

REPORT OF THE COMMITTEE

convened to make a disciplinary decision about

RICHARD ERNEST AURICHT

a registered liquidator.

Members of the Committee

Ms Sarah Thrift, a delegate of ASIC¹ and Chair of the Committee

Ms Robyn Erskine, a registered liquidator chosen by ARITA²

Mr Stephen Parbery, an appointee of the Minister

Decision

1. Mr Auricht's registration as a liquidator should be cancelled under IPS s 40-55(1)(c).³
2. ASIC should publish the fact of the decision and this report, pursuant to IPS s 40-55(1)(h).

Reasons for the Decision

3. Mr Auricht was appointed as a registered company liquidator by ASIC on 29 April 1996. As a result he could act as a company's administrator, a company's deed of company arrangement (DOCA) administrator and as a company's liquidator.
4. Mr Auricht is the sole registered liquidator at his firm, Auricht Chartered Accountants.
5. Under the cover of a letter dated 18 August 2022, ASIC gave Mr Auricht a 'notice to explain why liquidator registration should continue' under IPS 40-40 (the Show-Cause Notice). The Show-Cause Notice was given because ASIC believed that:
 - a. Mr Auricht was not a fit and proper person (pursuant to IPS s 40-40(1)(m));
 - b. Mr Auricht had failed to carry out adequately and properly the duties as a liquidator by not lodging documents with ASIC (IPS s 40-40(1)(f) and (l)(i));
 - c. Mr Auricht no longer has the qualifications, experience, knowledge and abilities prescribed under IPS s 20-20(4)(a) (IPS s40-40 (1)(a)).
6. Schedule B to the Show-Cause Notice set out six concerns upon which ASIC had based its beliefs.
7. By letter dated 21 September 2022, Mr Auricht's solicitor provided Mr Auricht's response to the Show- Cause Notice (the Explanation).
8. By letter dated 1 December 2022 ASIC responded to Mr Auricht's solicitor advising that it was not satisfied by the Explanation and that it would refer Mr Auricht to a committee convened under IPS s 40-45.
9. Mr Auricht's solicitor sent an email on 1 December 2022 providing further information in response to ASICs letter of 1 December 2022. ASIC confirmed receipt of this email its attachments on 1 December 2022.

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³ References to the "IPS" are references to the *Insolvency Practise Schedule (Corporations)* which is Schedule 2 to the *Corporations Act 2001* (Cth) (**the Act**). Schedule 2 has effect because of s600K of the Act. References to the "IPR" are references to the *Insolvency Practise Rules (Corporations)* 2016.

10. By letter dated 6 December 2022 ASIC convened this committee under IPS s 40-45, and under IPS s40-50 referred Mr Auricht to this committee.
11. On 8 December 2022 Mr Auricht's solicitor sent two further emails to ASIC providing information and further documents in response to the Show-Cause Notice.
12. By letter dated 9 December 2022 ASIC responded to Mr Auricht's solicitor's emails of 1 and 8 December 2022, confirming that it was not satisfied by the Explanation or the additional information provided and that it had taken steps to refer Mr Auricht to this committee.
13. This Committee must make a decision that results in one or more of the outcomes IPS 40-55. The Committee must, under IPS 40-60, give Mr Auricht and ASIC a report setting out its decision. The report is this document. It sets out what has been decided.
14. The Committee must observe the rules of natural justice but is not bound by the rules of evidence.⁴
15. In making its decision, the Committee considered information provided to it by ASIC, namely the Show-Cause Notice and its attachments, the Explanation provided by Mr Auricht to ASIC, and correspondence between Mr Auricht's solicitors and ASIC in December 2022. The Committee also took into consideration the information provided by Mr Auricht to the Committee, such as information provided in the letter of 10 February 2023, information provided at the interview, and the submissions dated 13 March 2023 and 1 June 2023 .
16. The Committee may inform itself on any matter it sees fit. As part of its decision making process, the Committee asked three questions of ASIC that related to the technical procedure around the lodgement of documents and the templates available generally. As part of ASICs response, ASIC provided further commentary in relation to Mr Auricht specifically. As that material was now before the Committee, the Committee considered that it was bound by the rules of natural justice to provide that material to Mr Auricht for comment. The Committee has therefore also taken into consideration the ASIC answers to its questions dated 6 April 2023, and Mr Auricht's response to that information dated 1 June 2023.
17. The two broad issues that the Committee were required to determine in coming to its decision were:
 - a. Have the preconditions to the making of a decision been satisfied?
 - i. Was Mr Auricht issued with a valid Show-Cause Notice? and
 - ii. Was Mr Auricht interviewed as required by IPR 50-85?And if the answer to both limbs of a) is yes, then:
 - b. Has the Committee observed the rules of natural justice?
And if the answer is yes, then:
 - c. What is the appropriate decision with reference to the outcomes those listed in IPS 40-55?
18. In order to decide upon the appropriate outcome set out in IPS 40-55, the committee determined the following issues:
 - a. Did Mr Auricht draw remuneration from Ultimate Air Control Pty Ltd without being entitled to do so because Mr Auricht did not have approval of the creditors or the Court to draw this remuneration? In considering this issue, the Committee was required to determine what "entitled" meant in the context of the concern set out in the Show-Cause Notice.
 - b. If the answer to a) is yes, then, in making the drawings, did Mr Auricht gain an advantage for himself or his firm?
 - c. Did Mr Auricht fail to apply to the Court in a timely manner to obtain approval to have his remuneration approved?

⁴ IPR 50-55

- d. Did Mr Auricht fail to address in a timely manner ASIC's concerns in relation to the remuneration and the failure to seek Court approval for the same?
 - e. And if the answer to a) and b), or c) or d) is yes, did Mr Auricht improperly use his position as an officer of Ultimate Air Control Pty Ltd to gain an advantage for himself or Auricht Chartered Accountants contrary to s182(1) of the Act?
 - f. And if the answer to e) is yes, does this make Mr Auricht not a fit and proper person to be a registered liquidator?
 - g. Did Mr Auricht fail to lodge on ASIC's published notices website (PNW) two notices of meeting of creditors?
 - h. Did Mr Auricht fail to lodge the documents set out in Annexure D to the Show-Cause Notice with ASIC?
 - i. And if the answer to g) or h) is yes, did Mr Auricht fail to carry out adequately and properly the duties as a liquidator by not lodging documents with ASIC?
 - j. And if the answer to a) and c), or d) or g) or h) is yes, then on the basis of that conduct, does Mr Auricht no longer have the qualifications, experience, knowledge and abilities prescribed under paragraph 20-20(4)(a) of the IPS?
19. Then having determined the above issued and made the appropriate decision, the Committee was required to decide if it should direct ASIC to publish the Decision.

Have the pre-requisites to the making of a decision been satisfied?

Was the Show-Cause Notice valid?

20. Under the IPS s40-50:

ASIC may refer a registered liquidator to a committee convened under s40-45 if ASIC:

- a. *Gives the liquidator a notice under section 40-40 (a show cause notice) and*
- b. *Either:*
 - i. *Does not receive an explanation within 20 business days after the notice is given; or*
 - ii. *Is not satisfied by the explanation.*

21. ASIC gave Mr Auricht the Show-cause Notice. The Show-Cause Notice was issued under IPS s40-40(1), which relevantly states that:

"ASIC may give a registered liquidator notice in writing asking the liquidator to give ASIC a written explanation why the liquidator should continue to be registered, if ASIC believes that:

(a) the liquidator no longer has the qualifications, experience, knowledge and abilities prescribed under paragraph 20-20(4)(a); or....

(l) the liquidator has failed to carry out adequately and properly (whether in Australia or in an external Territory or in a foreign country):

(i) the duties of a liquidator; or

(m) the liquidator is not a fit and proper person; or"

22. In the Explanation, it was submitted that the Show-Cause notice was invalid on the basis that ASIC, in Annexure B of the Show-Cause Notice, which sets out the matters upon which ASIC formed its beliefs, used the term "concerns" which, it was submitted, indicated that ASIC had not formed the requisite level of belief required by IPS s 40-40(1) to issue the Show-Cause Notice.

23. There is no prescribed form or format for a show-cause notice issued under IPS s40-40(1). The Committee infers that Schedule B to the Show-Cause Notice was an attempt by ASIC to provide particulars to Mr Auricht so that he could respond to the Show-Cause Notice in a meaningful way.

24. Neither ASIC nor the Committee are bound by the rules of evidence, and while natural justice, including procedural fairness, must be provided to all registered liquidators who are issued with show-cause notices, the Committee considers that it would be inconsistent with the intention of Parliament if an emphasis was placed on the form over the substance of the Show-Cause Notice.
25. What is required by IPS s40-40 (1) is that ASIC turn its mind to determine if it believes that any of the statements set out in IPS s40-40(1) apply to the registered liquidator. A belief requires a high level of satisfaction and cannot not merely be a suspicion. Given the consequences that can flow from the process that is instigated by the Show-Cause Notice, the Committee accepts that it is appropriate that the high level of satisfaction be reached by ASIC prior to the Show-Cause Notice be issued.

26. The Show-Cause Notice states:

“ASIC believes that you:

- a) are not a fit and proper person (s40-40(1)(m) of Schedule 2 to the Act);*
- b) have failed to carry out adequately and properly duties as a liquidator by not lodging documents with ASIC (s40-40(1)(f) and (l)(i) of Schedule 2 to the Act);*
- and*
- c) no longer have the qualifications, experience, knowledge and abilities prescribed under s20-20(4)(a) of Schedule 2 to the Act (s40-40(1)(a) of Schedule 2 to the Act);*

ASIC’s belief is based on a review of your conduct as the external administrator of the companies identified in the attached Schedule A, which has given rise to the concerns set out in the attached Schedule B.”

27. The Committee considers that the use of the word “concerns” to describe the particulars upon which ASIC formed its beliefs, or each individual belief, does not detract from the statement that ASIC makes in the Show-Cause Notice that it “believes”. The Committee considers that the use the terms “concerns”, “concern 1”, “concern 2” and “concern 3” when setting out the conduct that is of concern to ASIC, and upon which it has based its beliefs, is not inconsistent or incongruous with ASIC having formed and holding those beliefs.
28. The Committee is satisfied that ASIC has acted in a manner consistent with having formed the requisite belief (by issuing the Show-Cause Notice), has set out the particulars upon which it has formed that belief (in Annexure B to the Show-Cause Notice), and has continued to act as would be expected of having reached the requisite state of belief; namely, ASIC considered the Explanation and upon not being satisfied by the Explanation, convened the Committee and referred Mr Auricht to it.
29. In circumstances where ASIC has stated in the Show-Cause Notice that it formed the necessary belief, and has then acted in a manner consistent with holding that belief, it would be a triumph of form over substance if the Committee inferred that ASIC did not have the requisite belief solely on the basis of the use of the words “concerns” “Concern 1” “Concern 2” and “Concern 3” being used to differentiate between the different basis for its belief in the Show-Cause Notice and its attachments.
30. The Committee therefore does not accept the submission that ASIC did not have the requisite state of belief and is therefore satisfied that the Show-Cause Notice was valid.
31. The Committee also does not accept the submission that each different piece of conduct or “concern” set out in the Show-Cause Notice should have been subject to a separate show-cause notice, as such an approach would be inefficient, time consuming and potentially oppressive to the liquidator.
32. The Committee is satisfied that Mr Auricht was given the Show-Cause Notice, and that he provided an Explanation in response to the Show-Cause Notice.

33. The Committee is satisfied that the pre-conditions to the forming of the Committee set out in IPS s40-50 have been satisfied.

Did the Committee interview Mr Auricht?

34. Mr Auricht attended an in person interview before the Committee on 12 February 2023. Mr Auricht was accompanied to the interview by his solicitor and his barrister.

35. The Committee is satisfied that Mr Auricht was interviewed as required by IPR 50-85.

36. The Committee is therefore satisfied that the pre-requisites to the making of a decision have been satisfied in relation to Mr Auricht.

Is Mr Auricht a fit and proper person to be a registered Liquidator?

What does "entitled" mean in the context of Concern 1 of the Show Cause Notice?

37. At the Interview, Counsel made the submission that the Show-Cause Notice referred to Mr Auricht not having "an entitlement" to the fees he drew, which Counsel submitted was incorrect.⁵ Counsel submitted that liquidators always have an entitlement to payment of fees, and that the processes around approval are not there to determine if the entitlement exists, but rather to quantify the entitlement.⁶

38. Schedule B to the Show Cause Notice states at paragraph 2:-

[2] In summary, ASIC believes that you:

Concern 1

are not a fit and proper person [s40-40(1)(m) of Schedule 2 of the Act] because as an officer of Ultimate Air Control (administrator, deed administrator and liquidator) under section 182(1) of the Act, you:

i) improperly used your position to draw remuneration of between \$339,188.54 and \$388,688.54 from Ultimate Air Control without being entitled to so do. You did not have approval from creditors or the Court to draw this remuneration and by doing so used your position to gain an advantage for yourself and your firm.

ii) have since at least 2016, failed to apply to the Court to have your remuneration approved.

iii) have since October 2021, failed to address ASIC's concerns raised with you regarding the remuneration drawn and approvals in paragraphs (a)(i) and (ii).

39. At paragraph [31] Schedule B to the Show Cause Notice states:

ASIC believes that you are not a fit and proper person [s40-40(1)(m) of Schedule 2 of the Act] because as an officer (administrator, deed administrator and liquidator) of Ultimate Air Control you contravened section 182(1) and (2) of the Act when you drew between \$339,188.54 and \$388,688.54 in remuneration you were not entitled to as set out in paragraphs 18 to 21 and by doing this, you:

a) gained an advantage for yourself and your firm and caused detriment to Ultimate Air Control.

b) reduced the funds available to creditors without providing creditors with the opportunity to scrutinise the value of the work you conducted and denied them the opportunity to refuse your remuneration, in full or in part.

40. Paragraphs [18] sets out the Form 524 Presentation of Accounts and Form 5602 Annual Administration Returns lodged with ASIC between 20 September 2013 and 14 May 2019. Paragraph [19] sets out the date and amount of remuneration drawn by Mr Auricht that is disclosed in the Forms 524 and 5602. Paragraph [20] refers to Annexure B which sets out ASIC's analysis of the documents lodged with ASIC and summarises the fee approvals given and the

⁵ Interview transcript at page 6 line 24 and above

⁶ Interview transcript at page 6 line 20

remuneration paid. Paragraph [21] refers to the Form 5602 lodged on 14 May 2019 which indicates that more funds have been drawn than approved, but the quantum is inconsistent with ASICs analysis.

41. It is unfortunate that the summary of the concern at paragraph [2] of the Show-Cause Notice, and the wording of the concern at [31] of the Show-Cause Notice are different. However, the Committee is satisfied that the word “entitled” in [2] of the Show-Cause Notice refers to the action, i.e. the drawing of the fees, that ASIC believes Mr Auricht was not entitled to do. Paragraph [2] of the Show-Cause Notice states that ASIC believes that Mr Auricht is not a fit and proper person because he drew fees he was not entitled to draw because he “did not have approval from creditors or the Court to draw this remuneration”. It is the drawing that ASIC believed Mr Auricht was not entitled to, not the fees themselves. This construction is consistent with [31] of the Show Cause-Notice which refers to paragraphs [18] – [21], which in turn set out the particulars of the quantum of remuneration drawn, and the quantum of approvals given. It is not the basis upon which the fees were incurred, or the entitlement to being paid that ASIC believes makes Mr Auricht not fit and proper to be a liquidator, it is the drawing of the fees when they were not approved to be drawn.
42. Given the Explanation, and the responses Mr Auricht gave at the interview, the Committee is satisfied that Mr Auricht was on notice that ASIC believed that he was not a fit and proper person because he had drawn remuneration when he was not entitled to do so because the fees had not been approved.

What is the proper process for a liquidator to make drawings for fees?

43. An administrator, deed administrator or liquidator is required to obtain approval before drawing their fees. A committee of creditors may be formed which can approve fees. If the committee of creditors do not approve the fees, then approval can be provided by the creditors at a creditors meeting. If there is no approval by the committee of creditors or the creditors, then the liquidator can apply to the Court for fee approval.

Did Mr Auricht draw remuneration from Ultimate Air Control Pty Ltd without approval?

44. Mr Auricht was appointed as the voluntary administration of Ultimate Air Control Pty Ltd ACN 091 617 846 on 26 June 2013. On 21 August 2013 Mr Auricht was appointed as the deed of company arrangement administrator for Ultimate Air Control, and on 14 February 2014 Mr Auricht was appointed as the liquidator of a creditors voluntary liquidation of Ultimate Air Control.
45. It is not in dispute that over the course of his tenure as an administrator, deed administrator and liquidator of Ultimate Air Control Mr Auricht drew \$887,302.75 in fees. This figure is set out at paragraph [52] of Mr Auricht’s affidavit of 13 September 2022 and corresponds to the total of remuneration drawn as set out in Annexure A to Schedule B of the Show-Cause Notice.
46. It is not in dispute⁷ that a portion of the \$887,302.75 in fees were drawn without Mr Auricht having gained the approval from a committee of creditors, at a meeting of the creditors of the company or from the Court. Mr Auricht accepted at the interview that multiple drawings were made without approval.⁸
47. It is in dispute what the quantum of the approvals Mr Auricht had were, and therefore what the quantum of the unapproved drawings were.

⁷ The explanation at [37], transcript at page 6, line 28

⁸ Interview transcript at page 24 line 10

48. The Committee is satisfied on the material before it that Mr Auricht had the six approvals set out in paragraph [24] of his affidavit of 13 September 2022. Those approvals totalled \$768,499.83⁹ and were as follows:
- a. On 31 July 2013 the creditors resolved to approve Mr Auricht's fees as administrator for the period of 26 June 2013 to 26 July 2013 in the amount of \$98,123.00 inc GST.¹⁰
 - b. On 14 November 2013, the Committee of Creditors resolved to approve Mr Auricht's fees as administrator for the period of 27 July 2013 to 30 September 2013 in the amount of \$105,000 inc GST.¹¹
 - c. By order dated 18 June 2014 the Federal Court approved Mr Auricht's fees as deed administrator for the period of 1 October 2013 to 31 December 2013 in the amount of \$66,070.40 inc GST.¹²
 - d. On 23 April 2014 the Committee of Creditors resolved to approve Mr Auricht's fees (as liquidator) for the period of 1 January 2014 to 28 February 2014 in the amount of \$66,762.30 inc GST.
 - e. On 7 August 2014 the Committee of creditors resolved to approved Mr Auricht's fees for the period of 1 March 2014 to 31 May 2014 in the amount of \$94,233.70 inc GST.¹³
 - f. By order dated 28 January 2016 the Federal Court approved Mr Auricht's fees as liquidator for the period of 1 June 2014 to 31 May 2015 in the amount of \$338,310.17 inc GST.¹⁴
49. The discrepancy between ASIC's quantum for the approvals as set out in Attachment B to Schedule B of the Show-Cause Notice, and Mr Auricht's figure, can be explained because:
- a. ASIC did not have the details of the approval of \$98,123.00 for the period of 26 June 2013 to 26 July 2013; and
 - b. ASIC did not have the details of the approval of \$105,000 for the period of 27 July 2013 to 30 September 2013; and
 - c. ASIC did not have the details of the approval of \$66,762.30 for fees incurred for the period of 1 January 2014 to 28 February 2014.
50. Once these approvals are added to ASIC's total of \$498,612.22, the figure of \$768,499.83 is obtained.
51. The Committee is satisfied that Mr Auricht had approvals of \$768,499.83, prior to the final approval being granted by the Court on 8 February 2023.
52. Mr Auricht stated in his affidavit that \$118,802.92¹⁵ in fees were drawn without approval. In the Show-Cause Notice ASIC believed that the figure was between \$339,188.54 and \$388,688.54.¹⁶
53. A reconciliation of the approvals set out in Mr Auricht's affidavit, with the drawings as set out in Annexure A to Schedule B of the Show-Cause Notice, is set out in the table below.

⁹ The Auricht Affidavit at [52]

¹⁰ Auricht Affidavit of 13 September 2022 at [24]

¹¹ Auricht Affidavit of 13 September 2022 at [24]

¹² Auricht Affidavit of 13 September 2022 at [24]

¹³ Auricht Affidavit of 13 September 2022 at [24]

¹⁴ Auricht Affidavit of 13 September 2022 at [24]

¹⁵ Auricht Affidavit of 13 September 2022 at [52]

¹⁶ Annexure B to Schedule B of the Show-Cause Notice

Table 1: reconciliation of drawings and approvals			
Date	Drawn ¹⁷	Approved ¹⁸	Approved not draw / drawn without approval
31/07/2013	\$98,123.00	\$98,123.00	\$0.00
14/11/2013	\$100,000	\$105,000	\$5,000
15/11/2013	\$5,000		\$0
23/04/2014		\$66,762.30	\$66,762.30
24/04/2014	\$66,762.30		\$0.00
18/06/2014	\$19,000.00	\$66,070.40	\$47,070.40
25/06/2014	\$11,000.00		\$36,070.40
16/07/2014	\$5,000.00		\$31,070.40
07/08/2014		\$94,233.70	\$125,304.10
08/08/2014	\$50,528.00		\$74,776.10
15/08/2014	\$7,895.00		\$66,881.10
21/08/2014	\$13,816.25		\$53,064.85
04/09/2014	\$3,552.75		\$49,512.10
23/09/2014	\$2,368.50		\$47,143.60
24/12/2014	\$10,110.84		\$37,032.76
27/02/2015	\$32,344.09		\$4,688.67
06/09/2015	\$41,611.11		-\$36,922.44
30/09/2015	\$50,000.00		-\$86,922.44
16/10/2015	\$40,000.00		-\$126,922.44
19/11/2015	\$22,300.77		-\$149,223.21
24/12/2015	\$9,292.80		-\$158,516.01
17/01/2016	\$20,676.48		-\$179,192.49
28/01/2016		\$338,310.17	\$159,117.68
29/01/2016	\$20,289.88		\$138,827.80
11/02/2016	\$16,527.54		\$122,300.26
14/03/2016	\$4,044.75		\$118,255.51
14/04/2016	\$52,381.62		\$65,873.89
19/04/2016	\$1,578.13		\$64,295.76
22/04/2016	\$7,757.02		\$56,538.74
09/05/2016	\$4,605.73		\$51,933.01
23/05/2016	\$10,811.34		\$41,121.67
30/05/2016	\$4,363.32		\$36,758.35
12/06/2016	\$56,674.85		-\$19,916.50
15/06/2016	\$4,014.47		-\$23,930.97
23/06/2016	\$16,530.16		-\$40,461.13
19/07/2016	\$13,224.13		-\$53,685.26
05/10/2016	\$22,158.18		-\$75,843.44
23/11/2016	\$19,897.14		-\$95,740.58
17/12/2016	\$13,792.34		-\$109,532.92
10/03/2017	\$9,270.26		-\$118,803.18

54. The above reconciliation was put to Mr Auricht by email from the Committee dated 17 May 2023. In the submissions of 1 June 2023, Mr Auricht accepted that the reconciliation appeared to be accurate, but submitted that he is limited in his response at he has no recollection of the events as they occurred nine years ago. Mr Auricht stated that he had never previously prepared an analysis in the nature of the reconciliation and was therefore unaware of the unapproved drawings being made in 2015 and 2016.
55. The Committee is satisfied on the basis of the information before it that in total fourteen drawings were made that exceeded the approvals Mr Auricht had at the time each drawing was made. These drawings occurred in two tranches:-
- a. \$179,192.49 was drawn through six drawings made between 6 September 2015 and 16 January 2016, which he did not have approval for at the time he made the drawings.
 - b. \$118,803.18 was drawn through eight drawings made between 12 June 2016 and 10 March 2017, which Mr Auricht did not have approval for at the time that he made the drawings.
56. The Committee is satisfied that Mr Auricht made the drawings at times that he did not have approval to make those drawings.

How did Mr Auricht come to make drawings without approval?

57. Mr Auricht stated¹⁹ that the drawings without approval came about because when fees had been approved there had been insufficient funds available to cover the total fees approved. As and when funds became available over time from the payment of settlements for unfair preferences and the like, Mr Auricht divided the available funds between his solicitors, his counsel and himself (Mr Auricht's submission was that there was never sufficient funds to cover all three parties in full).²⁰ In Mr Auricht's affidavit he said:

Given that numerous claims were on foot, that numerous settlements were being achieved, that the timing of receipt of funds from those settlements was sporadic, and that significant periods of time were elapsing between the obtaining of earlier fee approvals and the subsequent receipts of funds, there was a heightened risk of discordance emerging between the total amount of fees that had been approved at any one time compared with the fees that had actually then been paid to me, and there was in fact such a discord to the extent of the said sum of \$118,802.92.

58. The Committee asked Mr Auricht about the system he used to keep track of fee approvals and drawings he made under those approvals. Mr Auricht stated that his staff had maintained a spreadsheet²¹ and that prior to drawings being made, the spreadsheet would be consulted.
59. At the interview Mr Auricht said:

"I don't believe there was anything wrong with that spreadsheet. I think, um, it may not have been kept quite up to date as I would have liked. I, I, I should say as well, I did, as a liquidator I did delegate responsibility. I did have another person who I spoke about who was a senior manager on the file, [name known to the Committee]. Um, you know, in fairness, I'm not sure that he, he kept on top of that as he should have either. I understand the responsibility is ultimately mine to check. Um, but he didn't come to me I don't think often enough as that was occurring to say I've checked that we are okay with the approvals. I should have then perhaps

¹⁷ Taken from Annexure A to Schedule B to the Show-Cause Notice

¹⁸ Taken from Mr Auricht's affidavit of 13 September 2022 at [24]

¹⁹ Auricht Affidavit of 13 September 2022 at [53] and Interview transcript from page 10 line 18

²⁰ Auricht Affidavit of 13 September 2022 at [53]

²¹ Interview transcript page 10, line 29

also have been firmer on reminding him to check that for me. Um, all I can say is that the process broke down because we were, we were under a lot of stress to handle a lot of different matters at that time. It was a lot bigger administration that only really had those three staff members including myself.”²²

60. Mr Auricht accepted at the interview that there had been a breakdown in the process, rather than a deliberate intention to take unapproved funds.²³ Mr Auricht said at the Interview that he is the only signatory for the bank transfer of the funds. Mr Auricht said that as the funds on the Ultimate Air Control liquidation came in from preference claim settlements and the like, he made calculations as to how to distribute the funds between himself, Counsel and his solicitor based on the invoices before him and would then log in to the online bank account and transfer the funds. Mr Auricht stated that he was relying on his staff members to come to him and say, “You’ve overdrawn” and they didn’t do that. He said that he didn’t pay enough attention to the spreadsheet that had the level of approvals as against what fees were drawn, and that he didn’t believe the spreadsheet was up to date enough to show that he had overdrawn the approvals.²⁴
61. The Committee does not accept that the sporadic nature of settlement payments being made is a reasonable excuse for what was a failure by Mr Auricht to have appropriate financial controls and systems in place. It is not unusual in a liquidation to have funds being deposited in a liquidation on an ad hoc basis, or to hold approvals for fees that have exceeded the funds available. However it is incumbent upon a registered liquidator to maintain adequate systems and business practises that keep an accurate account of the funds being held and the approvals that have been obtained. To fail to ensure that there is a fee approval in place before a drawing is made is a failure of a basic fundamental requirement of a liquidator.
62. It is apparent from the information before the Committee that Mr Auricht had exceeded the approvals that he held before the Court Order of 28 January 2016. This error should have been apparent to Mr Auricht at the time that the Court Order was made and he sought to recover those newly approved fees, if he had done a proper reconciliation. On Mr Auricht’s submissions he was not aware that he had overdrawn fees in 2015 and 2016, which indicates that he did not do a proper reconciliation at that time, or any time until he came to prepare for the creditors meeting on 11 May 2018, some two years later, despite the fact that he continued to draw fees until March 2017. It is concerning to the Committee that Mr Auricht did not realise that he had exceeded his approvals in the first tranche of drawings when he received the approval of the Court in January 2016 for \$338,310.17. The Committee can only conclude that the process Mr Auricht used to keep track of the approvals he had, the fees he had accrued and the drawings he had made was completely inadequate.
63. The Committee is satisfied that the business practice described by Mr Auricht was not sufficiently rigorous to ensure that only approved funds were drawn. The practise was heavily reliant on staff members to keep track of approvals and drawings, and contained insufficient checks to account for human error, including error in the spreadsheet or Mr Auricht not consulting the spreadsheet before authorising multiple drawings. In Mr Auricht’s own words he did not consult the spreadsheet before drawing the funds and relied on others to tell him he did not have approval. The Committee considers that it is incumbent upon a liquidator in a practise such as Mr Auricht’s to satisfying himself that he did have approval before he drew the funds.
64. It is noted that Mr Auricht’s practise was a small practise where he was the sole registered liquidator and he had a small staff of two or three individuals. The Committee does not expect

²² Interview transcript page 13 line 12

²³ Interview transcript at page 12, line 26

²⁴ Interview transcript page 24 from 14 to page 25 line 14

that Mr Auricht would have the business practises akin to a large firm with multiple practitioners, however, the systems he does have must be sufficiently robust to ensure that Mr Auricht can meet his obligations as a registered liquidator, and one such core, irreducible obligation of a liquidator is to ensure that drawings do not exceed approvals.

65. Any drawing without approval is problematic and represents a departure from the standard expected of a registered liquidator, either because unapproved drawings indicate the practitioner is deliberately taking monies without approval, or because they have insufficient controls in their business systems to ensure that the required approvals are in place prior to the drawings being made. The Committee is satisfied that in Mr Auricht's case, it is the latter.
66. Mr Auricht's solicitor provided a letter to ASIC and the Committee dated 10 February 2023. The letter set out, amongst other things, the new office procedure implemented by Mr Auricht to ensure that the circumstances that led to the drawing of the funds without approval did not occur again. That procedure was described as:
- a. *Mr Auricht's office manager having responsibility for:*
 - i. *the entering of Mr Auricht's timesheets in a designated system ledger in Xero;*
 - ii. *the making of monthly print outs of the resultant WIP reports on each Administration; and*
 - iii. *the preparation of a spreadsheet for each administration showing fees incurred and fees approved and the running totals of each.*
 - b. *The establishment of a recurring monthly calendar appointment in Outlook for Mr Auricht and the office manager to jointly check the above spreadsheets and WIP reports on each Administration so as to ensure that all fees have been approved before they are paid.*

67. At the interview Mr Auricht described how it is the same spreadsheet that is being used, but now his office manager reminds him monthly to check the spreadsheet.²⁵ He said *"I've asked everyone to make sure that we've got the spreadsheet up to date and that's presented to me before I, I can see that the approvals are in place. Before I can do any, any transfers of any funds of course."* Mr Auricht noted that he has not had an administration on foot since he changed the procedure and so has not had funds he has needed to pay out.²⁶

68. Counsel submitted that :

"the essential difference between the new procedure and the old is, is simple but significant. And it's, it's essentially the involvement of the office manager at all steps including the all crucial final step of authorising payment. Now the office manager of course is Mr Auricht's wife but and so, this is obviously at a relatively straight forward level, but it's an important step we say where there has to be that cross check and that feeds into another question which was where is the redundancy and it's essentially, um, uh, the imposition of a step involving a cross check with his wife".²⁷

69. The Committee does not consider that the new procedure and the measures taken by Mr Auricht are sufficient to ensure that the same error is not made again. The Committee does not accept the submissions that assigning his office manager, rather than another staff member to over-see the spreadsheet, and assigning her a task of reminding him to check the spreadsheet, is a significant change to the procedure. The procedure as it stands does not make it clear what proactive steps Mr Auricht will take to satisfy himself that he has approval to make drawings prior

²⁵ Interview transcript page 13 line 7

²⁶ Interview transcript page 25 line 16

²⁷ Interview transcript at page 47 line

to making a drawing, and what checks and balances there are in the procedure to ensure that error, human or otherwise, does not allow unapproved drawings to be made again.

70. Furthermore, the office manager at Mr Auricht's firm is his wife. At the interview Mr Auricht was asked about his documented risk management framework (which is required under APES 325²⁸). This question was asked because of the potential conflict that may arise because of this spousal relationship, given that there is an implicit level of trust between spouses that may impact the rigour and scrutiny that one spouse will examine the other's actions which can compromise compliance measures. Mr Auricht responded that he did not have a risk management document.
71. The Committee has before it a medical report from dated 26 February 2023 that was provided to the Committee on 13 March 2023. Mr Auricht met with the author of the report on 21 February 2023. The Committee notes that the weight that it can place on the report is less than the weight that would be placed on a report from a medical professional who treated or assessed Mr Auricht between 2014 and 2018. Nevertheless, the Committee accepts, as is set out in the report and discussed at the interview, that Mr Auricht was overwhelmed by stress. The Committee takes Mr Auricht's stress from 2014 to 2018 into consideration but does not consider that it satisfactorily explains the lack of appropriate business practises.
72. The Committee is therefore satisfied that while Mr Auricht did not deliberately set out to make drawings without approval, he did not have sufficiently rigorous business practises in place to ensure that only approved amounts were drawn. The Committee is not satisfied that Mr Auricht has implemented practises that will prevent the same error being repeated in future.

Did Mr Auricht apply to the Court in a timely manner to obtain approval to have his remuneration approved?

73. Mr Auricht stated in his affidavit that the Committee of Creditors refused to approve the fee approval resolution he had put to them at a creditors meeting on 19 March 2015. This resolution had related to the approval of fees incurred since 1 June 2014. Mr Auricht received approval from the Court on 28 January 2016 in relation to those fees,²⁹ as that order dealt with fees incurred between 1 June 2014 and 31 May 2015.
74. Mr Auricht did not seek an approval for his fees incurred after 1 June 2015 until the Annual General Meeting of Creditors held in May 2018.
75. Mr Auricht attested that he became aware that unapproved drawings for his fees had been made when he was preparing for the 2018 Annual general meeting of Ultimate Air Control that was held on 11 May 2018.³⁰
- a. The materials provided to members in advance of the AGM included remuneration reports for the period 1 June 2015 to 31 March 2018. The further fees that were the subject of the remuneration reports totalled \$344,847.22.³¹ Mr Auricht put a motion to the meeting for approval of the fees that were the subject of the remuneration reports, however, the resolution did not pass.³²
76. Even if only the second tranche of unapproved drawings are taken into consideration, then there were eight unapproved drawings that occurred between 12 June 2016 and 10 March 2017. It is unclear why Mr Auricht stopped making withdrawals on 10 March 2017 if he did not become aware that he had exceeded his approvals until he came to prepare the materials for the creditors meeting in May 2018.

²⁸ Accounting Professional Standards and Ethics Board

²⁹ Auricht affidavit of 13 September 2022 at [31]

³⁰ Written submissions of 13 March 2023

³¹ Auricht Affidavit of 13 September 2022 at [26-29]

³² Auricht Affidavit of 13 September 2022 at [31 - 37]

77. In October 2021 ASIC wrote to Mr Auricht setting out the discrepancy between fees drawn and fees approved that was apparent on the documents ASIC held and asked for an explanation. Mr Auricht asked for an extension to provide that response until January 2022, which was granted by ASIC. Mr Auricht did not provide a response to ASIC on or before January 2022, or at all. When ASIC issued the Show-Cause Notice to Mr Auricht on 24 August 2022, Mr Auricht had still not responded to their request from October 2021 for an explanation.
78. Mr Auricht served Form 16 notices on the creditors of Ultimate Air Control on 13 September 2022 notifying them of his intention to apply for determination of his remuneration in the Supreme Court of South Australia.
79. On 21 September 2022 Mr Auricht responded to the Show-Cause Notice with the Explanation.
80. On 24 November 2022 Mr Auricht made the fee approval application in the Supreme Court of South Australia³³, and on 8 February 2023 the Supreme Court approved the remuneration.³⁴
81. In the Explanation, Mr Auricht stated that the delay in seeking the approval of the Court had arisen due to the complexity of the legal provisions covering the application, and the need to obtain legal advice, as well as the retirement of his solicitors, and the loss of the physical files of Ultimate Air Control.³⁵
82. At the Interview Mr Auricht stated that upon realising that he had drawn fees without approval he sought to have those fees approved at the creditors meeting. When that approval was not forthcoming, he consulted Counsel.³⁶ In his words:
- “We had a number of meetings with myself and [Counsel] we discussed what had happened. We knew that we had to make a court application. Um, um, uh, we were also considering other potential claims that were still afloat if you like in the sense of what was still outstanding. Um, we made, I believe a sensible decision at that point in time to, to decide that any further action would potentially cost more than it might return to the creditors. So, whilst there were some other claims that perhaps could have been pursued I believe we made a correct decision not to pursue them. So there was a few months where we were still considering if there was some possibility of some other return to the administration, creditors. We decided no.”*
83. At the Interview Counsel said that Mr Auricht had instructed his then solicitors to prepare the fee approval application, but that the solicitor who had been working on the file had left the firm, and the principal had taken over the file. The principal had limited experience and relied on Counsel for assistance, and Counsel had very limited availability in late 2018 and into 2019. The principal solicitor then got ill and retired, closing down the firm. Counsel then took on the file as a direct brief but then “Covid hit”, which, Counsel submitted, caused disruption to the legal profession that had a flow through effect to all of his work.³⁷
84. Mr Auricht said that by 2020 he no longer had the same staff so “it all fell back on me”. Mr Auricht said that he was extremely busy with the taxation side of the business, helping people with job keeper and the government requirements to keep afloat during Covid.³⁸
85. At the interview Counsel submitted that the delay in not seeking the approval of the Court prior to September 2022 was regrettable, but that it should not be the subject of criticism let alone the subject of disciplinary action.³⁹ In the letter of 1 June 2023, Mr Auricht’s solicitor referred to the decision of Justice Besanko in *Strazdins v DNPW Pty Ltd* [2013] FCA 1368 as being the case that

³³ Mr Auricht’s solicitor’s email to ASIC of 1 December 2022

³⁴ Record of Outcome – Judgement of the Supreme Court of South Australia dated 8 February 2023

³⁵ The Explanation at [40 and 41]

³⁶ For clarity, it was the same Counsel who represented Mr Auricht at the Interview

³⁷ Interview transcript at page 18 from line 6

³⁸ Interview transcript at page 22 line 16

³⁹ Interview transcript at page 7 line 26

Counsel relied upon to say that a delay of 2.5 years was “not so egregious” as to warrant a sanction. That case deals with an application by former administrators and deed administrators for approval of their fees, fees that notably, they had not yet drawn. The delay in *Strazdins* is the delay of two and a half years between approaches made to creditors by the administrators to have their fees approved in circumstances where the fees had not been drawn. The Committee does not consider that this case, and his Honour’s comments therein, are relevant to the present matter where Mr Auricht has already drawn the fees and took four and a half years from when he discovered he had drawn fees without approval and creditors did not approve his fees in May 2018, to when he sought Court approval in November 2022.

86. The Committee considers that Mr Auricht’s explanation of the delay in seeking Court approval is unsatisfactory.
87. Having discovered that he had drawn funds without approval the Committee is satisfied that it was incumbent upon Mr Auricht to take immediate, effective steps to rectify the situation, including to repay the funds.
88. The obligation to repay the funds drawn without approval is clearly set out in Clause 16.3 of the 3rd edition of the ARITA Code of Professional Practise: Insolvency Services (COPP),⁴⁰ which was in force in May 2018 when Mr Auricht discovered that the drawings had occurred without approval. Mr Auricht has been a member of ARITA since 12 December 2001,⁴¹ and was therefore bound by the COPP. Clause 16 of the 3rd edition COPP states:

Principle 12: A Practitioner is only entitled to draw Remuneration once it is approved and according to the terms of the approval.

16.1 Drawing of Remuneration

A Practitioner is only entitled to draw Remuneration once it is approved, subject to the terms of the approval.

Evidence of the approval must be recorded and maintained on the file. In the case of a resolution of a meeting of creditors, or of the committee, the minutes must be prepared and lodged where required (for example, with ASIC for corporate Administrations). In the case of court-approved Remuneration, the court order must be obtained.

...

16.3 Remuneration drawn inappropriately

If a Practitioner becomes aware that fees have been improperly taken, because, for example, the correct process has not been followed, the Practitioner must immediately repay the amount in question into the Administration account.

Remuneration may then only be redrawn on approval being obtained and an explanation as to why the fees were improperly taken must be provided to creditors at that time.

Fees and expenses incurred in rectifying inappropriately drawn fees must be borne by the Practitioner.

89. The Fourth edition of the COPP, that has been in force since 1 January 2020, states at 5.7:

⁴⁰ 3rd Edition of the ARITA Code was in force from 18 August 2014 to 1 January 2020.

⁴¹ Explanation at 53.1

A Member must only draw Remuneration once the proper resolution, order, or authority has been obtained from the Approving Body and in accordance with the terms of approval. [Comparable to APES 330 para 8.19]⁴²

90. 5.8 that:

If a Member becomes aware that Remuneration has been improperly drawn, the Member must immediately repay the amount in question into the Administration account.

Fees and expenses incurred in rectifying inappropriately drawn fees must be borne by the Appointee.

91. At the Interview Counsel made submissions that “improperly drawn” in clause 5.8 of the 4th edition of the COPP should be read with reference to COPP 5.3 which is called “Entitlement to remuneration and disbursements”. COPP 5.3 states:

A Member must only claim Remuneration and Disbursements in respect of services performed or to be performed for an Administration which are necessary and proper. [Comparable to APES 330 para 8.7]

The term ‘necessary’ means professional work that is:

(a) directly connected with the Administration; and

(b) performed in accordance with the duties of the Appointment and Professional Standards.

[Comparable to APES 330 para 8.8]

The term ‘proper’ means professional work that is performed in an effective and efficient manner in an Administration. [Comparable to APES 330 para 8.9]

92. The Committee does not accept that clause 5.3 is the appropriate reference point to determine what “improperly drawn” in 5.7 should mean. COPP Clause 5.3 is dealing with the basis that fees are claimed. Given that clause 5.8 follows clause 5.7 and both refer to the drawing of remuneration, rather than the incurring of fees, the Committee considers that “improperly drawn” in clause 5.8 should be read with reference to the requirement in 5.7 for drawings to be made with the “proper resolution, order or authority” and in accordance with the terms of the approval. It follows that the Committee is satisfied that drawings will be “improperly drawn” if they are made in the absence of the “proper approval, order or authority”, or if they were not in accordance with the terms of the proper approval, order or authority.

93. However, the Committee considers that the discussion of the 4th edition of the COPP is somewhat irrelevant given that it was the 3rd edition of the COPP, which was in force at the time that Mr Auricht became aware that he had overdrawn the fees. As set out above, Clause 16.3 the COPP 3rd edition states:

“If a Practitioner becomes aware that fees have been improperly taken, because, for example, the correct process has not been followed, the Practitioner must immediately repay the amount in question into the Administration account. (emphasis added).”

94. The Committee is therefore satisfied that the fees were drawn on an improper basis as the correct process of obtaining approval had not been followed, and that the 3rd edition of the COPP that was in place at the relevant time makes it clear that an ARITA member who becomes aware that they have improperly drawn fees was required to repay the fees and then seek approval.

95. The Committee does not accept that there is a level of ambiguity as to the correct course of action set out in the 4th edition of the COPP as was submitted by Counsel, and that under the 4th edition of the COPP, an ARITA member who has drawn fees without approval has drawn them improperly,

⁴² ARITA Code of Professional Practise: Insolvency Services (COPP) at 5.7

and so would be required to repay the fees. If the Committee is wrong on this point and there was ambiguity in the COPP, the Committee considers that a prudent liquidator with a high level of integrity and ethical insight would still have repaid the money while they sought the proper approval to make the drawings.

96. Mr Auricht did not repay the unapproved drawn funds upon discovering he had made the withdrawals without approval. Mr Auricht said at the interview this was because he did not have the funds to do so, but also because it would have been a circular situation where he would have paid the funds back, made the application, and gotten Court approval and taken the funds again.⁴³ The Committee considers that the circular nature of that process is irrelevant given that it is what is required by law, and that that answer given by Mr Auricht is very concerning as it indicates he lacks the ethical insight to see why drawing fees without approval requires the immediate repayment of the fees until they can be approved. The Committee is satisfied that Mr Auricht did not repay the drawings because he did not have the funds to do so and because he did not consider he was ethically obliged to do so.
97. Mr Auricht's first act upon learning he had over drawn the fees was to seek that approval at the meeting of creditors in May 2018 for remuneration which covered the drawings he had already made. It is not clear on the material before the Committee if Mr Auricht disclosed to the meeting that he had already drawn the funds. Having not received that approval, it took Mr Auricht over four years to seek the approval of the Court.
98. It is unclear to the Committee why Mr Auricht felt that he could put a resolution to creditors immediately, but that he needed legal advice before seeking the approval of the Court.
99. The over drawing of his fees is a separate and discrete issue from the liquidation more generally. The Committee does not accept that Mr Auricht was required to determine if more claims should be made prior to seeking approval from the Court for the fees that he had drawn without approval. Mr Auricht could have sought legal advice from any solicitor, and the Committee does not consider that he was beholden to previous counsel or solicitors if they were unavailable.
100. Even taking into account Mr Auricht's stress prior to and following the death of his father, the Committee does not consider that Mr Auricht's actions upon becoming aware of the over payment were reasonable or consistent with his obligations as a liquidator.

Did Mr Auricht fail to respond to ASIC's enquiries in a timely manner?

101. When asked why no answer was provided to ASIC, after they first wrote to Mr Auricht in October 2021, Mr Auricht stated:

*I was, I was endeavouring to get that court approval application done as quickly as possible. I believe it is still the major issue in ASIC's mind at the moment I'm presuming. So, I was pushing very hard for that to be completed as quickly as possible.*⁴⁴

102. Mr Auricht agreed when it was put to him that the decision was made to prioritise getting the approval of the Court for the fees drawn, rather than responding to ASIC.⁴⁵
103. Mr Auricht stated⁴⁶ that ASIC had been conducting an investigation into him, during the course of which he had placed archive boxes of files outside of his office for collection by a courier to be delivered to ASIC, and the boxes had disappeared. This had resulted in ASIC raising the possibility of criminal action being taken against Mr Auricht, and that his actions in not responding to ASIC must be considered in light of the previous communication and pressure he had felt from ASIC at the time.

⁴³ Transcript at page 19 line 13

⁴⁴ Transcript at page 26 line 27

⁴⁵ Transcript at page 29 line 1

⁴⁶ Transcript at page 27

104. The Committee is not aware of any more details regarding the ASIC investigation, or any other dealings between ASIC and Mr Auricht, other than what was told to the Committee by Mr Auricht and Counsel at the interview, and what is in the documents that have been provided to the Committee over the course of this matter. The Committee appreciates that Mr Auricht may not have wanted to communicate with individuals at ASIC and that the earlier ASIC investigation and subsequent actions had caused Mr Auricht significant stress.
105. Nevertheless, to fail to provide a response to ASIC when one is requested, is not appropriate nor is it consistent with the obligations of a registered liquidator.
106. To seek an extension of time to provide a response to ASIC, and when that extension was granted, not comply with it, is not appropriate nor is it consistent with the obligations of a registered liquidator.
107. There will be occasions during the professional life of a registered liquidator that they will be required to communicate with ASIC as the regulator. That communication should be accurate, fulsome and in a timely manner, regardless of the personal feelings involved. To fail to respond to ASIC shows a lack of professionalism that is not consistent with the role of a registered liquidator.

Did Mr Auricht gain an advantage for himself or another because of the unauthorised drawings?

108. The Committee is satisfied that Mr Auricht made drawings without approval. For the following reasons the Committee is satisfied that in doing so he obtained an advantage for himself and his firm, Auricht Chartered Accountants, and caused a detriment to the creditors and shareholders of Ultimate Air Control and therefore the corporation, by receiving funds at a time that he did not have approval to draw those funds.⁴⁷
109. Counsel submitted at the interview that drawing without approval was not a serious breach of Mr Auricht's obligations nor was any-one prejudiced by the drawing of funds without approval, and in fact, Mr Auricht was prejudiced because he had done work as liquidator that there were no funds to cover and for which he would not get paid.⁴⁸
110. The question of if Mr Auricht gained an advantage by drawing funds at a time that he did not have approval to do so, is quite separate from the question of if Mr Auricht was prejudiced by being the liquidator of Ultimate Air Control because he incurred fees that he would not be paid because of insufficient funds in the liquidation; and it is a false dichotomy to equate the two. The Committee does not accept the submission that Mr Auricht did not gain an advantage for himself and his firm in drawing funds when he did not have approval to do so because he had performed work to the value of \$308,302.45 for which no payment will be received.⁴⁹ Just because Mr Auricht incurred fees that will not be paid because of insufficient funds in the liquidation does not entitle Mr Auricht to draw the funds that are available without approval, and does not mean he did not benefit from drawing funds earlier than he should have.
111. Mr Auricht and Auricht Chartered accountants were able to use the drawn funds at a time when they did not have approval for the funds. Mr Auricht stated at the hearing that he did not repay the drawings because he did not have the funds on hand to do so.⁵⁰ The Committee infers

⁴⁷ The Committee notes that wording of s182 requires that a person gain an advantage **or** cause a detriment to the corporation, however the wording of the notice incorrectly used "and" instead of "or". The Committee considers nothing turns on this error as the Committee is satisfied that Mr Auricht did gain an advantage and also caused a detriment by failing to follow the proper process regarding the approval of his fees.

⁴⁸ Transcript at page 7, line 5

⁴⁹ The Explanation at [42.1] and the Auricht affidavit of 13 September 2022 at [48-51].

⁵⁰ Transcript at page 19 line 24

- therefore that there was a benefit in the drawings in that they provided cashflow at a time when Mr Auricht and Auricht Chartered Accountants would not have otherwise had the funds available.
112. The Committee does not accept that the approval of the Supreme Court of Mr Auricht's fees on 8 February 2023, and the Court's comments in the Record of Outcome, evidence that there was no detriment to the corporation caused by the unapproved drawings.⁵¹ All that the Record of Outcome is evidence of is that the Court was satisfied that "if a detailed consideration of the claim was undertaken the amount to be awarded would exceed that sum." The Court specifically said, *"In the circumstances, rather than cause further delays and expense, it is appropriate to fix the remuneration in the [amount of the already drawn fees]."* The Court did not, and was not required to, turn its mind to if there was any detriment caused to the corporation by Mr Auricht drawing fees without approval.
113. Mr Auricht attested that no prejudice⁵² was suffered by creditors by his drawing of fees without approval because ultimately there were insufficient funds for a return to be made to creditors.
114. This is a reductive view of prejudice or detriment and fails to consider that the creditors were deprived of their right to approve or disapprove of the fees before Mr Auricht withdrew the fees. By the time Mr Auricht first put a resolution to creditors to approve the fees, in May 2018, some 22 months had passed since the first withdrawal in the second tranche of drawings. By the time the Court approved the fees in February 2023 it was over six years since he made the first drawing that the approval related too. Some four years had passed since Mr Auricht found out about the drawings. In this time the books and records of Ultimate Air Control had become lost.
115. A liquidator holds funds in a liquidation in a capacity tantamount to funds held on trust. They are not his to do with what he wants. A Liquidator is entitled to be paid for fees incurred on a proper and reasonable basis and is entitled to draw those fees once proper approval to do so has been obtained. The statutory conditions around fee approvals are not optional, they are requirements dictated by law to ensure that a transparent, efficient and accountable process is followed by the professional who has been entrusted to manage the liquidation of a company.
116. That Mr Auricht would go on to obtain approval some four years after he found out about the unapproved drawings does not negate that Mr Auricht received a benefit of being paid when he did not have approval to be paid. He received the benefit of having drawn the second tranche of fees for six years before he had approval to do so. And the Corporation was denied the opportunity to oppose the fees and scrutinise the basis on which they were drawn at a time when the books and records of the company were able to be produced.
117. The Committee is satisfied that Mr Auricht and Auricht Chartered Accountants received a benefit from the making of the unapproved drawings and caused a detriment to the shareholders and creditors of Ultimate Air Control, and therefore the company, by his making the unapproved drawings and his delay in seeking approval from the Court.

Where the drawings made in contraventions of s182(1) of the Corporations Act?

118. Under s182(1), a director, secretary, other officer or employee of a corporation must not improperly use their position to a) gain an advantage for themselves or someone else; or b) cause a detriment to the corporation. Under s9, an officer includes a liquidator of a corporation.
119. It is not in dispute that Mr Auricht was an officer of Ultimate Air Control.
120. For the reasons set out above, the committee is satisfied that, in his capacity as an officer of Ultimate Air Control, Mr Auricht obtained an advantage for himself and Auricht Chartered

⁵¹ Letter of 10 February 2023

⁵² The Auricht affidavit of 13 September 2022 at [54]

Accountants, and caused a detriment to the corporation, by making drawings totalling \$118,803.18 that he did not have approval for.

121. The Committee is therefore satisfied that Mr Auricht contravened s182(1) by making drawings when he did not have approval to do so.

Is Mr Auricht a fit and proper person to be a registered liquidator?

122. The meaning of fit and proper will vary depending on the context in which it appears.⁵³ Fitness regarding the office of registered liquidator involves honesty to execute the office truly without partiality, knowledge to know what the liquidator ought duly to do, and ability to diligently and properly perform the requirements of the office.⁵⁴ The role of a liquidator carries with it significant responsibility:

*[T]he role of a liquidator (and administrator) is one which involves a high degree of responsibility and trust, a high level of integrity and ethical insight and also a high degree of training, experience, skill and competence.*⁵⁵

123. The Committee accepts that Mr Auricht did not deliberately make drawings without the approval to do so. However, as set out above, the Committee is satisfied that Mr Auricht made fourteen drawings for fees he did not have approval for and that those drawings came about because Mr Auricht did not have sufficient business practises in place to ensure that unapproved fees were not drawn. Mr Auricht, at paragraph [54] of his affidavit stated that he regretted the circumstances that led to the unapproved drawings. However, the Committee is not satisfied that Mr Auricht understands the gravitas of the conduct, nor that he took ownership of the failings that led to the drawings being made, nor that he has implemented sufficiently robust business processes to ensure that he does not make drawings that exceed his approvals in future.
124. The transparency and accountability of a liquidator to the creditors of a company for the actions they undertake as a liquidator, and their use of funds as a liquidator, is fundamental to the Australian insolvency and restructuring framework. The work of a liquidator involves the scrutiny of the past actions of the officers of a company, as well as the attempted maximisation of any return to creditors in the future. In order to do this effectively they must hold themselves to unimpeachable standards of transparency, accountability and professionalism. Mr Auricht has not done this, and his failure to follow proper processes around the drawing of his fees has the potential to bring the entire profession into disrepute.
125. The Committee considers that ensuring that approvals are in place before drawings are made is at the cornerstone of the obligations of a liquidator. The Committee accepts that from time to time, an error will be made and a drawing may be made without approval, however the Committee notes that in the present matter it was not a single drawing, but 14 made over an extended period of time and totalling a considerable sum of money. The Committee considers that a fit and proper registered liquidator, upon discovering that drawings of unapproved fees had been made, would have repaid the funds immediately, sought approval with haste, and implemented new strategies and business systems in order to ensure that the error would not be repeated in future to ensure that no further harm could flow to the specific company involved but also to the profession as a whole.
126. Mr Auricht did not repay the fees upon learning they had been drawn without approval. Mr Auricht sought approval from the creditors, but then only applied to the Court for approval of the fees after the Show-Cause Notice was served on him, some four and a half years later. The

⁵³ *Re Percival v Australian Securities Commission* (1993) 18 AAR 114 ; 30 ALD 280

⁵⁴ *Hughes and Vale Pty Ltd v The State of New South Wales (No 2)* (1955) 93 CLR 127, 156.

⁵⁵ *Australian Securities and Investments Commission v Fernandez* (Proceedings before the CALDB, Matter No. 02/VIC13), [323].

Committee considers the delay is excessive and contributed to the detriment suffered by the corporation and its creditors. The explanation given for four and a half year delay was unsatisfactory, and the Committee is satisfied that Mr Auricht's conduct upon learning of the unapproved drawings lacked professionalism, competence, integrity and diligence

127. When ASIC wrote to Mr Auricht in August of 2021 Mr Auricht sought an extension of time in which to respond but did not comply with that extension and did not respond to ASIC at all. Mr Auricht agreed that he had prioritised getting the Court approval over responding to ASIC, and yet, Mr Auricht still failed to file for that approval for over a year from when ASIC first asked for an explanation. The failure to respond to ASIC in a timely, fulsome and transparent manner indicates that Mr Auricht does not have the professionalism, diligence, competence and judgement to be a registered liquidator.

128. The Committee is satisfied that Mr Auricht is not a fit and proper person to be a registered liquidator.

Did Mr Auricht fail to carry out adequately and properly his duties as a liquidator?

Did Mr Auricht fail to lodge on ASIC's published notices website (PNW) two notices of meeting of creditors?

129. Annexure D to Schedule B to the Show Cause Notice set out that ASIC believed that Mr Auricht had failed to lodge two Notices of meetings of creditors on ASIC's published notices website (PNW). They were:

- a. A notice of meeting for creditors meeting held on 27 November 2019 when Mr Auricht was the deed administrator of GN Bricklayers Pty Ltd; and
- b. A Notice of meeting of creditors for a meeting held on 14 March 2014 when Mr Auricht was the deed administrator for Ultimate Air Control.

130. The Explanation enclosed:-

- c. in relation to Ultimate Air Control Pty Ltd, a notice of meeting of creditors for the meeting held on 14 March 2014 dated 21 September 2022; and
- d. in relation to G N Bricklayers Pty Ltd, notice of meeting of creditors for the meeting held on 27 November 2018 dated 21 September 2022.

131. The Explanation accepted that the two Notices of creditors meetings were not lodged "in a timely manner".⁵⁶

132. As the notices are dated some seven and a half and four and half years after the meetings which they relate to, the Committee infers that these notices were created in response to ASIC's Show-Cause Notice, and that they were only lodged as part of the response to the Show-Cause Notice. The lodging of notices advising creditors of meetings years after the meetings were held fails to fulfil the purpose for which the notices are required to be lodged. The Committee places no weight on the fact that the notices were lodged given that they were only done so once the Show-Cause Notice was issued and were lodged so late after the meetings which they relate to were held that they are entirely redundant.

133. The Committee is satisfied that Mr Auricht failed to lodge the two notices and failed to ensure that the notices of the meetings were published on the PNW. In so failing, Mr Auricht failed to ensure that proper notice was provided to the creditors of the respective companies in relation to the meetings.

⁵⁶ The Explanation at [46]

Did Mr Auricht fail to lodge the documents set out in Annexure D to Schedule B of the Show-Cause Notice with ASIC?

134. Mr Auricht was appointed as the voluntary administrator of G N Bricklayers on 23 February 2012, and on 29 March 2012 he was appointed as the administrator of a deed of company arrangement. On 27 November 2018 Mr Auricht was appointed as the liquidator.
135. It is not in dispute that in respect of G N Bricklayers Pty Ltd Mr Auricht was required to lodge, and failed to lodge a Form 5603 End of Administration return for the period of 29 March 2018 to 27 November 2018, which was required to be lodged by 27 December 2018, and a Form 5601 Statutory report by a liquidator to creditors which was required to be lodged on or before 27 February 2019.⁵⁷ Both documents, dated 21 September 2022, were provided to ASIC with the Explanation.
136. A report under s533(1) is required to be lodged as soon as practicable and no later than six months after it appears to the liquidator that the company may be unable to pay its creditors more than 50 cents in the dollar, or one of the other criteria set out in s533(1)(a) and (b) has occurred.⁵⁸ Mr Auricht provided a report under s533(1) in relation to G N Bricklayers Pty Ltd on 3 December 2022.⁵⁹ As well as providing transparency to creditors, reports under s533(1) provide ASIC with critical information which ASIC and are a statutory threshold in relation to director disqualifications under s206F.
137. The Committee is satisfied that Mr Auricht failed to lodge the Form 5601, Form 5603 and the s533(1) report. The Committee places no weight on the lodgement of the documents after the Show-Cause Notice was issued. It indicates that Mr Auricht either has insufficient business systems to ensure that he made the lodgements when they were required, or he chose to ignore his lodgement requirements. Either way, the damage of the late lodgement is not rectified by his providing the documents to ASIC in response to the Show-Cause Notice.
138. Annexure D to Schedule B of the Show-Cause Notice sets out that Mr Auricht failed to lodge 19 separate Form 5602 Annual Administration Returns with ASIC.
139. It is not in dispute that Mr Auricht was required to lodge the returns.
140. In the Explanation Mr Auricht submits that he did lodge the reports with ASIC. Mr Auricht states that he lodged them “in physical form” by sending a hard copy of the form to “ASIC’s address for lodgement” (ASIC PO Box 4000, Gippsland Mail Centre VIC 3841).⁶⁰
141. Following the legislative amendments that were enacted on 1 September 2017 registered liquidators have been encouraged to lodge all documents through ASIC’s liquidator portal. Forms 5602 and 5603 specifically are approved by ASIC for lodgement electronically. The reasons for this are straight forward: it allows for information to be available almost instantly to ASIC and to shareholders, in a searchable format that allows for transparency and accountability across the profession.
142. Forms 5602 and 5603 have never been published in paper form, although versions are available for use in exceptional circumstances. However, while the Forms are approved to be lodged electronically, the Committee is not aware of any legislation or regulation that prohibits the forms being lodged in hard copy.
143. Mr Auricht stated that he has had a lot of trouble lodging electronic forms through the ASIC portal since 2017- although he was able to lodge documents in September 2022 in preparation for providing the Explanation to ASIC.⁶¹ Mr Auricht stated that he doesn’t find the ASIC systems easy

⁵⁷ The Explanation at [45] and [46]

⁵⁸ S533(1) of the Corporations Act

⁵⁹ Email from Mr Auricht’s solicitor to ASIC 6 December 2022

⁶⁰ The Explanation at [43]

⁶¹ Transcript at page 32

to use. He stated that he uses a paper template that is updated every six months or so, and that he sends them to ASIC by post. Mr Auricht noted that the paper template is no longer available from ASIC.⁶²

144. Given the legislation does not prohibit the lodgement of paper forms, the Committee declines to make a finding as to if Mr Auricht has “lodged” the forms by posting them to ASIC.
145. As ASIC says that the forms have not been lodged, none of the forms would be appearing as lodged against the relevant company were Mr Auricht to have checked. Since receiving the Show Cause Notice in August 2022 Mr Auricht has continued to “lodge” form by posting them to ASIC, despite the fact he was on notice that ASIC says it has not received the forms.
146. Registered liquidators are required to make a number of lodgements across the course of an appointment. While these requirements may at times seem onerous, they are required for accountability and transparency of the liquidation process, to keep interested parties informed and to share information with ASIC to allow ASIC to perform its functions as regulator of both corporate conduct as well as the insolvency industry. ASIC has moved to electronic lodgement as a way of receiving data that is in a structured form, which allows for greater ease in processing the data to provide information available in public searches, but also to be able to provide greater information to the profession, stakeholders and government. The Committee is concerned that Mr Auricht’s approach of sending the documents in by hard copy would not facilitate this information sharing and does not promote transparency across the profession.
147. Mr Auricht has failed to obtain sufficient skills to allow him to lodge the documents electronically, and his continuing to send documents in by post when he is aware that they are not actually being received as “lodged” has obvious repercussions to the parties interested in the administrations that the lodgements relate to, and also has macro implications for the profession and its regulation as a whole.

Did Mr Auricht fail to carry out adequately and properly the duties as a liquidator by not lodging documents with ASIC?

148. The Committee is satisfied that Mr Auricht has failed to carry out adequately and properly the duties of a liquidator.
149. Mr Auricht is required to lodge the Form 5601, Form 5603 and the s533(1) report within the required timeframe. Mr Auricht failed to lodge two notices of meetings for publication on the PNW prior to the meetings being held, and only provided the documents to ASIC in response to the Show Cause Notice being issued.
150. Mr Auricht has either failed to have business systems that ensured he met these lodgement requirements, or he ignored his obligations to lodge documents on time.
151. Mr Auricht has failed to ensure that the 19 Form 5602s he posted were received and processed by ASIC.
152. Upon becoming aware that the method of “lodgement” he was using was not effective, he has continued to use it.
153. Mr Auricht has failed to obtain the skills required to lodge documents electronically.
154. The Committee is satisfied that carrying out the duties of a registered liquidator adequately and properly requires getting the information in the forms to ASIC in a usable format in a timely fashion. Mr Auricht has failed to do that. The Committee is satisfied that Mr Auricht has failed to carry out adequately and properly the duties of a registered liquidator.

⁶² Transcript at page 32

Does Mr Auricht no longer have the qualifications, experience, knowledge and abilities prescribed under paragraph 20-20(4)(a) of the IPS to continue to be a registered liquidator?

What are the qualifications, experience, knowledge and abilities prescribed under paragraph 20-20(4)(a) of the IPS?

155. Under IPS 40-40(1)(a) ASIC may give a registered liquidator a show cause notice in writing asking the liquidator to give ASIC a written explanation why the liquidator should continue to be registered if ASIC believes that the liquidator no longer has the qualifications, experience, knowledge and abilities prescribed under paragraph 20-20(1)(a).

156. IPR 20-1(2) sets out the experience, knowledge and abilities for the purposes of IPS 20-20(4)(a). 20-20(4)(a) is concerned with the applicants who are applying to be registered as liquidators, but it follows that a liquidator, once registered, should maintain, if not exceed, the experience, knowledge and abilities that are required to become registered. IPR 20-20(2) states:

(a) the applicant has completed the academic requirements for the award of a tertiary qualification that includes at least 3 years of full-time study (or its equivalent) in commercial law and accounting;

(b) the applicant has completed the academic requirements for at least 2 course units accredited under the Australian Qualifications Framework Level 8 (or equivalent study) in the practice of external administrators of companies, receivers, receivers and managers, and trustees under the Bankruptcy Act 1966;

(c) if the applicant wishes to be registered to practise as an external administrator of companies, receiver and receiver and manager—the applicant has, during the 5 years immediately preceding the day on which the application is made, been engaged in at least 4,000 hours of relevant employment at senior level;

(d) if the applicant wishes to be registered to practise only as a receiver, and receiver and manager—the applicant has, during the 5 years immediately preceding the day on which the application is made, been engaged in at least 4,000 hours of relevant employment at senior level;

(e) the applicant has demonstrated the capacity to perform satisfactorily the functions and duties of a registered liquidator;

(f) the applicant is able to satisfy any conditions to be imposed under the Insolvency Practice Schedule (Corporations) if the applicant is registered as a liquidator.

157. IPR 20-20(3) states:

For the purposes of paragraph (2)(c), relevant employment must include:

(a) employment that involves any of the following:

(i) assisting a registered liquidator in the performance of the registered liquidator's duties as external administrator of companies, receiver or receiver and manager;

(ii) providing advice in relation to the external administration of companies, receivership or receivership and management;

(iii) providing advice in relation to Subdivision C of Division 3 of Part 5.7B of the Act;

(iv) providing advice in relation to the restructuring of company debt outside the external administration of companies, receivership or receivership and management; and

(b) employment that provides direct or indirect exposure to processes (including bankruptcy) under the Bankruptcy Act 1966; and

(c) any other employment that the committee considers relevant.

158. The Committee accepts that Mr Auricht meets the requirements in IPR 20-20(2)(a) and (b). The Committee is satisfied that IPR 20-20(2)(d) is not relevant to Mr Auricht.

159. The Committee considers that the relevant questions are whether Mr Auricht:

- a. has the relevant experience to meet the requirements of 20-20(2)(c) given that his last Chapter 5 appointment was November 2018; and
- b. has demonstrated the capacity to perform satisfactorily the functions and duties of a registered liquidator, given that:
 - i. Mr Auricht made drawings without the proper approvals; and
 - ii. Mr Auricht either did not lodge documents or failed to ensure documents were properly received.

160. In considering whether Mr Auricht has demonstrated the capacity to perform satisfactorily the functions and duties of a registered liquidator, the Committee considers that “capacity” refers both to the practise capacity, which is the resources, technical, staff and financial, that are available to Mr Auricht, as well as the personal capacity, the skills, knowledge, time and attributes of Mr Auricht personally.

Has Mr Auricht demonstrated that he has the capacity to perform satisfactorily the functions and duties of a registered liquidator?

161. Under IPS 50-85(4) At an interview, the committee may ask the liquidator any question that the committee reasonably believes to be related to any matter that is relevant to the committee’s proposed decision to cancel the liquidator’s registration.

162. At the interview, the Committee asked Mr Auricht what was included in a remuneration approval report.⁶³

163. Mr Auricht stated that he does not prepare them but that he had reviewed them and checked that they are correct.⁶⁴ Mr Auricht went on to say that he has trained his wife who is his office manager, in what is required in a remuneration report⁶⁵. Mr Auricht couldn’t speak to what is now required in a remuneration report, as opposed to what was required in 2018.⁶⁶

164. Mr Auricht did not have a risk management framework as required by APES 325.

165. Mr Auricht stated at the Interview that he has not accepted an appointment for a number of years, and that he no longer has the staff to conduct insolvency work, but that it would be his intention to contract to a mid-tier firm to utilise their staff and resources to conduct a matter.

166. Mr Auricht said at the interview that if he were required to conduct a creditors meeting his wife would send the notices to the creditors and book the room, but that he would need to either form a relationship with another firm or hire someone in order to conduct the meeting.⁶⁷ In the Explanation Mr Auricht submitted that if he was to accept an appointment he would need to sub-contract the staff of a mid-sized firm, or recruit sub-contractors of his own firm’s if necessary.⁶⁸

167. In the Explanation Mr Auricht submitted that he had submitted a formal proposal to be appointed to a Chapter 5 appointment in October 2020 but was not successful.

⁶³ Interview transcript at page 36

⁶⁴ Interview transcript at page 37

⁶⁵ Interview transcript at page 41 line 13

⁶⁶ Interview transcript at page 38

⁶⁷ Interview transcript at page 43

⁶⁸ Explanation at 58

168. The Committee has found that Mr Auricht did not have sufficient business systems in place that ensured that he was aware what fee approvals he had in place and what drawings he had made relative to those fee approvals. The Committee has found that Mr Auricht either failed to have business systems that ensured he met the lodgement requirements, or he ignored his obligations to lodge documents on time. The Committee is satisfied that Mr Auricht has not acquired the skills required to lodge documents through the liquidator portal. The Committee is satisfied that Mr Auricht, does not, at the present time have the staff to conduct insolvency work, and does not have the systems in place to do so. The Committee is satisfied that Mr Auricht has failed to adequately and properly carry out the duties of a registered liquidator. The Committee is satisfied that Mr Auricht has contravened s182 in relation to Ultimate Air Control.
169. The Committee is satisfied that Mr Auricht does not have the capacity to perform satisfactorily the functions and duties of a registered liquidator.
170. The Committee is therefore satisfied that Mr Auricht does not have the qualifications, experience, knowledge and abilities prescribed under paragraph 20-20(4)(a) of the IPS.

What should the decision of the Committee be?

171. In the Explanation Mr Auricht submitted that suspension or cancellation of Mr Auricht's registration would cause Mr Auricht significant economic loss, and inconvenience and cost third party creditors by requiring the appointment of new liquidators to Mr Auricht's remaining appointments and is unwarranted.⁶⁹
172. In the written submissions of 13 March 2023 Mr Auricht's solicitors stated that weight should be placed on the fact that Mr Auricht did not continue to draw fees once he realised that the drawings were made without approval, and therefore that the drawings were made inadvertently. The Committee considers that it is incumbent upon a registered liquidator to satisfy themselves that they have approval for the fees prior to making the withdrawal, and therefore, Mr Auricht ceasing to contravene his obligations is the bare minimum that should be expected. The fact that he was not intentionally making the withdrawals goes to his honesty, but not his competency.
173. At the Interview Counsel submitted that the conduct was regretted but was not serious.
174. The Committee has considered all of the possible outcomes under IPS s40-55 and has determined that the appropriate decision is to cancel Mr Auricht's registration.
175. In coming to this decision the Committee is mindful that this is a serious outcome and has weighty repercussions for Mr Auricht and for the administrations he remains appointed to. However, the findings the Committee has made against Mr Auricht, that he is not a fit and proper person to be a registered liquidator, and that he has failed to adequately and properly perform the duties of a liquidator, and that he has not demonstrated that he has the capacity to adequately and properly perform the duties of a liquidator, are serious and require that action be taken.
176. The Committee has considered all of the submissions and evidence Mr Auricht put before it, however, ultimately the Committee does not consider that it is appropriate for Mr Auricht to continue to be a registered liquidator given the seriousness of those findings, and his failure to understand the seriousness of the conduct and his failure to satisfy the committee that he has taken effective steps to ensure that the same failings are not made again in future.
177. The Committee places weight on the finding that it is satisfied that he does not have the capacity to adequately and properly perform the duties of a liquidator.
178. The Committee considers that the cancellation of Mr Auricht's registration is appropriate as it will help to ensure that the high standard of conduct expected by the public of registered liquidators is maintained.

⁶⁹ The Explanation at [60]

179. The Committee is satisfied that it is appropriate to direct ASIC to publish this report under s40-55(1)(h). The Committee does so, not to embarrass Mr Auricht, but to provide transparency about the disciplinary process, to inform the broader profession, and for the public protection that will flow from other liquidators being made aware of the potential consequences for similar conduct.

Decision of the Committee

180. Mr Auricht's registration as a liquidator should be cancelled under IPS s 40-55(1)(c).⁷⁰

181. ASIC should publish the fact of the decision and this report, pursuant to IPS s 40-55(1)(h).

Signed: _____ SARAH THRIFT____
Sarah Thrift, a delegate of ASIC

Date: _26 June 2023

Signed: _____ ROBYN ERSKINE _____ Date: 28 June 2023
Robyn Erskine, a registered liquidator chosen by Australian Restructuring Insolvency and
Turnaround Association ACN 002 472 362

Signed: _____ STEPHEN PARBERY _____
Stephen Parbery, an appointee of the Minister

Date: 26 June 2023

The decision of the committee is taken to be made on the last date on which a member of the committee signs a copy of this report.

⁷⁰ References to the "IPS" are references to the *Insolvency Practise Schedule (Corporations)* which is Schedule 2 to the *Corporations Act 2001* (Cth) (**the Act**). Schedule 2 has effect because of s600K of the Act. References to the "IPR" are references to the *Insolvency Practise Rules (Corporations)* 2016.