

EXPLANATORY STATEMENT

Issued by the authority of the Chief Justice of the Federal Court of Australia on behalf of the Judges of the Court

Federal Court (Corporations) Amendment (Insolvency Law Reform) Rules 2017

Authority for Federal Court Rules

Section 59 of the *Federal Court of Australia Act 1976* (Federal Court Act) permits the Judges of the Federal Court of Australia (Federal Court) or a majority of them, to make Rules of Court not inconsistent with the Federal Court Act. These rules may provide for the practice and procedure to be followed in the Court and in Registries of the Court. They may extend to all matters incidental to any such practice or procedure that are necessary or convenient to be prescribed for the conduct of any business of the Court.

Section 1337S of the *Corporations Act 2001* (Corporations Act) extends the power to make Rules of Court conferred by section 59 of the Federal Court Act to proceedings and practice and procedure under the Corporations Act and the *Australian Securities and Investments Commission Act 2001* (ASIC Act) and associated matters and things, including costs.

Under subsection 59(4) of the Federal Court Act, the *Legislation Act 2003* (other than sections 8, 9, 10 and 16 of that Act) applies in relation to rules of court made by the Court under the Federal Court Act or another Act:

- (a) as if a reference to a legislative instrument were a reference to a rule of court; and
- (b) as if a reference to a rule-maker were a reference to the Chief Justice acting on behalf of the Judges of the Court; and
- (c) subject to such further modifications or adaptations as are provided for in regulations made under section 59A of the Federal Court Act.

Background to and Monitoring of the Federal Court (Corporations) Rules 2000

The Federal Court has jurisdiction under the Corporations Act and the ASIC Act to deal with a range of civil proceedings and matters which is (subject to some limitation) concurrent with that of the Family Court of Australia and the Supreme Courts of the States and Territories.

Since 1996, Rules Harmonisation Committees established by the Council of Chief Justices of Australia, and later Australia and New Zealand (the Council), have produced harmonised court rules and forms in a number of distinct areas of common jurisdiction.

Harmonised Rules are prepared by the Committee and endorsed by the Council before adoption. Once Harmonised Rules have been adopted, it is expected that Courts in the

jurisdictions in which the Harmonised Rules are relevant will incorporate the Harmonised Rules into their rules of court, or, where necessary, will request that legislation governing the relevant practice and procedure be amended accordingly. Each participating jurisdiction retains authority to modify the application of the Harmonised Rules to suit the circumstances of that jurisdiction.

The present Harmonisation Committee comprises Judges nominated by the Chief Justices of the Federal Court, Family Court, Supreme Courts of the States and Territories of Australia and the High Court of New Zealand.

In addition to the formulation and drafting of rules and forms in subject areas identified or agreed to by the Council, the role of the Harmonisation Committee is to monitor the operation of all of the harmonised rules and generate amendments to address issues which may arise in one or more jurisdictions or as a result of legislative amendment.

In 1999, the Council adopted Harmonised Corporations Rules which had been prepared by a Harmonisation Committee. In the Federal Court, these were made as the *Federal Court (Corporations) Rules 2000* (Corporations Rules) and took effect on 1 January 2000. Similar rules were made by each Supreme Court of the States and Territories.

Since that time, Harmonisation Committees have monitored those Harmonised Corporations Rules and made a number of recommendations for their amendment consequential to amendments to the Corporations Act, ASIC Act and legislative instruments made under them, as well as developments in relevant case law and practice and procedure in jurisdictions more generally. In turn, these amendments have been adopted by the Council and implemented by each jurisdiction.

Insolvency Reform

Following extensive community consultation, significant regulatory reforms of Australia's insolvency laws and industry were made by the *Insolvency Law Reform Act 2016*. These included a large number of amendments to the Corporations Act. The first tranche of these, largely concerned with registration and discipline of insolvency practitioners, commenced on 1 March 2017 and the second tranche, dealing with insolvency administration processes, commenced on 1 September 2017.

As part of the second tranche of the reforms, the *Insolvency Practice Schedule (Corporations)* (supported by the *Insolvency Practice Rules (Corporations) 2016*) will take effect as Schedule 2 to the Corporations Act. In conjunction, a number of procedural provisions of the former Corporations Act were replaced by equivalent provisions in the new Insolvency Practice Schedule (Corporations).

Consequently, a number of technical changes are required to the Federal Court (Corporations) Rules for proceedings in the Federal Court under the Corporations Act or the ASIC Act. These (subject to minor local variations) will also be required to the Harmonised Corporations Rules adopted by the Supreme Courts of the States and Territories.

These changes include removing and substituting some terms following the repeal of some definitions in the Corporations Act; removing or substituting a number of references in rules and notes to rules to repealed sections of the Corporations Act with references, where appropriate, to equivalent replacement provisions in the new Insolvency Practice Schedule (Corporations); removing some rules or subrules made redundant as a result of some of the reforms to some insolvency administration processes; and removing and substituting some rules and subrules following changes to some insolvency administration processes.

Consultation

The amendment rules are made following their adoption by the Council of Chief Justices of Australian and New Zealand as amendments to the Harmonised Corporations Rules.

The Federal Court has also consulted with the Treasury and the Australian Restructuring Insolvency and Turnaround Association (the peak body representing insolvency practitioners in Australia) in relation to the amendment rules, as well as the Australian Securities and Investments Commission (ASIC) (the agency with regulatory and administrative responsibilities under the Corporations Act) on aspects of the interrelationship between the amendment rules and ASIC's administrative systems and processes.

As the amendment rules involve only technical changes, primarily consequential to insolvency law reform which has been the subject of considerable community consultation over several years, further consultation is unnecessary.

Human Rights Scrutiny

Subsection 8(8) of the Legislation Act provides that Rules of Court made for the Federal Court are not legislative instruments for the purposes of that Act. As a result, the *Human Rights (Parliamentary Scrutiny) Act 2011* does not apply to any such Rules of Court and no statement of compatibility for the purposes of that latter Act is included in this Explanatory Statement.

Explanation and Commencement of the Rules

Details of the Rules are in the Attachment.

The Rules commence on the day after they are registered on the Federal Register of Legislation.

Federal Court (Corporations) Amendment (Insolvency Law Reform) Rules 2017

Outline

Rules 1 to 3 deal with formal matters including the name of the Rules, the commencement date and the source of authority to make Rules of Court. Rule 4 provides that the details of the amendment made by the Rules are set out in the Schedule.

Rule 1 - Name

Rule 1 provides that the Rules are to be cited as the *Federal Court (Corporations) Amendment (Insolvency Law Reform) Rules 2017*.

Rule 2 - Commencement

Rule 2 provides that the Rules commence on the day after they are registered on the Federal Register of Legislation.

Rule 3 - Authority

Rule 3 provides that the Rules are made under the *Federal Court of Australia Act 1976*.

Rule 4 – Schedules

Rule 4 provides that the instrument specified in the Schedule, namely the *Federal Court (Corporations) Rules 2000*, is amended or repealed as set out in the items in the Schedule to the Rules.

Schedule 1 - Amendments

Part 1 - Amendments

Items 1, 2 and 3 – Rule 1.4 and Note

Rule 1.4 provides that the definitions of a number of terms used in the Rules and in the Corporations Act is the same in the Rules as in the Act. A note to the rule provides a non-exhaustive list of such terms and where the definition of their meanings can be found in the Act.

Item 2 omits from rule 1.4 the term “official liquidator” and the location of its definition from that list. The definition of that term was repealed in the Corporations Act by the Insolvency Law Reform Act.

The new Insolvency Practice Schedule (Corporations), inserted into the Corporations Act as Schedule 2 by the Insolvency Law Reform Act, includes definitions of a number of terms some of which are also used in the Rules. Item 3 inserts, after the note to rule 1.4, a new subrule 1.4(2) providing that the definitions of terms used in the Rules and in that new Schedule is the same in the Rules as in the Schedule.

As a consequence of the insertion of the new subrule, item 1 renumbers the old rule as subrule 1.4(1).

Item 4 – Rule 1.5

Rule 1.5 defines, for the purposes of the Rules, the meaning of a number of terms.

Item 4 inserts into rule 1.5 an additional definition that “Insolvency Practice Schedule (Corporations)” means Schedule 2 to the Corporations Act.

Items 5, 6 and 7 – Subrule 2.8(3) (table)

Subrule 2.8(3) provides that, unless otherwise ordered, if a person makes an application under a provision of the Corporations Act mentioned in the table following the subrule, a copy of the originating or interlocutory process and supporting affidavit must be served on the Australian Securities and Investments Commission (ASIC). The table includes a brief description of each type of application.

Included in the table as items 3 and 4 respectively are applications for the deregistration of a company under subsection 509(6) of the Corporations Act and for an inquiry into the conduct of a liquidator under subsection 536(1) of that Act.

Subsection 509(6) is repealed by the Insolvency Law Reform Act and replaced in similar terms by subsection 509(2). Subsection 536(1) is repealed by the Insolvency Law Reform Act and replaced in the more general terms of, first, providing the Court with power to make orders in relation to a registered liquidator by subsection 45-1 of the Insolvency Practice Schedule (Corporations) and, second, for an inquiry into the external administration of a company by subsection 90-10(1) and section 90-15 of that Schedule.

Item 5 of the amendment rule omits the reference in the “Provision” column for item 3 in the table following subrule 2.8(3) to “subsection 509(6)” and substitutes “subsection 509(2)”.

Item 6 of the amendment rule omits item 4 from the table following subrule 2.8(3).

Item 7 inserts at the end of the table following subrule 2.8(3) three additional items 10, 11 and 12 referring, respectively, to:

subsection 45-1(3) of the
Insolvency Practice Schedule
(Corporations)

For an order under subsection 45-1(1) of the
Insolvency Practice Schedule
(Corporations) in relation to a registered

subsection 90-10(1) of the Insolvency Practice Schedule (Corporations)	liquidator For an inquiry into the external administration of a company
section 90-20 of the Insolvency Practice Schedule (Corporations)	For an order under section 90-15 of the Insolvency Practice Schedule (Corporations) in relation to the external administration of a company

Items 8, 9 and 10 – Division 4

Division 4 currently deals with receivers and other controllers of corporation property and rule 4.1 provides that a complaint under paragraph 423(1)(b) of the Corporations Act about an act or omission of a receiver, or a controller appointed by the Court, must be made by an originating process seeking an inquiry in relation to the complaint.

Section 45-1 of the new Insolvency Practice Schedule (Corporations) permits the Court to make orders in relation to a registered liquidator either on the application of the registered liquidator or ASIC. In considering any such orders, the Court can take into account a range of matters including whether the registered liquidator has faithfully performed the registered liquidator's duties or failed to act in compliance with the Corporations Act, the new Schedule or any order of the Court.

Section 90-10 of the new Schedule permits the Court to make orders on the application of certain persons and ASIC to inquire into the external administration of a company.

Section 90-15 of the new Schedule permits the Court to make orders in relation to the external administration of a company, on its own initiative or on application under section 90-20 by the persons, including ASIC, specified in that section.

External administration includes where a company is under the administration of a liquidator or provisional liquidator.

Rule 7.11 (currently located in Division 7 which relates to liquidators) deals with applications of complaint to the Court about the conduct of a liquidator under paragraph 536(1)(b) of the Corporations Act, as it previously existed. Section 536 is repealed by the Insolvency Law Reform Act and replaced, in relation to inquiries into the external administration of a company, by sections 90-10 and 90-15 of the new Insolvency Practice Schedule (Corporations) and, in relation to a review of a matter that relates to the external administration of a company by another registered liquidator, by section 90-23 of that Schedule (in regard to the latter see item 14 below).

Item 8 repeals the heading to Division 4 and substitutes "Process for seeking an inquiry or order in relation to controller, registered liquidator or external administration".

Item 9 adds at the end of the existing rule 4.1 a sentence providing that the complaint may be made by a person mentioned in any of paragraphs 11.2(1)(a) to (d) (see item 42 below).

Item 10 inserts after rule 4.1 a new rule 4.2, similar to existing subrule 7.11(1), providing that an application under section 45-1 of the new Schedule for an order in relation to a registered liquidator or under either sections 90-10 or 90-20 of that Schedule for an inquiry or order in relation to the external administration of a company must be made by an interlocutory process for a winding up of the company by the Court or, in any other case, by an originating process. A note to the new rule informs readers that an application for an order or inquiry in relation to the external administration of a company ordered to be wound up by a Court is normally made to the Court that made the winding up order.

Items 11 to 16 – Rule 5.6, Subrules 5.11(3) and (4), Note to Division 6 Heading and Subrules 6.2(3) and (4)

Rule 5.6 deals with the requirements for a plaintiff in an application for the winding up of a company to give notice of the application to the public.

Since 1 August 2012, section 465A of the Corporations Act (renumbered as subsection 465A(1) by the Insolvency Law Reform Act) required that a plaintiff, in an application for the winding up of a company made under section 459P, 462 or 464 of that Act, must cause a notice to be published electronically on the website administered by ASIC for publication of insolvency and external administration-related notices under section 1367A of the Corporations Act. Subrule 5.6(2) currently provides that the notice must be in a specified form and be published at least 3 days after the originating process is served on the company and at least 7 days before the date fixed for the hearing of the application. From 16 March 2017, subrule 5.6(3) required that notice of an application for an order under Part 2F.1 of the Act (which could not be published on ASIC's website under section 1367A) must be published in a daily newspaper circulating generally in the State or Territory where the company has its principal, or last known, place of business.

Currently, rule 5.11 applies if the Court orders that a company be wound up and a liquidator be appointed. Subrule 5.11(3) provides that, in that event, the liquidator must publish a notice of the winding up order and the liquidator's appointment in a newspaper circulating generally in the State or Territory where the company has its principal, or last known, place of business as soon as practicable after being informed of the appointment. Subrule 5.11(4) requires that this notice be in a specified form.

Subsection 465A(2) of the Corporations Act was inserted by the Insolvency Law Reform Act and provides that if the Court orders that a company be wound up as a result of an application under section 459P, 462 or 464, the liquidator must cause notice setting out prescribed information about the order to be published electronically on the website administered by ASIC for publication of insolvency and external administration-related notices under section 1367A of the Corporations Act.

Rule 6.2 applies if the Court orders that a liquidator is appointed as a provisional liquidator of a company. Subrule 6.2(3) provides that, in that event, the provisional liquidator must publish a notice of the provisional liquidator's appointment in a newspaper circulating generally in the State or Territory where the company has its principal, or last known, place of business as soon as practicable after the order is made. Subrule 6.2(4) requires that this notice be in a specified form.

Subsection 465A(2) of the Corporations Act was inserted by the Insolvency Law Reform Act and provides that if the Court orders that a company be wound up as a result of an application under section 459P, 462 or 464, the provisional liquidator must cause notice setting out prescribed information about the order to be published electronically on the website administered by ASIC for publication of insolvency and external administration-related notices under section 1367A of the Corporations Act.

As a result of the reforms, there are now consistent requirements under the Corporations Act for the publication of notice of applications for the winding up of a company made under section 459P, 462 or 464 of that Act and for the publication of notice of the making of orders that a company be wound up and that a liquidator has been appointed or that a provisional liquidator has been appointed that is made as a result of an application under any of those sections.

Item 11 repeals subrule 5.6 and substitutes a new rule. Subrule 5.6(1) provides that if a plaintiff applies for a company to be wound up and that application is not under section 459P, 462 or 464 of the Corporations Act, notice of the application must be published in a daily newspaper circulating generally in the State or Territory where the company has its principal, or last known, place of business. The subrule also provides that such a notice must be in Form 9. A note to the subrule, referencing subsection 465A(1) and section 1367A of the Corporations Act and regulation 5.4.01A of the Corporations Regulations, informs readers that if an application is made under section 459P, 462 or 464 of the Act, the notice must be published electronically on the ASIC website.

Subrule 5.6(2) provides that a notice under subrule 5.6(1) or section 465A(1) must be published at least 3 days after the originating process is served on the company and at least 7 days before the date fixed for the hearing of the application.

Item 12 repeals the heading to rule 5.11 and substitutes a substantially identical heading that omits a reference to Form 11. As noted below, Form 11 applies only for a notice of an order and appointment required under new subrule 5.11(3).

Item 13 repeals subrule 5.11(3) and (4) and substitutes new subrules consistent, as relevant, with subrule 5.6. New subrule 5.11(3) provides that, if the winding up order results from an application other than under section 459P, 462 or 464 of the Corporations Act, the liquidator must publish a notice of the winding up order and the liquidator's appointment in a daily newspaper circulating generally in the State or Territory where the company has its principal, or last known, place of business and that the notice must be in Form 11. A note to the subrule, referencing subsection 465A(2) and section 1367A of the Corporations Act and regulation 5.4.01B of the Corporations Regulations, informs

readers that if an application is made under section 459P, 462 or 464 of the Act, the notice must be published electronically on the ASIC website. New subrule 5.11(4) provides that a notice under subrule 5.11(3) or section 465A(2) of a winding up order must be published as soon as practicable after the liquidator is informed of the appointment.

Item 14 inserts after the heading to Division 6, “Provisional liquidators (Corporations Act Part 5.4B)”, a note referring readers to rule 7.3. That rule provides that a report filed by a liquidator (including a provisional liquidator) under subsection 475 of the Corporations Act is not available for inspection by any person.

Item 15 repeals the heading to rule 6.2 and substitutes a substantially identical heading that omits a reference to Form 12. As noted below, Form 12 applies only for a notice of appointment required under subrule 6.2(3).

Item 16 repeals subrule 6.2(3) and (4) and substitutes new subrules consistent, as relevant, with subrule 5.6. New subrule 6.2(3) provides that, if the order results from an application other than under section 459P, 462 or 464 of the Corporations Act, the provisional liquidator must publish a notice of the provisional liquidator’s appointment in a daily newspaper circulating generally in the State or Territory where the company has its principal, or last known, place of business and that the notice must be in Form 12. A note to the subrule, referencing subsection 465A(2) and section 1367A of the Corporations Act and regulation 5.4.01B of the Corporations Regulations, informs readers that if an application is made under section 459P, 462 or 464 of the Act, the notice must be published electronically on the ASIC website. New subrule 6.2(4) provides that a notice under subrule 6.2(3) or section 465A(2) of a provisional liquidator’s appointment must be published as soon as practicable after the relevant order is made.

Item 17 – Rule 7.1

Rule 7.1 deals with the procedural requirements to be followed by a liquidator appointed by the Court who wished to resign under subsection 473(1) of the Corporations Act, as it previously existed. Section 473 was repealed by the Insolvency Law Reform Act and replaced by a new provision permitting a court appointed liquidator to resign at any time. Subsection 537(2) now requires that a resigning liquidator lodge notice of that resignation with ASIC within 14 days. As a result, item 17 repeals rule 7.1.

Item 18 – Rule 7.2

Rule 7.2 deals with the Court making an order to fill a vacancy in the office of liquidator in a winding up under subsection 473(7) or section 502 of the Corporations Act, as it previously existed.

Subsection 473(7) and section 502 were both repealed by the Insolvency Law Reform Act and replaced by subsections 473A(1) and (4) and subsection 499(3) of the

Corporations Act and section 90-15 of the new Insolvency Practice Schedule (Corporations).

Item 18 repeals rule 7.2 and substitutes a new rule which provides that if, for any reason, there is no liquidator of a company under external administration, the Court may appoint a registered liquidator whose written consent in Form 8 is filed, with a note to the subrule referencing subsection 90-15(2) of the new Schedule, that such appointment may be made on the initiative of the Court or on application under section 90-20 of the new Schedule. It includes a substantially identical heading to the existing rule but with references to the correct legislative provisions.

Items 19 and 20 – Subrules 7.3(1) and (4)

A liquidator or provisional liquidator is required by subsection 475(7) of the Corporations Act to file with the Court and lodge with ASIC, within seven days, a copy of any report as to the affairs of a company received. ASIC is permitted, under subsection 1274(4D) of that Act as amended by the Insolvency Law Reform Act, to edit from any such report any information that ASIC is satisfied is commercial-in-confidence, before allowing a person to inspect the report or obtain a copy of it. Subsection 1274(4G) provides that no person may inspect any information which has been edited from such a report.

Item 19 inserts a new subrule 7.3(1A) (which is identical to existing subrule 7.3(4)) providing that a reference in the rule to “liquidator” includes a provisional liquidator. Item 20 repeals subrule 7.3(4) (which, as above, is replaced by subrule 7.3(1A)) and substitutes a new subrule providing that a report filed by a liquidator is not available for inspection by any person unless the Court otherwise orders, with a note referencing subsection 1274(4G) of the Act.

Item 21 – Paragraph 7.5(3)(e)

Rule 7.5 deals with applications by the liquidator of a company for an order for release or for an order for release and that ASIC deregister the company. Subrule 7.5(3) sets out the details which must be included in the affidavit in support of such an application. Paragraph (e) provides that this must include whether ASIC has appointed an auditor to report on an account or statement of the position in the winding up under subsection 539(2) of the Corporations Act, as it previously existed.

Section 539 was repealed by the Insolvency Law Reform Act and replaced by section 70-15 of the new Insolvency Practice Schedule (Corporations).

Item 21 repeals paragraph 7.5(3)(e) and substitutes a requirement to include details of whether ASIC has caused books in relation to the company to be audited under section 70-15 of the new Schedule.

Item 22 – Rule 7.11

As noted above (see item 8), rule 7.11 deals with applications of complaint to the Court about the conduct of a liquidator under paragraph 536 of the Corporations Act, as it previously existed. Section 536 was repealed by the Insolvency Law Reform Act and replaced, in relation to inquiries into the external administration of a company, by sections 90-10 and 90-20 of the new Insolvency Practice Schedule (Corporations) and, in relation to a review of a matter that relates to the external administration of a company, by section 90-23 of that Schedule.

Item 22 repeals rule 7.11 and substitutes a new rule dealing with applications under subsection 90-23(8) of the new Schedule for appointment of a registered liquidator to carry out a review into a matter relating to the external administration of a company. The rule requires that such an application must be commenced by filing an interlocutory process where the winding up was made by the Court or an originating process where it was a voluntary winding up. It also requires that the application must be accompanied by the written declaration made by the proposed reviewing liquidator under section 90-18 of the *Insolvency Practice Rules (Corporations) 2016*.

As noted above (see item 10), a new rule 4.2 is added in Division 4 which is similar to existing subrule 7.11(1).

Item 23 – Rule 9.2

Rule 9.2 deals with the determination under section 449E of the Corporations Act, as it previously existed, of the remuneration of an administrator of a company under administration or of a deed of company arrangement. The Insolvency Law Reform Act repealed section 449E.

In substitution of this and other remuneration provisions, Division 60 of the new Insolvency Practice Schedule (Corporations) regulates the remuneration of external administrators.

The Insolvency Law Reform Act also repealed the definition and use of “committee of creditors” which, in the context of a voluntary administration, is treated as a committee of inspection under Division 80 of the new Schedule.

Item 23 repeals rule 9.2 and substitutes a new rule in similar terms.

The heading to the new rule refers to “external administrator” instead of “administrator” and to paragraphs 60-10(1)(c) and (2)(b) of the new Schedule.

Subrule 9.2(1) provides that the new rule applies to applications for a determination under paragraph 60-10(1)(c) or (2)(b) of the new Schedule specifying remuneration that an external administrator of a company is entitled to receive for necessary work properly performed by the external administrator in relation to an external administration. The subrule notes that section 60-10 of the new Schedule does not apply to the remuneration

of a provisional liquidator or a liquidator appointed by ASIC under section 489EC of the Corporations Act.

Subrule 9.2(2) is identical to the existing subrule 9.2(2) save and except that it refers to “external administrator” instead of “administrator” and “external administrator’s” instead of “administrator’s” and omits reference to “committee of creditors”.

Subrule 9.2(3) is identical to the existing subrule 9.2(3) save and except that it refers to “external administrator” instead of “administrator”.

Subrule 9.2(4) is identical to the existing subrule 9.2(4) save and except that it refers throughout to “external administrator” instead of “administrator”.

Subrule 9.2(5) is identical to the existing subrule 9.2(5) save and except that it refers throughout to “external administrator” instead of “administrator”.

Subrule 9.2(6) is identical to the existing subrule 9.2(6) save and except that, first, it refers throughout to “external administrator” instead of “administrator” and, second, as subsection 449E(4) of the Corporations Act, as it previously existed, was also repealed by the Insolvency Law Reform Act, it refers to “section 60-12 of the Insolvency Practice Schedule (Corporations)” instead of that repealed subsection.

Items 24 to 33 – Rule 9.2A

Rule 9.2A deals with the review of the remuneration of an administrator under section 449E of the Corporations Act, as it previously existed. As noted above (see item 23), the Insolvency Law Reform Act repealed section 449E and in substitution of this and other remuneration provisions, Division 60 of the new Insolvency Practice Schedule (Corporations) regulates the remuneration of external administrators. It also repealed the definition and use of “committee of creditors” which, in the context of a voluntary administration, is treated as a committee of inspection under Division 80 of the new Schedule.

Item 24 repeals the heading to the rule and substitutes a substantially identical heading save and except that it refers to “external administrator” instead of “administrator” and to subsection 60-11(1) of the new Schedule.

Item 25 repeals subrule 9.2A(1) and substitutes a new subrule providing that the rule applies in relation to an application under subsection 60-11(1) of the new Schedule for a review of a remuneration determination for an external administrator of a company. The subrule notes, first, that section 60-11 of the new Schedule does not apply to the remuneration of a provisional liquidator or a liquidator appointed by ASIC under section 489EC of the Corporations Act and, second, that an application may not be made under subsection 60-11(1) for a review of a remuneration determination made by the Court under paragraph 60-10(1)(c) or (2)(b) of the new Schedule.

Item 26 repeals subrule 9.2A(2). That subrule clarified that an application under rule 9.2A could be made only after the remuneration had been determined under relevant paragraphs of the repealed section 449E. Subsection 60-11(1) of the new Schedule applies only in relation to a remuneration determination. Section 5-5 of the new Schedule defines a remuneration determination to mean, for an external administration of a company, a determination made in accordance with section 60-10 in relation to an external administrator.

Item 27 amends paragraph 9.2A(3)(a) by omitting “a committee of creditors or” leaving the requirement for service of the relevant documents to be on only the members of the committee of inspection.

Item 28 amends paragraph 9.2A(3)(b) by substituting “external administrator” for “administrator”.

Item 29 amends subrule 9.2A(7) by substituting “The external administrator” for “The administrator”.

Item 30 amends paragraph 9.2A(7)(a) by substituting “section 60-12 of the Insolvency Practice Schedule (Corporations)” for “subsection 449E(4) of the Corporations Act”.

Item 31 amends each of paragraphs 9.2A(7)(b), (c), (d) and (e) by substituting “the external administrator” for “the administrator”.

Item 32 amends paragraph 9.2A(7)(f) by substituting throughout “the external administrator” for “the administrator”.

Item 33 repeals subrule 9.2A(8). Subsections 449E(5), (6) and (7), as they previously existed, required that, in differing circumstances, the administrator prepare a report before remuneration was determined. No equivalent requirement exists following the repeal of section 449E.

Items 34 to 38 – Rule 9.3

Rule 9.3 deals with the determination under former subsection 473(2) of the Corporations Act of a provisional liquidator’s remuneration. Subsection 473(2) was repealed by the Insolvency Law Reform Act and replaced by section 60-16 of the new Insolvency Practice Schedule (Corporations).

Subrule 9.3(8) currently provides that the affidavit in support of an application for a determination must provide evidence of matters set out in subsection 473(10) of the Act. That subsection was also repealed and replaced by section 60-16 of the new Schedule providing, as relevant, that section 60-12 applies to a determination of the remuneration of a provisional liquidator in the same way as it applies to the determination of the remuneration of an external administrator. Section 60-12 sets out the matters which must be included in the affidavit in support of an application for a determination.

Item 34 repeals the heading to the rule and substitutes a new heading. The new heading omits “(Corporations Act s 473(2))” and substitutes “(Insolvency Practice Schedule (Corporations) s 60-16)”.

Item 35 repeals subrule 9.3(1) and substitutes a new subrule 9.3(1) providing that the rule applies in relation to an application by a provisional liquidator of a company for a determination under subsection 60-16(1) of the new Schedule of the remuneration the provisional liquidator is entitled to receive.

Item 36 omits “the order” and substitutes “the determination” throughout subrules 9.3(3), (5), (6) and (7) reflecting the language used in the new section.

Item 37 omits from subrule 9.3(8) “subsection 473(10) of the Corporations Act” and substitutes “section 60-12 of the Insolvency Practice Schedule (Corporations)”.

Item 38 omits “liquidator” and substitutes “external administrator” in paragraph 9.3(8)(b).

Item 39 – Rules 9.4 and 9.4A

Rules 9.4 and 9.4A applied to applications by a liquidator of a company for an order under subparagraph 473(3)(b)(ii) and 473(3)(b)(i), respectively, of the Corporations Act for determination of the liquidator’s remuneration and for the review of the amount of the remuneration of a liquidator under subsection 473(5) or (6) or 504(1) of the Corporations Act. Each of those subsections was repealed by the Insolvency Law Reform Act. As noted above (see items 24-33), Division 60 of the new Insolvency Practice Schedule (Corporations) regulates the remuneration of external administrators.

Item 39 repeals both rules.

Item 40 – Paragraph 9.5(3)(b)

As noted above (see item 23), the Insolvency Law Reform Act repealed the definition and use of “committee of creditors” which, in the context of a voluntary administration, is treated as a committee of inspection under Division 80 of the new Schedule.

Item 40 amends paragraph 9.5(3)(b) by omitting “committee of creditors or” (twice occurring), thus requiring service of the relevant documents on only the members of the committee of inspection.

Item 41 – Division 11 (heading)

Currently, Division 11 deals with examinations and orders under Part 5.9, Divisions 1 and 2, of the Corporations Act as in force prior to its amendment by the Insolvency Law Reform Act. Consequential to the latter amendments, the Court may conduct examinations, investigations and inquiries under a broader range of provisions.

Item 41 repeals the Division heading and substitutes “Division 11 – Inquiries, examinations and investigations and orders against person concerned with corporation”.

Item 42 – Rule 11.2

Rule 11.2 currently provides that certain persons and ASIC may apply for an examination or investigation of a person without notice under paragraph 411(9)(b), section 423 or subsection 536(3) of the Corporations Act. The Insolvency Law Reform Act amended paragraph 411(9)(b) to provide that Subdivision B of Division 90 of the new Insolvency Practice Schedule (Corporations) applies to a person appointed to administer a compromise or arrangement of a body as if the appointment was as an external administrator of the body. Subsection 536(3) was repealed by the Insolvency Law Reform Act. Subdivision B of Division 90 of the new Insolvency Practice Schedule (Corporations) provides for inquiries into the external administration of a company including on the application of certain persons.

Item 42 repeals the existing rule and substitutes a new rule. The new rule is in broadly similar terms.

Subrule 11.2(1), however, provides that an application for an order for an examination or investigation under paragraph 423(3) of the Act in relation to a controller of property of a corporation may be made by a person with a financial interest in the administration of the corporation; an officer of the corporation; a creditor on behalf of any committee of inspection provided that that committee so resolves; or ASIC. It notes that an application under paragraph 411(9)(b) of the Act or under Subdivision B of Division 90 of the new Schedule may be made by a person mentioned in subsection 90-10(2) of that Schedule.

Subrule 11.2(2) provides that relevant applications under subsection 423(3) or paragraph 411(9) of the Corporations Act or Subdivision B of Division 90 of the new Schedule may be made without notice.

Subrule 11.2(3) provides that the provisions of Division 11 that apply to an examination under Division 1 of Part 5.9 of the Corporations Act apply, with any necessary adaptations, to an application for an order for an inquiry, examination or investigation under paragraph 411(9)(b) or subsection 423(3) of the Act or Subdivision B of Division 90 of the new Schedule.

Item 43 and 44 – Rule 11.8

Rule 11.8 currently provides that a written record or transcript of an examination or investigation under section 411, 423 or 536 of the Corporation Act may be available for inspection with the consent of the liquidator or ASIC or by leave of the Court. The provision does not apply to the liquidator, ASIC or any person authorised by ASIC.

As noted above (see item 42), amendments and repeals made by the Insolvency Law Reform Act mean that no examination or investigation will occur under section 536 but,

instead, may be held under section 411 or 423 or under Subdivision B of Division 90 of the new Insolvency Practice Schedule (Corporations).

Item 43 repeals the heading and substitutes a new substantially identical heading save and except that it omits reference to “under s 411 s 423 or s 536 of the Corporations Act” and substitutes “under s 411 or s 423 of the Corporations Act or Subdivision B of Division 90 of the Insolvency Practice Schedule (Corporations)”.

Item 44 omits “under section 411, 423 or 536”, and substitutes “under section 411 or 423 of the Corporations Act or Subdivision B of Division 90 of the Insolvency Practice Schedule (Corporations)” in subrule 11.8(1).

Item 45 – Division 14 (heading)

Currently, Division 14 deals with powers of the Court under Part 9.5 of the Corporations Act as in force prior to its amendment by the Insolvency Law Reform Act (particularly appeals under section 1321 in that Part) and under section 554A of that Act. Section 1321 was repealed by the Insolvency Law Reform Act and, as a result, the Division deals only with appeals under section 554A of the Act.

Item 45 repeals the Division heading and substitutes “Division 14 – Appeals authorised by the Corporations Act”.

Item 46 – Rule 14.1

Rule 14.1 provides for the process of an appeal authorised by the Corporations Act from an act, omission or decision of a person holding the office of an administrator, receiver, liquidator or similar. The heading refers to sections 554A and 1321. As noted above (see item 45) section 1321 was repealed by the Insolvency Law Reform Act. Following that latter Act taking full effect, the term “external administrator” covers an administrator of a company or under a deed of arrangement, a liquidator or a provisional liquidator but not necessarily a receiver, a receiver and manager or a controller. Section 554A provides for an appeal from a liquidator’s estimate of the value of a debt or claim made in accordance with the *Corporations Regulations 2001*.

Item 46 repeals the heading and substitutes the similar but less prescriptive heading “Appeals against acts, omissions or decisions”.

Item 47 – Rule 15A.5

Rule 15A.5 provides that where an application is made for an order under article 19 or 21 of the Model Law under the *Cross-Border Insolvency Act 2008* to entrust the administration or realisation of all or part of the debtor’s assets to a person designated by the Court, or under article 21 to entrust the distribution of all or part of the debtor’s assets to a person designated by the Court, then that person must be an official liquidator and have filed a consent to act in accordance with Form 19.

Consequential to the omission from rule 1.4 of the term “official liquidator” (see discussion of item 2 above), item 47 repeals the heading of rule 15A.5 and substitutes a new substantially identical heading save and except that it omits the reference to an “Official liquidator’s” and substitutes “Registered liquidator’s” consent to act.

Item 48 – Subrule 16.1(1)

Subrule 16.1(1) provides that, for the purposes of paragraph 35A(1)(h) of the *Federal Court of Australia Act 1976*, a Registrar may exercise a power of the Court under certain provisions of the Corporations Act, Federal Court (Corporations) Rules or the ASIC Act as listed in Part 1 and Part 2 of Schedule 2 of the Federal Court (Corporations) Rules.

Consequential to the introduction of the Insolvency Practice Schedule (Corporations), item 48 inserts paragraph 16.1(1)(aa) after paragraph 16.1(1)(a) providing that the powers of the Court that may be exercised by a Registrar include those under a provision of the Insolvency Practice Schedule (Corporations) or a provision of these Rules mentioned in Part 1A of Schedule 2.

Item 49 – Schedule 1 (Form 8)

Form 8 is the form currently prescribed by rules 5.5 and 6.1 for the consent of liquidator or provisional liquidator. As noted above (see item 18), it is now also prescribed by rule 7.2.

Item 49 repeals Form 8 and substitutes a new form which is substantially identical. The new form includes a reference to rule 7.2 in the note to the form heading. References to “an official liquidator” are omitted and substituted with “a registered liquidator”. The form makes provision for the disclosure of time-cost rates rather than hourly rates. A new note refers to Division 60 of the new Schedule and adopts the language used in that Division.

Items 50 to 52 – Schedule 1 (Form 16)

Form 16 is currently the form prescribed by rules 9.1, 9.2, 9.3, 9.4 and 9.5 for the notice of intention to apply for remuneration. As noted above (see item 30), rule 9.4 is repealed.

Item 50 omits “9.4” from the note to the form heading, and omits references to “administrator” and substitutes “external administrator” throughout.

Items 53, 54 and 55 – Schedule 1 (Form 16A)

Form 16A is the form currently prescribed by rule 9.2A and 9.4A for notice of an intention to apply for review of an administrator’s or a liquidator’s remuneration. As noted above (see item 39), rule 9.4A is repealed.

Item 53 repeals the note to the form heading and substitutes “(rule 9.2A)”.

Item 54 omits references to “administrator” and substitutes “external administrator” throughout.

Item 55 omits “subrule *9.2A(4)/*9.4A(4)”, and substitutes “subrule 9.2A(4)”.

Item 56 – Schedule 1 (Form 17A)

Form 17A is the form currently prescribed by rule 11A.01 for a warrant under subsection 486B(1) of the Corporations Act for the arrest of a person. Under that subsection, such a warrant can be issued only by the Court and, on issue, the arrest warrant is frequently signed by the issuing Judge. The description under the provision on the form for signing, however, currently is “Signature of Registrar”.

Item 56 omits that description and substitutes “Judge/Registrar”.

Item 57 – Schedule 1 (Form 19)

Form 19 is the form currently prescribed by rule 15A.5 for the consent by an official liquidator to act as a designated person for the administration, realisation or distribution of assets of a company in certain proceedings under the Cross-Border Insolvency Act.

Item 57 repeals Form 19 and substitutes a new form which is substantially identical save and except that it omits reference to “an official liquidator” and substitutes “a registered liquidator”. The form makes provision for the disclosure of time-cost rates rather than hourly rates.

Items 58 to 63 – Part 1 of Schedule 2 (table)

Part 1 of Schedule 2 lists in a table those powers of the Court that may be exercised by a Registrar under a provision of the Corporations Act. As a result of the Insolvency Law Reform Act, a number of provisions of the Corporations Act listed currently in the table have been replaced by other provisions and some provisions were included in the Act under which a Registrar should be able to exercise the power of the Court.

Item 58 inserts a new item into the table. Item 10A in that table provides a Registrar with the power under sections 415A and 415B to make orders in relation to proposals considered at a meeting of creditors.

Item 59 omits the reference to “sections 449C and 449D” in item 45 in the table and substitutes “section 449C”.

Item 60 omits the reference to subsection “473(7)” in item 55 of the table and substitutes subsection “473A(1)”.

Item 61 omits the reference to subsection “473(8)” in item 56 of the table and substitutes subsection “473A(4)”.

Item 62 omits reference to subsection “509(6)” in item 79 of the table and substitutes subsection “509(2)”.

Item 63 inserts after Part 1 of Schedule 2 a new “Part 1A – Insolvency Practice Schedule (Corporations)” that lists the powers of the Court that may be exercised by a Registrar under the provisions of the Insolvency Practice Schedule (Corporations). These are the powers under subsection 20-70(3); paragraphs 40-5(4)(b) and 40-10(4)(b); subsection 45-1(1); paragraphs 60-10(1)(c) and (2)(b); subsections 60-11(3) and 60-16(1); section 65-45; paragraph 70-35(3)(c); section 70-90; subsections 75-41(3), 75-42(4), 75-43(4) and 80-50(2); paragraph 80-55(5)(b); subsections 90-5(1), 90-5(2) and 90-10(4); section 90-15; subsections 90-23(6) and (9); section 90-28; and subsection 90-35(6) of the new Schedule.

Item 64 – Amendments of listed provisions referring to registered liquidators

Consequential to the omission from rule 1.4 of the term “official liquidator” (see discussion of item 2 above), item 64 lists in a table all provisions in which the reference to “an official liquidator” is omitted and “a registered liquidator” is substituted.

Item 65 – Part 1 of Schedule 2 (table)

Item 65 repeals a number of items from Part 1 of Schedule 2 consequential to the repeal by the Insolvency Law Reform Act of provisions of the Corporations Act referred to in those items. These are items 7, 8, 9, 23, 42, 43, 44, 46, 46A, 52, 53, 54, 54A, 69, 73, 74, 75, 81, 82, 84, 89, 90, 97 and 112.

Part 2 – Transitional provisions

Item 66 – Division 17

Item 66 inserts a new Division 17 for the purpose of the transition to the amended rules.

Subrule 17.1(1) provides that, despite the repeal and substitution of rule 9.2 (see item 23 above), that rule, as in force immediately before 1 September 2017, continues to apply in relation to the remuneration of an external administrator of a company who was appointed before 1 September 2017.

Subrule 17.1 (2) provides that, despite the amendments of rule 9.2A (see items 24 to 33 above), that rule, as in force immediately before 1 September 2017, continues to apply in relation to a review of the remuneration of an external administrator who was appointed before 1 September 2017.

Subrule 17.1 (3) provides that, despite the amendments of rule 9.3 (see items 34 to 38 above), that rule, as in force immediately before 1 September 2017, continues to apply in relation to the remuneration of a provisional liquidator who was appointed before 1 September 2017.

Subrule 17.1 (4) provides that, despite the repeal of rule 9.4 (see item 39 above), that rule, as in force immediately before 1 September 2017, continues to apply in relation to the remuneration of a liquidator of a company who was appointed before 1 September 2017.

Subrule 17.1 (5) provides that, despite the repeal of rule 9.4A (see item 39 above), that rule, as in force immediately before 1 September 2017, continues to apply in relation to a review of the remuneration of a liquidator of a company who was appointed before 1 September 2017.

Subrule 17.1 (6) provides that, despite the repeal and substitution of rule 11.2 (see item 42 above), that rule, as in force immediately before 1 September 2017, continues to apply in relation to an inquiry commenced by ASIC before that date under section 536 of the old Corporations Act (including an inquiry commenced because of the extension of section 536 of the old Corporations Act by subsection 411(9) of the Corporations Act to persons appointed under the terms of a compromise or arrangement.

Subrule 17.1(7) provides that “old Corporations Act” means the Corporations Act as in force immediately before 1 September 2017. That term is used only in subrule 17.1(6).

A note to the rule 17.1 informs readers that the Court may give directions if a difficulty arises, or doubt exists, in relation to the practice and procedure to be followed in a proceeding. The note references rule 1.8, which provides general powers to the Court to give directions, and subsection 467(3) of the Corporations Act, which provides the Court with broad powers to give directions about and to dispense with procedural requirements of the Corporations Act, the Court’s rules and prior orders of the Court.