres Strait Islander) Regulations 2007**

#### *Items 66 – 76*

The external administration of ATSI corporations is primarily provided for under the *Corporations (Aboriginal and Torres Strait Islander) Act 2007* by applying the provisions, or a modified version, of the Corporations Act.

- Section 516-1 applies the controllership provisions of the Corporations Act to ATSI corporations;
- Section 521-1 applies the voluntary administration provisions to ATSI corporations; and
- Section 526-35 applies the winding up provisions to ATSI corporations.

Regulation 418-10.01 of the CATSI Act obliges the Registrar for Indigenous Corporations to keep a Register of ATSI Corporations which holds information specified in Part 4 of Schedule 2.

Part 4 of Schedule 2 of the CATSI Act modifies information or documents which must be kept on a Register kept by ASIC under the Corporations Act, and then applies those obligations on the Registrar for Indigenous Corporations to keep a similar register for ATSI corporations.

Items 66, 67, 68, 70 and 73 of this Regulation amend table items 17, 22, 35 and 43 to reflect changes made by the Amending Act.

Items 69, 71, 72 and 74 of this Regulation repeal table items 30, 36, 40, 41, 42 and 47 as the Corporations Act provisions referred to in those table items have been repealed by the Amending Act.

#### *Items 75 – 76*

Schedule 4 of the CATSI Regulations modifies a range of obligations set out in the Corporations Act which are then applied to ATSI corporations through the operation of the CATSI Act.

Item 75 of this Regulation repeals table item 23 of Schedule 4 as the Corporations Act provision referred to in that table item (Paragraph 473(5)(a) of the Corporations Act) has been repealed by the Amending Act.

Item 76 of this Regulation amends table item 27 of Schedule 4 to reflect the change made to section 532 (1) of the Corporations Act by the Amending Act.

### **Amendments to the Corporations Regulations 2001**

#### *Item 77*

Regulation 1.0.03A (table items 13 and 14) requires a return regarding the holding of a meeting under section 509 of the Corporations Act, or the provision of a liquidator's receipts and payments under section 539 of the Corporations Act, to be lodged in a prescribed form. These obligations are repealed when Schedule 1, Part 2 of the Amending Act commences.

#### *Item 78*

Regulation 1.0.03C (table item 1) requires a statement about the company's business, property, affairs and financial circumstance under subsection 438B (2) of the Corporations Act to be lodged in a form approved by ASIC. The Amending Act amends subsection 438B (2) to achieve this same effect, making this table item redundant. The table item is repealed.

Regulation 1.0.03C (table item 2) requires a report to creditors as part of the second meeting of creditors in a voluntary administration under paragraph 439A (4) (a) of the Corporations Act to be prepared in a form approved by ASIC. This obligation will be moved to the Insolvency Practice Rules (Corporations), making this table item redundant. The table item is repealed.

#### *Items 80-81*

Regulations 5.3A.01, 5.3A.02, 5.3A.03 and 5.3A.03AB will be replicated in the Insolvency Practice Rules (Corporations). These Regulations are therefore repealed.

#### *Item 82*

Subregulation 5.3A.06A(2) replaces the timing for the publication of notice regarding the passing of a special resolution by a company that the company be wound up voluntarily. Instead of within 15 days of the special resolution, the notice must be published by the end of the next business day after a liquidator is appointed to administer the winding up of the company.

#### *Items 83*

Section 449C of the Corporations Act is repealed by the Amending Act – as a result regulation 5.3A.06AB is no longer operational and should be repealed.

#### *Item 85*

Item 85 omits the reference to '465A(c)' and substitutes it with a reference to '465A(1)(c)'.

#### *Item 86*

Subsection 465A(2) of the Corporations Act requires a liquidator to cause a notice to be published on ASIC's *Published Notices Website* once a winding up order has been made by the Court. Regulation 5.4.01B sets out the information required in the notice.

#### *Item 87*

Subregulation 5.5.01(3) replaces the timing for the publication of notice regarding the appointment of a liquidator to a creditors' voluntary winding up commenced by a special resolution of the company. Instead of within 21 days of the special resolution, the liquidator appointed to administer the winding up will be required to cause a notice to be published on ASIC's *Published Notices Website* by the end of the next business day.

#### *Item 88*

The requirement for an initial meeting of creditors in a creditor's voluntary winding up was repealed by the Amending Act, as was the requirement to publish a notice regarding the meeting on ASIC's website. Regulation 5.5.02 is therefore no longer operational and is repealed.

#### *Item 89 and 94*

Regulations 5.6.01 to 5.6.36A (except regulations 5.6.11 and 5.6.11A) relate to the keeping of books and records by an external administrator, the handling of administration funds, and the convening, conduct, and voting at meetings during an external administration. The regulation of these requirements is repealed and will be dealt with through Rules made by the

Minister in order to provide for the greater alignment of these requirements between corporate and personal insolvencies.

#### *Items 90 - 92*

Subregulations 5.6.11(2) and (3) of the Corporations Regulations provide that where certain meetings are held during external administrators under the Corporations Act, the rules for meetings set out under 5.6.12 to 5.6.36A will apply. With the repeal of regulations 5.6.12 to 5.6.36A, subregulations 5.6.11(2) and (3) are redundant and are repealed.

#### *Item 93*

Regulation 5.6.11A of the Corporations Regulations sets out when a person is authorised to send information to another person electronically. Subregulations 5.6.11A(1)(a) and (b) apply these rules to subregulation 5.6.12(1) and 5.6.16(6) which is repealed under Item 90. These references are therefore redundant and are repealed.

#### *Item 94*

The Amending Act amended section 497 of the Corporations Act to remove the requirement for an initial meeting in a creditors' voluntary winding up. As a result the requirement to send out a creditor list to all known creditors has been moved from subparagraph 497(2)(b)(ii) to subparagraph 497(1)(a)(ii). The reference to subparagraph 497(2)(b)(ii) of the Corporations Act in regulation 5.6.65 is therefore amended to reflect these changes to the Corporations Act.

#### *Item 95*

Item 95 provides for the substitution of references to an 'externally-administered body corporate' with 'a Chapter 5 body corporate' in order to reflect changes in terminology made through the Amending Act.

#### *Item 96*

Item 96 omits the reference to 'Schedule 10D' in Regulation 10.2.36 and replaces it with a reference to 'Schedule 11'.

#### *Items 97-102*

Schedule 2 to the Corporations Regulations prescribes the format for a range of forms required to be lodged with ASIC during external administrations. As a result of the Amending Act, paragraph 445F(2)(a), subsection 496(2) and subsection 449C(5) have been repealed. These forms are now redundant and are repealed.

### **Schedule 2 – Transition to Part 3 of the Insolvency Practice Schedule (Corporations)**

#### *Item 1*

Item 1 inserts a new Part 10.25 into the Corporations Regulations for the purposes of the transition of Part 3 of the Insolvency Practice Schedule (Corporations) under the Amending Act.

#### *10.25.01*

Subsection 1634 (1) of the Amending Act allows for regulations to be made prescribing matters of a transitional nature relating to the amendments and repeals made by Schedule 2 to the Act. Subregulation 10.25.01 (1) provides for the commencement of transitional provisions outlined under Divisions 3 and 5 of Part 10.25 of the Amending Act from 1 September 2017.

Subsection 1634 (2) of the Amending Act allows for regulations to be made modifying the effect of the Act. Subregulation 10.25.01 (2) provides that the operation of Divisions 1 and 3 of Part 10.25 of the Amending Act are modified as set out in a new Schedule 13 to the Corporations Regulations.

#### *10.25.02*

Regulation 10.25.02 delays the commencement of consequential amendments to the Corporations Act and the CATSI Act which were required as a result of the introduction of Part 3 of the Insolvency Practice Schedule (Corporations) to the Amending Act. The amendments listed apply in relation to external administrations on and after 1 September 2017, instead of upon the commencement of the Amending Act.

#### *Item 2*

Item 2 inserts a new Schedule 13 into the Corporations Regulations for the purposes of the transition to Part 3 of the Insolvency Practice Schedule (Corporations) under the Amending Act.

#### ***Schedule 13, Items 1 and 3***

Items 1 and 3 of Schedule 13 amend the simplified outlines at section 1550 and 1578 which refer to the commencement of Part 3 of the Insolvency Practice Schedule (Corporations) occurring when the Part 1 of Schedule 2 commences. These sections now operate in a manner to refer to Part 3 commencing on 1 September 2017.

#### ***Schedule 13, Item 2***

Item 2 of Schedule 13 allows for the continued existence and operation of the Register of Official Liquidators despite the repeal of sections 1283 and 1286 of the Corporations Act by the Amending Act.

#### ***Schedule 13, Item 4***

Item 4 of Schedule 13 substitutes section 1579 of the Amending Act and replaces it with a provision which allows for Part 3 of the Insolvency Practice Schedule (Corporations) to apply in relation to an external administration of company that starts on or after 1 September 2017, instead of on or after the commencement of the remainder of the Amending Act.

#### ***Schedule 13, Item 5***

Item 5 of Schedule 13 substitutes section 1581 of the Amending Act and replaces it with provisions that operate in the same manner but which commence on 1 September 2017, instead of in line with the commencement of Part 1 of Schedule 2.

#### ***Schedule 13, Item 6***

Item 6 of Schedule 13 amends subsection 1582(1) of the Amending Act to provide that it applies on and after 1 September 2017.

#### ***Schedule 13, Item 7***

Item 7 of Schedule 13 amends section 1584 of the Amending Act to provide that the new provisions about vacancies of court-appointed liquidators apply whether or not the vacancy in the office of liquidator occurred before, on and after 1 September 2017, instead of upon the commencement day.

#### ***Schedule 13, Item 8***

Item 8 of Schedule 13 amends section 1586 of the Amending Act to provide that the new provisions about the exercise of power under section 198G apply to such an exercise occurring on or after 1 September 2017, instead of upon commencement day.

#### ***Schedule 13, Item 11***

Item 11 of Schedule 13 amends section 1591 of the Amending Act to provide that Division 70 of the Insolvency Practice Schedule (Corporations) commences on and after 1 September 2017, instead of on and after the commencement day.

#### ***Schedule 13, Items 12 and 39***

Item 12 of Schedule 13 replaces the transitional provision for annual administration returns set out at section 1592 of the Corporations Act.

Under the new transitional rule,

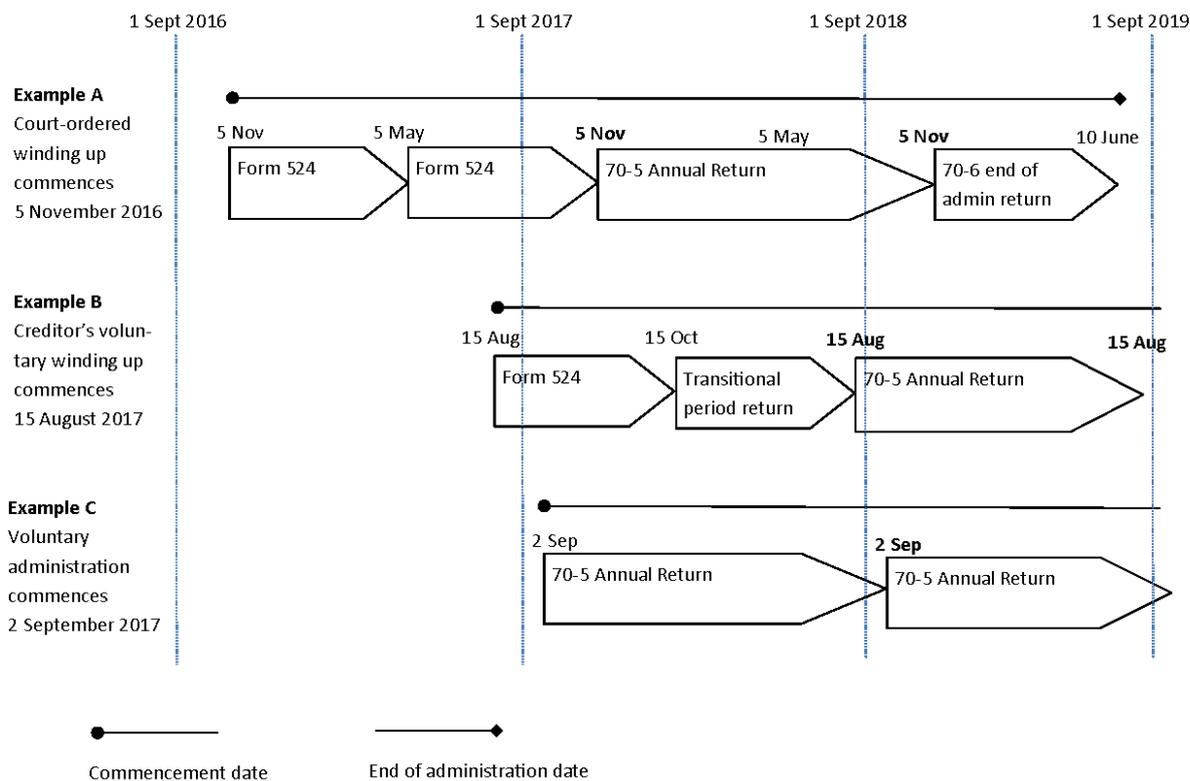
- A liquidator is required to continue to comply with his or her obligations to lodge documents under old return provisions in the first six months after 1 September 2017 if the administration commenced before 1 September 2017.
- If there is then a further six months until the administration's anniversary, the liquidator is then required to lodge a return in the form approved by ASIC for the period after the post-1 September 2017 lodgement under the old return provision and the remainder of the year until the anniversary date of the administration (that is, six months). This is referred to as the transitional return period.
- After the end of the transitional return period, the liquidator is then required to lodge a section 70-5 return that covers the first full anniversary year after 1 September 2017.

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

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

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

Similar transitional arrangements apply to the requirement for statements to the transitional rules applying to returns under section 1623 of the Amending Act to be prepared by controllers annually and at the completion of a controllership.



### ***Schedule 13, Items 13-16***

Items 13 to 16 of Schedule 13 operate to amend sections 1594, 1596, 1597, 1598, 1599 and 1601 so that these sections apply on and after 1 September 2017, instead of on or after the commencement day.

### ***Schedule 13, Item 17***

Item 17 of Schedule 13 to the Amending Act operate to modify section 1604 so that the repeal and substitution of section 509 of the Corporations Act by Schedule 2 to the Amending Act applies where the external administration of the company ends during a financial year stating or after 1 July 2018, instead of 1 July 2017.

### ***Schedule 13, Items 18-20, 22-38, 40***

Items 18, 19, 20 and 22-38 of Schedule 13 operate to amend sections 1613, 1615, 1618, 1619, 1620 and 1627 of the Amending Act so that these sections apply on and after 1 September 2017, instead of on or after the commencement day.