

## **EXPLANATORY STATEMENT**

### **Issued by authority of the Assistant Treasurer, Minister for Housing and Minister for Homelessness, Social and Community Housing**

#### *Corporations Act 2001*

#### *Insolvency Practice Rules (Corporations) Amendment (Virtual Meetings and Electronic Communication) Rules 2022*

Section 105–1 of the Insolvency Practice Schedule in Schedule 2 to the *Corporations Act 2001* (the Act) 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 purpose of the *Insolvency Practice Rules (Corporations) Amendment (Virtual Meetings and Electronic Communication) Rules 2022* (the Rules) is to make minor amendments to the Insolvency Practice Rules to ensure the reforms relating to virtual meetings undertaken as part of the 2020 corporate insolvency reforms operate as intended.

The *Insolvency Practice Rules (Corporations) Amendment (Corporate Insolvency Reforms) Rules 2020* (2020 Rules) amended the Insolvency Practice Rules to allow meetings during an external administration to be held virtually. The 2020 Rules further provided a framework to allow all documents required or permitted to be given during an external administration to be given using electronic means. The 2022 Rules make a number of enhancements to the virtual meetings framework for insolvency to ensure the process is suitable for an external administration and to ensure the framework operates as intended.

The Rules apply:

- in relation to virtual meetings – to meetings held on or after the day the Rules commence;
- in relation to giving documents - to each document relating to the meeting that is required or permitted to be given to a person under the Act (including the Insolvency Practice Schedule and Insolvency Practice Rules) that is given on or after the commencement day; and
- in relation to the keeping of information – to information kept before, on or after the day the Rules commence.

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

Public consultation was undertaken on the Rules from 2 December 2021 to 15 December 2021. Where appropriate, the explanatory materials have been refined in response to feedback from stakeholders.

The Rules also make a number of technical amendments and refinements to the law suggested by stakeholders during the consultation process for the 2020 Rules which took place from 17 November 2020 to 24 November 2020.

Consultation undertaken with States and Territories under intergovernmental agreements (excl. GST).

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

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

The Rules commenced on the day after they were registered on the Federal Register of Legislation.

**Details of the *Insolvency Practice Rules (Corporations) Amendment (Virtual Meetings and Electronic Communication) Rules 2022***

**Section 1 – Name of the Instrument**

This section provides that the name of the Instrument is the *Insolvency Practice Rules (Corporations) Amendment (Virtual Meetings and Electronic Communication) Rules 2022* (the Rules).

**Section 2 – Commencement**

Schedule 1 to the Instrument commences on the day after the instrument is registered on the Federal Register of Legislation.

**Section 3 – Authority**

The Instrument is made under the *Corporations Act 2001* (the Act).

**Section 4 – Schedule**

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

**Schedule 1 – Amendments**

**New definition of ‘show of hands’**

Item 1 inserts a new definition of *show of hands* into section 5-5, which clarifies that votes at meetings may be taken by a show of hands using any electronic mechanism. This definition is necessary to ensure that a show of hands may be used at a virtual meeting as an alternative to a poll.

The new definition is a broad and inclusive definition. Any electronic mechanism used to indicate a person’s intentions in respect of the vote is included in the definition of ‘show of hands’. This could include an attendee clicking a ‘raise hand’ or similar button on a virtual meeting computer program, as well as verbally indicating their vote if dialling-in to the meeting on the telephone.

**Part 2 committee meetings**

*Voting*

Item 2 repeals the rule in subsection 50-6(4) which allowed members of a Part 2 committee to record a vote in advance of a meeting (at the election of the member) and substitutes a new subsection 50-6(4). Under the new rule, where virtual meeting technology is used in holding the meeting, each member must be given the opportunity to participate in the vote in real time. This prevents Part 2 committee members from deciding on an application or a disciplinary matter without first hearing the application or evidence at the meeting. Where Part 2 committees decide

matters at a meeting, the matter must be decided by a majority of the members' votes.

The new rule in subsection 50-6(4) does not require any matter to be decided at a particular meeting. It merely specifies that if a vote is considered necessary, then that vote must be in real time.

#### *Tabling of documents*

Item 3 repeals the rule in subsection 50-6(7) and inserts a new subsection 50-6(7) governing when documents are taken to be tabled at meetings. The new rule allows documents to be tabled at meetings if they are made accessible to the attendees in any form. This includes using 'screen sharing' technology to share the document during a virtual meeting and providing an electronic or physical copy of the document before or during the meeting.

#### *Keeping minutes*

Items 4 and 5 amend subsection 50-7(2) which contains a rule for keeping minutes of Part 2 committee meetings in electronic form. Part 2 committees are required to keep minutes of the proceedings at their meetings under subsection 50-60(4). These minutes may be kept in electronic form under subsection 50-7(2). The amendments remove the requirement to keep the minutes at a particular place, where they may be open for inspection. This allows minutes of Part 2 committee meetings to be kept confidential due to the sensitive and often personal nature of the matters discussed at committee meetings.

#### *Other miscellaneous amendments*

Item 6 amends subparagraphs 50-85(2)(c)(i) and (ii) to correct a drafting error. The new provisions now correctly refer to interviewing a liquidator, whereas previously they referred to interviewing an applicant.

### **General rules for meetings**

#### *Place of a meeting*

Items 7, 9 and 12 amend subparagraph 75-15(1)(a)(iii), paragraph 75-40(2)(db) and paragraph 75-75(6)(a) to establish a new rule for deeming the place of a virtual meeting where none of the attendees are entitled to attend in person. Previously, the deemed place of an entirely virtual meeting was the registered office of the company under external administration, or the contact address specified in the pooling determination in the case of a pooled group. The new rule allows the convenor of the meeting to nominate a physical address in Australia in the notice of the meeting. This provides the convenor with the flexibility to nominate the place that is most appropriate for the stakeholders in an external administration.

Item 9 further amends paragraph 75-40(2)(db) to require a notice of a meeting lodged with ASIC to include a statement that the persons entitled to attend a virtual meeting have been given sufficient information to attend the meeting. This prevents the information to access the meeting from being circulated publicly and potentially allowing persons to attend a meeting where they are not entitled to do so.

The requirement for the notice of a meeting to provide sufficient information for the persons entitled to attend a virtual meeting to participate in the meeting by means of the technology does not prevent the meeting convenor from including appropriate

safeguards. For example, if convening a creditors' meeting, a convenor could include in the notice the contact details of the administrator and a request that potential creditors contact the administrator for further information. The convenor could then only give the meeting access information to proven creditors, that is, only to those persons entitled to attend the meeting.

### *Notice of meeting*

Subparagraph 75-15(1)(a)(iii) previously required the notice of a meeting, if virtual meeting technology was to be used, to include sufficient information to allow the persons entitled to attend the meeting to participate by means of the technology. This effectively replicated a rule in section 75-35 that applies to all meetings held using virtual meeting technology. The redundant rule in subparagraph 75-15(1)(a)(iii) has been replaced with a requirement to include the notional place of the meeting in the meeting notice, while section 75-35 will continue to apply if virtual meeting technology is to be used.

### *Voting*

Items 8, 10, 14 and 15 amend subsection 75-15(1), subsection 75-75(3), subsection 75-110(1) and subsection 75-110(2) to allow the default voting procedures at a virtual meeting to be specified in the notice of the meeting. Previously, resolutions put to the vote at virtual meetings were required to be decided on a poll. Under the new rule, the convenor of a virtual meeting must specify in the notice of the meeting whether the vote must be taken on a poll. If the notice does not require votes to be taken on a poll, votes must be taken on a show of hands unless a poll is requested.

A show of hands may include electronic mechanisms to indicate a voter's intention in respect of a resolution (see item 1).

Item 11 alters the requirements in subsection 75-75(4) for votes taken at virtual meetings. Formerly, all persons who were participating in the meeting and entitled to vote, had to be given the opportunity at the election of the voter to participate in the vote in real time, or to record a vote in advance of the meeting where it was practicable. Under the new rule, persons entitled to vote at the meeting must in all cases be given the opportunity to participate in the vote in real time. The convenor of the meeting may also give attendees the opportunity to record a vote in advance of the meeting (at the election of the voter). This change allows convenors of meetings to extend the opportunity to vote on some matters in advance of the meeting, but to also restrict voting on other matters to real-time votes. However, this rule does not prevent any person entitled to vote from appointing a proxy for the meeting under section 75-150 of the Rules, including a specific proxy.

### *Tabling of documents*

Item 13 repeals subsection 75-75(7) and substitutes a new 75-75(7) regarding tabling documents at virtual meetings. The new rule provides greater flexibility and parallels the new rule that applies to Part 2 committee meetings (see item 3).

Items 16 and 17 amend paragraph 120-5(b) and insert sections 125-1, 125-5 and 125-10 which set out transitional matters and application provisions for virtual meetings and the keeping of information after the Rules commence.

The amendments apply in relation to virtual meetings if the meeting is held on or after the day the Rules commence. The amendments apply to each document relating

to the meeting that is required or permitted to be given to a person under the Act (including the Insolvency Practice Schedule and Insolvency Practice Rules due to the amendment made by item 16) that is given on or after the commencement day.

The amendments apply in relation to information kept before, on or after the day the Rules commence.

**Statement of Compatibility with Human Rights**

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

**Insolvency Practice Rules (Corporations) Amendment (Virtual Meetings and Electronic Communication) Rules 2022**

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 purpose of the *Insolvency Practice Rules (Corporations) Amendment (Virtual Meetings and Electronic Communication) Rules 2022* is to make minor amendments to the *Insolvency Practice Rules (Corporations) 2016* to ensure the reforms relating to virtual meetings undertaken as part of the 2020 corporate insolvency reforms operate as intended.

**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.