

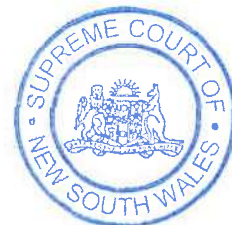
I, Kevin Lee Christensen, solicitor on record for the Applicants, hereby certify that the Applicants written submissions are suitable for publication pursuant to paragraph 27 of Practice Note SC CA 01.

Signed: 
20 November 2025

**IN THE SUPREME COURT OF NEW SOUTH WALES
COURT OF APPEAL
SYDNEY REGISTRY**

FILED

17 NOV 2025



No. 2025/267011

B E T W E E N

Ample Skill Limited & others
First to Tenth Applicants

Geoffrey Reidy, Andrew Barnden and Paula Smith as liquidators of Balamara Resources Limited (in liq) (ACN 016 219 985)

First Respondents

Balamara Resources Limited (in liq) (ACN 016 219 985)

Second Respondent

Vulpes Distressed Fund (Cayman Islands Company No. 330197)

Third Respondent

APPLICANTS' APPEAL SUBMISSIONS IN REPLY

These submissions reply to the Respondents' submissions filed on 3 November 2025 (RS), using terms as defined in the Applicants' Submissions in Chief filed on 1 October 2025 (AS).

1. Contrary to RS[6], the primary legal issue raised on this appeal is not whether s 75-250(2) includes a requirement that the opinion held be reasonable or not unreasonable. That is a tertiary issue. The primary legal issue is whether the Liquidators asked themselves the wrong question and thereby failed to form the opinions required by s 75-250(2)(a) or (d).¹ That was also the primary legal issue before the primary judge.²
2. If the applicants establish that the Liquidators failed to form the necessary opinions, or that the opinions were arbitrary or capricious (and so not in good faith), or otherwise not formed reasonably, then the appeal will succeed. The repeated assertions of the respondents to the contrary (see RS[8], [12], [14], [19], [23], [67], [69]) are misconceived.

A. Ground 1 – grant of leave to re-open and call further evidence

3. Contrary to RS[9], the Directing Creditors *did* oppose the grant of leave to re-open and call further evidence.³ The primary judge understood that, as indicated in his *ex tempore* judgment in which he noted the points made by counsel in opposition to the grant of leave.⁴

¹ See "Issue 1 – the wrong question" at AS[42]-[47].

² See Directing Creditors' Written Submissions dated 12 May 2025 at [27]-[28], [31]-[34] (AWB 8/87-88); Transcript, 21 May 2025 at 27 (AWB 17/682); Directing Creditors' Additional Submissions dated 4 June 2025 at [3]-[11] (AWB 11/101-105); J[72]-[76] (AWB 3/45-46).

³ Transcript, 21 May 2025, 62.1-5 (AWB 17/717).

⁴ *Ex tempore* judgment (AWB 19/760-762)

4. Contrary to RS[10], the proposition that Mr Barnden’s evidence had been influenced by the Directing Creditors’ submissions on the first day of the hearing was put to Mr Barnden in cross-examination.⁵
5. The respondents suggest there was no prejudice caused by the grant of leave (RS[11] and [13]). That is incorrect. First, evidence of a person’s beliefs as to their reasons for holding an opinion is inherently difficult to challenge (particularly if the respondents are correct that all that is required is that the opinion be subjectively held). For that reason, it was particularly important that Mr Barnden give all of his evidence of his reasons *before* the Directing Creditors embarked on establishing that those reasons were insufficient. Here, evidence was allowed to be given by a plaintiff witness *after* that plaintiff witness had read and heard the other side’s arguments against the validity of the reasons he previously gave for his opinion, and he had heard the Judge’s preliminary views in respect of those arguments. The prejudice is obvious: the witness has been permitted an opportunity to tailor his further evidence of his personal beliefs to overcome the legal arguments.
6. The prejudice caused by the grant of leave to reopen was not raised below (as pointed out at RS[11]) because, had the new evidence been within the narrow grant of leave, there may have been no prejudice (see Ground 1A).
7. Contrary to RS[11]-[12], *Gerlach v Clifton Bricks Pty Ltd* (2002) 209 CLR 478 at [7] is not authority for the proposition that the applicants need to establish a miscarriage of justice; the applicants do not seek a new trial. Instead, the applicants must show that the wrongly admitted evidence affected the final result (*Gerlach*, [6]). It did: it was the only evidence of a reason for refusing the Direction that may have been addressed to the correct question (the effects of convening the meeting) and not to the wrong question (the anticipated effects of the removal of the Liquidators).

B. Ground 1A – admission of the Work Minimisation Reason evidence over objection

8. The objections were not withdrawn (cf RS[16]). The primary judge ruled on them, stating “I rule on the objections in the manner I have indicated”.⁶
9. At RS[17], the respondents misstate the limitations that the Judge placed on the grant of leave. The leave was for further evidence of Mr Barnden “directed to the intermediate steps *between* the factual observations he makes [in his existing evidence] and the conclusions that he reaches” (emphasis added).⁷ It is clear from paragraph 1 of the *ex tempore* judgment that the reference in

⁵ Transcript, 5 June 2025, 11.30-33 (AWB 18/730).

⁶ Transcript, 5 June 2025, 3.43-44 (AWB 18/722).

⁷ *Ex tempore* judgment (AWB 19/762).

the grant of leave to the “factual observations he makes” was to the factual observations *in his existing evidence*. In inviting the Liquidators *sua sponte* to seek leave to re-open, the primary judge articulated his concerns in detail over six instructive pages of transcript.⁸ The Judge observed that the leave was for “a relatively limited scope of evidence”.⁹ Yet the evidence that the primary judge later admitted, over objection, was evidence of *new* facts, new reasons in support of the Liquidators’ opinion, and not the “*intermediate steps*” in the chain of reasoning.

10. At RS[18], the respondents selectively quote three words (“increased costs” and “delay”) from the File Note¹⁰ and the Refusal Letter,¹¹ attempting to link the Work Minimisation Reason to those three words. As to costs, there can be no suggestion that there would have been any costs associated with convening the meeting, because the Directing Creditors had agreed in the Direction to bear the costs of complying with the Direction.¹² There was also no evidence of any costs associated with convening the meeting. That leaves “delay”. When the word is read in its context in the File Note¹³ and the Refusal Letter,¹⁴ it is evident that the delay referred to there is the potential delay in prosecuting the Poland claim if the Liquidators were removed. That was confirmed in Mr Barnden’s affidavit evidence filed prior to the hearing. There was no mention of costs or delay in Barnden 1. In Barnden 2, Mr Barnden explained his reasoning as to costs and delays as follows:¹⁵

I am concerned that the amount of preparatory work the Liquidators have undertaken will need to be duplicated by any replacement. This will significantly increase the costs associated with the liquidation and also cause a prolonged delay in progressing the liquidation, which is not in the interests of creditors and shareholders as a whole.

11. Mr Barnden then set out in the following seven paragraphs further detail regarding the increased costs and delay he foresaw if the Liquidators were removed.¹⁶ That was the only evidence regarding costs and delay. No mention was made there, or anywhere else in Mr Barnden’s affidavit evidence filed prior to the hearing of any delay to be caused by the Liquidators minimising their work pending the holding of a meeting (or pending the determination by the Court of the Liquidators’ application for directions that they were justified in refusing to convene the meeting, as to which see AS[45] and [16] below).
12. The evidence was not within the grant of leave and should have been rejected.

⁸ Transcript, 21 May 2025, 55-61 (AWB 17/710-716).

⁹ *Ex tempore* judgment (AWB 19/762).

¹⁰ The File Note is at AWB 16/654-655.

¹¹ The Refusal Letter is at AWB 12/365-369.

¹² AWB 12/338.

¹³ AWB 16/655, third dot point.

¹⁴ AWB 12/368 at [32]-[33].

¹⁵ at [56] (AWB 13/402).

¹⁶ Barnden 2 at [57]-[63] (AWB 13/402).

C. Grounds 2 and 3 – primary judge’s acceptance of the Work Minimisation Reason

13. The evidence references suggested by the respondent for the primary judge’s findings at J[69] (see RS[20]) suffer from the same vice as discussed at [10] to [11] above: the references to cost and delay in the Refusal Letter and the File Note were not references to any cost or delay involved in convening the meeting, but rather to costs and delay if the Liquidators were removed.
14. Contrary to RS[21], there is nothing unreasonable or exceptional in expecting a liquidator to mention in his statutorily required reasons, or at least in his expansion on those reasons in his two affidavits filed in advance of the hearing, that one of his reasons for refusing to convene the meeting as directed was that the meeting could not be held for 8 weeks and the Liquidators considered they would be obliged to minimise their work to the prejudice of creditors during that time.

D. Ground 4 - reasonableness of Work Minimisation Reason

15. No support can be drawn from *Deputy Commissioner of Taxation v Starpicket Pty Ltd (No 2)* [2013] FCA 699 (referred to by the respondents at RS[26]-[27]) for the Liquidators’ choice here not to do work, including work in progressing the Poland claim, where Mr Barnden himself gave evidence that delaying that work would be prejudicial to the interests of creditors.¹⁷ It was unreasonable for the Liquidators to rely on their own unreasonable decision to minimise their work as an instance of supposed prejudice to creditors in convening the meeting.
16. As to the evidence which emerged in cross-examination that the Liquidators minimised their work anyway despite having refused to comply with the Direction,¹⁸ that was evidence from which the court could infer Mr Barnden’s intention at the time the Liquidators refused to comply with the Direction (cf RS[28]).

E. Grounds 5 and 6 – reasonableness, or lack of unreasonableness

17. These grounds will not require determination if the Court concludes that the Liquidators did not form the requisite opinions, or that they did so arbitrarily or capriciously. The respondents accept that a decision made arbitrarily or capriciously is not made in good faith (RS[40.2] and [46]). It is difficult to understand, in light of that acceptance, how it is that the Liquidators can contend at RS[31] that the test is “entirely subjective”. Further, it is not the case that the meaning of “good faith” contended for by the applicants is “an objective test as to the correctness of that opinion” (cf RS[31]). Rather, it is a subjective test with some elements of reasonableness (or lack of unreasonableness) as exists both in the court’s supervision of liquidations and in administrative

¹⁷ Barnden 3 at [26] (AWB 16/647).

¹⁸ Transcript, 5 June 2025, at 15.38-43 (AWB 18/734).

law. Contrary to RS[32] and [45], it is not “merits review”, nor an “insistence ... that the Liquidators base their opinion on reasons which must be correct”. The question is whether the result was reasonable, or not unreasonable, not whether the Court would have reached the same opinion reached by the Liquidators.

18. The respondents’ comparison at RS[35] with the regime for requests for documents does not lead to the conclusion contended for. *First*, the equivalent right of appeal here is a liquidator’s right to apply to be reinstated by the court under s 90-35(4) (as discussed at AS[40]). *Secondly*, there was no need for the Insolvency Practice Rules to provide a separate right for creditors to apply to court where a direction to call a meeting is refused. Such an application may undoubtedly be brought under s 90-15 of the IPS to challenge a decision of a liquidator (as could previously have been brought under s 1321 of the *Corporations Act*). Even with a discretionary decision by a liquidator, the court may interfere where the liquidator did not address themselves to the correct section; made errors of law; failed to take into account relevant matters or took into account irrelevant matters; or if the liquidator’s decision in the circumstances appears such that no reasonable person could arrive at it, or in another formulation: that the decision is so unreasonable, in the circumstances, that it should not be allowed to stand.¹⁹ Similar principles apply on a liquidator’s application for directions under s 90-15.²⁰ As was noted by the English Court of Appeal in *In re Edenote Ltd* [1996] 2 BCLC 389, 394 (Nourse LJ, Millett LJ agreeing) and by Bowen CJ in Eq in *Re Equity Funds of Australia* (1976) 2 ACLR 238, 239, these principles are akin to, although not identical to, administrative law principles. That is the context in which r 75-250 was introduced. The requirement that the liquidator hold the requisite opinions should be interpreted accordingly. That a liquidator is required to provide reasons (r 75-255(2)) also indicates a statutory intention that the liquidator’s decision be capable of review.
19. Contrary to RS[40.2], the Liquidators do not have a “very wide discretion”. Rather, they have a narrowly constrained power: they *must* convene a meeting if directed to do so by creditors satisfying the relevant thresholds (IPS, s 75-15(1)) and the *only* circumstance in which they are not required to comply with the direction is if the direction is not reasonable (IPS, s 75-15(2)). This is consistent with one of the three objects of the IPS, as identified in s 1-1: “to regulate the external administration of companies to give greater control to creditors”. Rule 75-250(2) of the Insolvency Practice Rules then prescribes the *only* circumstances in which a direction is not reasonable (see r 75-250(4)). For the direction to be unreasonable, the liquidator *must* be of the

¹⁹ *Duffy v Supercentre Development Corporation Ltd* [1967] 1 NSW 382 at 383 (Street J); *Re Equity Funds of Australia* (1976) 2 ACLR 238 (Bowen CJ in Eq); *Re CIC Insurance Ltd and Fai General Insurance Company Ltd* [2015] NSWSC 1518 at [44] (Black J) and the cases cited therein.

²⁰ *Lewis (liquidator), Re Concrete Supply Pty Ltd (in liq)* (2020) 145 ACSR 459; [2020] FCA 841 at [31] (White J).

opinion set out in, relevantly r 75-250(2)(a) or (d). In being of that opinion, the liquidator must be acting in good faith, the meaning of which is context-dependent,²¹ and have formed that opinion reasonably.

20. As to the proper construction of the statutory text, at RS[33], the respondents misstate r 75-250(2) of the Insolvency Practice Rules. It does not impose a requirement that “the opinion is reached having acted in good faith in doing so”. Instead, it imposes a requirement that “the external administrator, acting in good faith, *is of the opinion that ...*”. That is, the liquidator must be acting in good faith in holding the opinion. Contrary to RS[33], there is no reference to process and there is no justification to read in such a requirement.
21. The suggestion (at RS[34] and [42]) that r 75-250(2) of the Insolvency Practice Rules could have been more clearly drafted by including an express reasonableness requirement had that been intended by the legislature (or rather the Minister, this being delegated legislation), is a *non-sequitur* for the reasons given in *Menz v Wagga Wagga Show Society Inc* (2020) 103 NSWLR 103; [2020] NSWCA 65 at [67(2)] (Leeming JA, Payne and White JJA agreeing). Further, it is legitimate to have regard to the fact that subordinate legislation is less carefully drafted, and less keenly scrutinised, than primary legislation.²²
22. At RS[36], the respondents call in aid the fact that the legislature granted only a “qualified right to have a meeting actually held”. What is not mentioned there is the unqualified right of the creditors to “by resolution at a meeting, remove the external administrator of a company”. The qualification on the right to direct the convening of a meeting should be narrowly construed so as not to deprive creditors of their right to remove the external administrator by resolution at a meeting.
23. The observations of Lord Sumption in the UK Supreme Court in *Eclairs Group Ltd and another v JKN Oil and Gas plc* [2016] 3 All ER 641 as to the importance of the application of the proper purpose rule to the powers of directors where the company is in play between competing groups seeking to control or influence its affairs are also applicable by analogy here. Lord Sumption observed (at [37]) that:

in that situation the board would naturally wish to have the predators disenfranchised. That is precisely why it is important to confine them to the more limited purpose for which their powers exist. Of all the situations in which directors may be called upon to exercise fiduciary powers with incidental implications for the balance of forces among shareholders, a battle for control of the company is probably the one in which the proper purpose rule has the most valuable part to play.

²¹ *Gillespie v Gillespie* (2025) 172 ACSR 183; [2025] NSWCA 24 at [29].

²² *Environment Protection Authority v Orchard Holdings (NSW) Pty Ltd (in liq)* (2014) 86 NSWLR 499; [2014] NSWCA 149 at [44]-[45] (Leeming JA; Bathurst CJ and McCall JA agreeing); *State of Queensland (Department of Education) v Johnston* [2025] QCA 142 at [23] (Brown JA, Boddice JA and Williams J agreeing); Herzfeld and Prince, *Interpretation* (3rd ed, 2024), [14.40].

24. Similarly, of all the situations in which a liquidator may exercise their powers, a battle for control of the liquidation is probably the one in which the “good faith” or reasonableness requirement in r 75-250 has the most valuable part to play. Contrary to RS[41], the applicants do not seek to “alter” the limits of r 75-250. Rather, the applicants seek to give meaning to the limits, in a context that requires a genuine limitation on the Liquidators’ ability to decline to call a meeting.
25. Contrary to RS[47], the context of s 70-15 IPS and r 75-250 is not “a routine feature of insolvency administrations, namely the convening of creditors’ meetings”. Rather, the context is the convening of creditors’ meetings *directed by the creditors* that the liquidator does not wish to convene, including importantly meetings at which creditors’ meeting the statutory thresholds wish to put resolutions for the removal of a liquidator. Finally, contrary to RS[47], Parliament did not enact the provision. The Minister did. Parliament was not “mindful of the risk ...”, rather Parliament was mindful of the need, as stated in the Explanatory Memorandum “[t]o ensure that creditors are able to call meetings when they desire it” (see AS[63]).²³

F. Grounds 7 and 11 – whether the Liquidators’ opinions were held in good faith and reasonably

26. Ground 7 deals with whether the Liquidators’ opinion that the direction was vexatious under r 75-250(2)(d) was an opinion held in good faith and reasonably. Ground 11 deals with whether the Liquidators’ opinion that complying with the Direction would cause substantial prejudice to creditors that outweighs the benefits of complying with the Direction under r 75-250(2)(a) was an opinion held in good faith and reasonably. These grounds cannot be properly addressed in the rolled up fashion attempted by the respondents. The vice is demonstrated by RS[51], in which the respondents attempt to justify the Liquidators holding the two distinct opinions required by r 75-250(2)(d) and r 75-250(2)(a) by reference to three “matters” to which the Liquidators are said to have had regard.
27. The first of the three matters is said to be “a relevant factual matrix”, the third is said to be a matter of “context”. Neither of those matters has anything to do with cost, delay, substantial prejudice or benefit. They could only be relevant to the opinion required under r 75-250(2)(d) that the Direction *is vexatious*. As the primary judge found, neither rose higher than a possibility of misuse of the relevant power and would not establish that the Direction was vexatious (J[58]), although his Honour declined to “reach any final views as to these matters” (J[79]). Further, for the reasons set out at AS[42] to [47], they were addressed to the wrong question. They are quintessentially matters to be considered by a Court on a liquidator’s application to be reinstated under s 90-35(4) of the IPS. On such an application, the Court may reappoint an external

²³ at [9.268] (SWB 4/73).

- administrator if “the Court is satisfied that the removal of the former administrator was an improper use of the powers of one or more creditors”. They are not matters to be considered by a liquidator in forming an opinion as to whether *a direction to call a meeting* is vexatious.
28. The sole remaining matter identified by the respondents (at RS[51.2]) is “increase in costs of the liquidation and delays in the Company’s prosecution of its claims against the Republic of Poland”. For the reasons set out at AS[42]-[47] and [35] and [39] below, those matters were concerned with the wrong question and the Liquidators failed to undertake the necessary balancing exercise required by r 75-250(2)(a) in respect of them.
 29. One of the problems with a liquidator having regard to the consequences of a creditors’ resolution passing at a proposed meeting is uncertainty. The Liquidators did not know whether or not the proposed resolutions would pass because, although the Directing Creditors made up around 60% of the value of creditors,²⁴ they were only 50% in number of the known creditors.²⁵ For a resolution relating to the removal of a liquidator to pass at a creditors’ meeting, either a majority in both number and value is required or the liquidator needs to have exercised their casting vote in favour of the resolution.²⁶ To have regard to such matters deprives the creditors of their right to choose.
 30. As to the respondents’ invocation of a rationale that creditors should not have to pay for meetings without consideration of their purpose, r 75-250(5) already expressly provides for the circumstances in which the cost of meetings will need to be borne by the directing creditors for the meeting to be reasonable. In this case, the Directing Creditors had already agreed in the Direction to pay the costs of convening the meeting.²⁷
 31. At RS[53], the respondents seriously misstate the primary judge’s finding. The primary judge did not find that “costs and delay which would arise from convening a meeting which, in practical terms could not be held until February” “were, without more, sufficient” (emphasis in RS). Instead, the primary judge found that the Liquidators’ “opinions as to cost and delay were, without more, sufficient”. Those opinions as to cost and delay were all (but for the Work Minimisation Reason), about the cost and delay that would occur if they were removed as Liquidators. The primary judge never made any finding that the Work Minimisation Reason alone was sufficient. Nor could such a finding be justified.

²⁴ The Liquidators’ estimate in the table of assets and liabilities in the Liquidators’ Statutory Report to Creditors dated 16 January 2025 (**Report Table**) (AWB 13/516) of the total owed to creditors was \$17,040,691 and their estimate of the total owed to the 10 Directing Creditors was \$10,305,679.

²⁵ There were 10 Directing Creditors. The Report Table (AWB 13/516) showed 18 ordinary creditors and two priority (employee) creditors.

²⁶ Rule 75-11(1), (2) and (5) of the Insolvency Practice Rules.

²⁷ AWB 12/338.

32. RS[53] also impermissibly reverses the onus. The Liquidators, of their own motion, sought a judicial direction that they were justified in refusing to comply with the Direction. The Liquidators needed to satisfy the Court on that application that they were so justified.

G. Ground 8 – adverse inference regarding applicants’ reasons

33. At RS[54], the respondents try to explain away the adverse inference drawn against the applicants as “simply an observation” about a different type of application. That cannot be accepted. The primary judge expressly stated at J[18]:

I proceed on the basis that no evidence that Mr Hale or other Directing Creditors could have led as to that matter would have assisted them in their opposition to the Liquidators’ application or in advancing their own application: *Commercial Union Assurance Co of Australia Ltd v Ferrcom Pty Ltd* (1991) 22 NSWLR 389 at 418–419; *Zaccardi v Caunt* [2008] NSWCA 202 at [27].

H. Ground 9 – absence of any explanation from the Directing Creditors as to benefit

34. Contrary to RS[56] to [58], the adverse inference drawn by the primary judge against the Directing Creditors at J[18] had a material impact on the primary judge’s determination: at J[75] to [76], the primary judge explained away the Liquidators’ failure to consider the benefits of complying with the Direction (as was required for the Liquidators to form the r 75-250(2)(a) opinion) on the basis that the Directing Creditors had failed to identify any benefits.

I. Ground 10 – wrong question (the Liquidators did not form the opinion required by r 75-250(2)(a))

35. Contrary to RS[60], the primary judge did not make reference at J[78] or anywhere else to “the Liquidators’ express inclusion, in the Letter, of the terms of the provision” because the Refusal Letter did not contain the terms of the provision. It simply referred to “r 75-250(2)(a) or (d) of the IPR”.²⁸ The issue is not one of mere form over substance (cf RS[61]). The issue is that, other than the text “r 75-250(2)(a)”, there was no indication in any of the evidence that Mr Barnden ever turned his mind to matters necessary for him to form the opinion, being: *substantial* prejudice of complying with the Direction; the *benefits* of complying with the Direction; and whether the substantial prejudice *outweighed* the benefits.

J. Ground 14 – primary judge’s assessment of whether benefit outweighed by disadvantages

36. Contrary to RS[66], Ground 14 is not a “trojan horse” argument. It directly reflects the primary judge’s finding at J[76] that:

Any benefit that exists in meeting their wish to hold the meeting, simply because that was their wish, was likely substantially outweighed by the Liquidators’ opinion ... as to disadvantages of delay and costs arising from that meeting.

37. That was the primary judge conducting the balancing exercise for himself because there was no

²⁸ AWB 12/368 at [26].

evidence that the Liquidators had conducted the balancing exercise.

K. Ground 15 – circular reasoning

38. At J[75], the primary judge stated “I recognise that, *if* the Direction was not unreasonable in the relevant sense, it would be a benefit to allow creditors an opportunity to vote at the relevant meeting” (emphasis in original). The difficulty with that reasoning is that one needs to determine the benefit of complying with the Direction *before* one can determine whether the direction was unreasonable under r 75-250(2)(a).

L. Ground 16 – wrong question (anticipated consequences of removal)

39. Contrary to RS[68], Ground 16 can succeed whether or not the applicants are correct as to the question of construction. *First*, if the Liquidators formed their opinion based on the anticipated consequences of their removal, then they did not form the opinion required by r 75-250(a) or (d). No question of good faith or reasonableness arises. *Secondly*, in the alternative, if their opinion is taken to be an opinion under r 75-250(a) or (d), then it was an arbitrary and capricious opinion (i.e. not in “good faith” on the meaning of those words accepted by the respondents) because it was based on the anticipated consequences of their removal and not on the matters required by r 75-250(a) or (d). *Thirdly*, in the alternative, it was an unreasonable opinion for the same reason.

M. Grounds 18 and 19 – Directing Creditors’ Application

40. The Directing Creditors’ Application did not seek an order that the Liquidators comply with the Direction (cf RS[72]). It sought an order from the Court under s 90-15 that the Liquidators convene a meeting of creditors at which resolutions could be put for the removal and replacement of the Liquidators.
41. The AS do not grapple with J[90] because J[90] merely sets out the Liquidators’ submissions on the Directing Creditors’ Application (cf RS[73]). The primary judge’s reasoning is contained in J[91], as addressed at AS[70]-[72].
42. As the primary judge noted at J[2], the parties’ common position was that *the question of whether it was reasonable (in the requisite sense) for the Liquidators to convene the requested meeting was to be determined as at the date of the Direction*. The question of whether the Court ought to order the Liquidators to convene a meeting was not so constrained (cf RS[73]).

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