Efficiency and Certainty in Decision-Making: An Evaluation of the Insolvency Practitioner Disciplinary Committees

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Abstract

The increase in rates of company failures and personal bankruptcy within the current economic climate warrants an assessment of the framework governing the conduct of the insolvency practitioners who administer them. Historically, trust and confidence in registered liquidators and trustees in bankruptcy has been impacted by concerns of widespread misconduct in the profession as discussed by the media and in the Australian Parliament. Providing evidence about this issue, which has been exceedingly scarce in academic literature, is in the public interest where financially distressed consumers are vulnerable to seeking the alternate services of untrustworthy insolvency advisers (otherwise known as 'debt vultures'). The *Insolvency Law Reform Act 2016* (Cth) introduced a new regulatory regime for insolvency practitioners; specifically, the introduction of pt 2 disciplinary committees in corporate insolvency and bankruptcy ('disciplinary committees'). Matters referred to the disciplinary committees are deemed to be the most serious by the insolvency regulators. In this article, I examine the totality of cases that have been published by the committees from the commencement of the regime on 1 March 2017 to 1 March 2025, including critically evaluating how they identify and weigh factors to determine appropriate orders. I seek to provide answers to the questions of whether the committees are achieving their intended legislative objectives to be efficient and resolve misconduct matters in a timely manner, and whether there is certainty in their decision-making. Overall, my research found that there continues to be a small number of matters appearing before disciplinary committees.

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I Introduction

Insolvency is a term used to describe a person's or company's ability to pay their debts when they fall due.[1] In Australia, a natural person who is insolvent may enter the 'bankruptcy' process (which is administered by the Commonwealth Official Trustee or privately by registered trustees) and a company may go into 'liquidation' (which is administered privately by registered liquidators).[2]

Australia has traditionally maintained a bifurcated system of personal and corporate insolvency laws and regulation.[3] The regulator for the *Corporations Act 2001* (Cth) ('*Corporations Act*') with oversight of liquidators is the Australian Securities and Investments Commission ('ASIC').[4] The regulator for the *Bankruptcy Act 1966* (Cth) ('*Bankruptcy Act*') with oversight of bankruptcy trustees (hereafter 'trustees') is the Australian Financial Security Authority ('AFSA').[5] The 2023 Parliamentary Joint Committee on Corporations and Financial Services ('PJC') Inquiry into Corporate Insolvency in Australia recommended as a priority issue for review the costs and complexity of this regulatory division for debtors in distress where personal and business finances are often intertwined.[6] In a significant move towards effecting this recommendation and aligning insolvency under a single regulatory umbrella, on 13 May 2025 the Commonwealth Governor-General signed an Administrative Arrangements Order transferring, inter alia, responsibility for bankruptcy, including associated legislation, from the Commonwealth Attorney-General's Department to the Treasury.[7] While the change became effective immediately, the operational implications of having separate regulators is yet to be determined.

In the current economic climate, including the Australian Taxation Office's accelerated collection activities which had been put on hold during the COVID-19 pandemic, increasing numbers of individuals and companies may face insolvency.[8] Accordingly, there is a greater need for trust and confidence in registered liquidators

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1 *Corporations Act 2001* (Cth) ('*Corporations Act*') s 95A; *Bankruptcy Act 1966* (Cth) ('*Bankruptcy Act*') s 5. For a discussion of 'bankruptcy' as distinct from 'insolvency', see Elizabeth Streten, *Legal and Ethical Standards in Corporate Insolvency* (Routledge, 2024) 7–8.

2 See Michael Gronow and Stewart Maiden, Thomson Reuters, *McPherson's Law of Company Liquidation* (online at 28 October 2025) [1.210]; Paul McQuade and Michael Gronow, Thomson Reuters, *McDonald, Henry & Meek Australian Bankruptcy Law and Practice* (online at 28 October 2025) [15.0.10].

3 Explanatory Memorandum, Insolvency Law Reform Bill 2015 (Cth) ('ILR Bill Explanatory Memorandum') 236 [9.7]. For a history of the development of insolvency laws in Australia, see Streten (n 1) 8–19.

4 *Australian Securities and Investments Commission Act 2001* (Cth) s 11 ('*ASIC Act*').

5 The Chief Executive of the Australian Financial Security Authority ('AFSA') is appointed as the Inspector-General in Bankruptcy who administers the *Bankruptcy Act* (n 1) ss 11–13.

6 Parliamentary Joint Committee on Corporations and Financial Services, Parliament of Australia, *Corporate Insolvency in Australia* (Report, July 2023) 53 [3.104] ('*PJC Report*').

7 Department of the Prime Minister and Cabinet (Cth), *Administrative Arrangements Order* (13 May 2025) pt 15.

8 See AFSA, 'Provisional Personal Insolvencies Increased in January 2025' (Media Release, 3 March 2025) <https://www.afsa.gov.au/newsroom/provisional-personal-insolvencies-increased-january-2025>; Australian Securities and Investments Commission ('ASIC'), 'Insolvency Statistics: Series 2, Table 2: All Appointments Over a Company including the First, Subsequent and Transitional Appointments, 2020–25' (7 October 2025) Table 2 <https://www.asic.gov.au/about-asic/corporate-publications/statistics/insolvency-statistics/>.

and registered trustees (together 'insolvency practitioners') who are specially accredited to support financially distressed debtors through the insolvency process.[9] If debtors do not have confidence in the quality and integrity of practitioners, they may turn to other sources of assistance, including untrustworthy advisers. These predatory advisers or 'debt vultures' widely advertise through social media and while they appear to be credible, can provide unethical advice (such as suggesting ways to hide assets), which can result in people unwittingly engaging in criminal behaviour.[10]

While there is a clear need for integrity and high standards of professionalism, the insolvency profession has historically been viewed in a poor light due to highly publicised incidences of misconduct. This is despite any evidence to support a prevalence of wrongdoing.[11] In 2025, there continues to be public attention to these issues with adverse media reporting of a former registered trustee and former registered liquidator's conduct.[12] The spotlight is likely in part because of their great responsibility where upon appointment they become custodians of the livelihood of directors of the companies or the individual bankrupt's estate. This necessarily impacts other stakeholders such as family members and employees of the business who rely on the practitioner to undertake their legal and fiduciary duties such as paying out entitlements to workers or attempting to turn around struggling business. Therefore, when practitioners engage in misconduct such as gaining personal benefit by misappropriating funds from the debtor's estates that they have assumed control of, there is significant prejudice and detriment to all stakeholders. It disrupts and prolongs the insolvency process, impeding the prospects of the business and the business owner/s getting back on their feet. Further, it diminishes the already low likelihood of monetary return for unsecured creditors, shareholders, and the Australian Government.[13]

Accordingly, a robust efficient regulatory framework founded on principles of integrity, accountability and high standards of professionalism is important for public confidence.[14] It supports the legitimacy of the insolvency regime as a mechanism for 'a fair and orderly process for dealing with the financial affairs of insolvent individuals and companies'.[15] Confidence in the insolvency system and

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9 See Ian Fletcher, 'Spreading the Gospel: The Mission of Insolvency Law, and Insolvency Practitioners, in the Early 21st Century' [2014] (7) *Journal of Business Law* 523, 526; Streten (n 1) 1–7; *PJC Report* (n 6) 175 [8.98].

10 See AFSA, *Untrustworthy Advisors: A Hidden Scourge in Australia's Personal Insolvency System* <https://www.afsa.gov.au/about-us/regulation-and-compliance/untrustworthy-advisors-hidden-scourge> ('*Untrustworthy Advisors*'); Vivien Chen and Michelle Welsh, 'Safeguarding Australian Consumers from "Debt Vultures"' (2023) 45(1) *Sydney Law Review* 45.

11 *PJC Report* (n 6) 99.

12 Michael Murray, 'Leroy and the [Still] Missing Bankruptcy Funds', *Murrays Legal* (Blog Post, 20 February 2025) <https://murrayslegal.com.au/blog/2025/02/20/leroy-and-the-missing-bankruptcy-funds> ('Murray on Leroy'); Brad Norington, 'Five-Star Luxury for Kathy Jackson Trustee Paul Leroy Missing with $2m', *The Australian* (online, 6 February 2024) <https://www.theaustralian.com.au%2Fnation%2Ffivestar-luxury-for-kathy-jackson-trustee-paul-leroy-missing-with-2m>. See also generally Elizabeth Streten, 'Insolvency Practitioners: A Phenomenological Study' (2021) 29(2) *Insolvency Law Journal* 83, 86–7.

13 Michael Murray and Jason Harris, *Keay's Insolvency: Personal and Corporate Law Practice* (Thomson Reuters, 11th ed, 2022) 4.

14 Streten (n 12) 85.

15 Australian Law Reform Commission, *General Insolvency Inquiry* (Report No 45, December 1988) 15.

those operating within it, such as the professional and regulatory bodies, increases the willingness of financiers to provide credit, minimise costs to vulnerable stakeholders, and reduce business closures.[16]

Against the backdrop of this need for trust and confidence in the profession, the *Insolvency Law Reform Act 2016* (Cth) ('*ILR Act*') was enacted to introduce a suite of regulatory changes including pt 2 disciplinary committees. The disciplinary committees are the primary forum for resolution of the most serious and often highly publicised misconduct by insolvency practitioners.[17] In light of government and industry efforts to encourage early financial intervention and the uptake of their professional services, in this article I make a timely evaluation of the adequacy of practitioner misconduct enforcement by the disciplinary committees and identify opportunities for improvement.[18] It is important to assess the reform to a newly formed body empowered to discipline practitioners, given that the 2024 Senate Economics References Committee report found that ASIC (the disciplinary and registering body of company liquidators) had 'comprehensively failed to fulfil its regulatory remit'.[19]

A key objective of the disciplinary committees, which the *ILR Act* adopted from the former committees in bankruptcy along with their structure, was to align the corporate and personal insolvency systems and promote greater consistency of outcomes for practitioners.[20] Matters are referred to disciplinary committees by ASIC or AFSA (together 'the Regulators'). This consistency objective is also reflected in the legislative aim of ASIC to 'maintain, facilitate and improve the performance of the financial system and the entities within that system in the interests of commercial certainty'.[21] Stern and Holder refer to the principles of regulatory governance as 'certainty', 'equality' or 'predictability'.[22] In this article, I use the term 'consistency' throughout as an indicator of certainty. Consistency is central to achieving equality in the administration of justice and can have a profound impact on stakeholders, particularly practitioners who are subject to disciplinary proceedings. The predictability of the disciplinary committees' decision-making

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16 Senate Economics References Committee, Parliament of Australia, *The Regulation, Registration and Remuneration of Insolvency Practitioners in Australia: The Case for a New Framework* (Report, September 2010) 1 ('*2010 Senate Economics References Committee Report*').

17 Catherine Robinson, 'CALDB to Part 2 Committee — A Review of Disciplinary Matters from 2017 to 2021' (2022) 37(2) *Australian Journal of Corporate Law* 163 ('CALDB to Pt 2 Committee').

18 See AFSA, *Untrustworthy Advisors* (n 10); 'Beware of Dodgy Insolvency Advisers!', *ARITA* (Australian Restructuring Insolvency and Turnaround Association) (Web Page) <https://arita.com.au/ARITA/ARITA/Insolvency_help/Beware_of_dodgy_insolvency_advisers.aspx>.

19 Senate Economics References Committee, Parliament of Australia, *Australian Securities and Investments Commission Investigation and Enforcement* (Report, July 2024) xxiii [8.7], 157 [8.7].

20 Australian Government, *Options Paper: A Modernisation and Harmonisation of the Regulatory Framework Applying to Insolvency Practitioners in Australia* (June 2011) 4–5 [24]–[27] ('*Australian Government Options Paper*'). For a study on insolvency practitioner preliminary views on the changes to the disciplinary regime, see Catherine Robinson, 'An Early Response to Regulatory Changes under the *Insolvency Law Reform Act 2016* (Cth): A Survey of Registered Liquidators and Registered Trustees' (2019) 27(4) *Insolvency Law Journal* 211 ('An Early Response to Regulatory Changes').

21 *ASIC Act* (n 4) s 1(2)(a).

22 Jon Stern and Stuart Holder, 'Regulatory Governance Criteria for Assessing the Performance of Regulatory Systems: An Application to Infrastructure in the Developing Countries of Asia' (1999) 8(1) *Utilities Policy* 33.

improves the practitioners' ability to make effective judgments about the process and their livelihood.

The methodology to assess each indicator is adapted from the framework used by Armson to evaluate the certainty and speed of the Australian Takeovers Panel.[23] This study is the first evaluation of decisions of a body set up under the *Corporations Act* with broad discretions to hear matters quickly, since the Takeovers Panel.

Another key objective of the disciplinary committees was to be a forum to 'better enable timely and appropriate action to be taken when misconduct occurs'.[24] Like certainty, efficient resolution of disciplinary matters is important for practitioners to finalise external administrations for stakeholders participating in the insolvency scheme who are awaiting a monetary distribution (if any).

In this article I address the questions of whether the disciplinary committees have met the legislative and policy objectives of being consistent and timely. My research investigates these questions by drawing on all published Committee decisions since commencement of the *ILR Act*. As will be seen, a main conclusion of the study is that overall, the committees have demonstrated strong procedural and substantive consistency and that like matters receive like treatment and outcomes. Efficiency for the disciplinary committees in corporate insolvency could not be measured due to the number of unpublished decisions, whereas matters before the committees in bankruptcy were resolved within three to six months. While this was outside the statutory timeframe, there were reasonable explanations for the delays. Similarly, while the number of unreported decisions of disciplinary committees in corporate insolvency was a limitation of this study, there are a number of public interest reasons for non-publication. Further, analysis of all publicly available cases offers original and valuable insights.

In this article, I build on my previous work that mapped the demographics and typology of conduct matters appearing before the disciplinary committees.[25] I also respond to the call of the *PJC Report* that identified misconduct and enforcement data as a specific area where data may be useful, including to 'assess the efficiency of insolvency regulators'.[26]

In the next Part, I outline the limitations of this study. In Part III, I then briefly outline the development of the disciplinary committees and their role and statutory functions within the regulatory framework. In Part IV, I explain the methodology used to measure certainty and efficiency. This is followed by Part V, in which I provide an overview of the case set to contextualise the disciplinary matters examined. In Part VI, I focus on the procedural and substantive consistency of the disciplinary committees and consider the application of the public interest policy and

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23 See Emma Jane Armson, 'The Australian Takeovers Panel: An Effective Forum for Dispute Resolution?' (PhD Thesis, University of Melbourne, 2017) ('Armson PhD'); Emma Armson, 'Certainty in Decision-Making: An Assessment of the Australian Takeovers Panel' (2016) 38(3) *Sydney Law Review* 369.

24 Australian Government, *Proposals Paper: A Modernisation and Harmonisation of the Regulatory Framework Applying to Insolvency Practitioners in Australia* (December 2011) ('*Australian Government Proposals Paper*') 27 [140].

25 Robinson, 'CALDB to Pt 2 Committee' (n 17).

26 *PJC Report* (n 6) 99 [6.30].

other factors to the determination of outcomes in committee decisions. In Part VII, I assess the speed of the disciplinary committees' decision-making. In particular, I detail the impact of appeals on the resolution of the overall matter. In Part VIII, I conclude by suggesting further law reform towards a unified insolvency regime in Australia with a single insolvency practitioner regulator.

II A Limitation of the Study

A limitation of this study is the small sample size. As I explain in Part III of this article, the disciplinary committees have powers to determine their own processes including to publish, as they see fit, the decision and reasons for the exercise of their powers.[27] During the study period (1 March 2017 to 1 March 2025), there were 18 referrals from the Regulators to the disciplinary committees, of which seven decisions were not published. Notably, this limitation is unlikely to be overcome with a longer study time for two reasons. First, the ongoing trend of a small number of serious misconduct matters appearing before the disciplinary committees is unlikely to produce a larger sample size.[28] Second, even if there was an increase in misconduct matters, the legislative discretion to not publish committee decisions could remain a barrier to an increased sample size.

Consistent with the academic literature, the small sample size of the case study supports case-oriented analysis.[29]As I will show in this article, the quantity of the sample size is balanced against quality and is sufficient to allow a new and richly textured understanding of the study questions.[30] The adequacy of the sample size was determined on the basis of informational needs and enables the study questions to be answered with sufficient confidence.[31] Based on the practical justification, the size of this case study is an appropriate sample of any larger population of actual decisions and the findings can likely be generalised to disciplinary decisions that are not published. This is because if there is consistency between the disciplinary committees then knowing how they have decided such cases enables predictions to be made about later cases.

Overall, my findings contribute to further understanding whether there are procedural or substantive differences that operate as barriers to certainty and efficiency in the resolution of misconduct matters.

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27 *Insolvency Practice Rules (Corporations) 2016* (Cth) ('*Insolvency Practice Rules (Corporations)*') r 50-5; *Insolvency Practice Rules (Bankruptcy) 2016* (Cth) r 50-5 ('*Insolvency Practice Rules (Bankruptcy)*').

28 Robinson, 'CALDB to Pt 2 Committee' (n 17) 184.

29 Konstantina Vasileiou, Julie Barnett, Susan Thorpe and Terry Young, 'Characterising and Justifying Sample Size Sufficiency in Interview-Based Studies: Systematic Analysis of Qualitative Health Research Over a 15-year Period' (2018) 18(1):148 *BMC Medical Research Methodology* 148. In qualitative studies, it is common for data to be based on one to 30 informants: see Mariette Bengtsson, 'How to Plan and Perform a Qualitative Study Using Content Analysis' (2016) 2 *Nursing Plus Open* 8, 10.

30 Margarete Sandelowski, 'One is the Liveliest Number: The Case Orientation of Qualitative Research' (1996) 19(6) *Research in Nursing and Health* 525.

31 Vasileiou et al (n 29) 16.

III The Genesis of the Corporate and Personal Insolvency Disciplinary Committees in Australia

While it is beyond the scope of this article to detail the history of the regulation of insolvency practitioners, relevantly, the first disciplinary committee — the Companies Auditors and Liquidators Disciplinary Board ('CALDB') — was established in 1990.[32] The CALDB was formed to act as an independent expert disciplinary tribunal regarding company auditors and liquidators who failed to carry out their obligations.[33]

The objectives under the *Corporations Act 1989* (Cth) were designed for the discipline of registered liquidators by CALDB to be a 'fast and efficient process'.[34] There was however, criticism of the time and costs to hear prosecuted matters and reach findings, along with a lack of transparency in the proceedings.[35] The tribunal nature of the CALDB meant that it was not a quick, cost-effective approach to dealing with disciplinary matters.[36]

By contrast, in personal insolvency, problems of inefficiency and delay were avoided by a statutory timeframe imposed on disciplinary committees in bankruptcy to decide a matter within 60 days of being convened.[37] In the High Court of Australia, Kirby J noted the advantages of a professional insolvency disciplinary board 'over the courts of cost saving, speed, flexibility and specialist knowledge'.[38] Recommendations from the 2010 Senate Economics References Committee Inquiry included transferring responsibility for regulating liquidators from the CALDB to a new system of separate committees for corporate insolvency and personal insolvency, based on the disciplinary committees in bankruptcy.[39]

In 2016, the Australian Government went on to adopt this recommendation under the *ILR Act.* The *ILR Act* led to legislative changes in key areas of the discipline and regulation of insolvency practitioners. The reforms were intended to improve the investigative, referral and disciplinary powers of the courts, 'industry bodies', and the Regulators.[40] The *ILR Act* laid the legislative foundation for the *Insolvency Practice Schedule* inserted as the *Corporations Act* sch 2 ('*Insolvency Practice Schedule (Corporations)*') and the *Bankruptcy Act* sch 2 ('*Insolvency*

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32 *Australian Securities Commission Act 1989* (Cth) s 202. See also Christopher Symes and Michael Murray, 'Australian Insolvency Practitioners as Unique Professionals: An Examination of the History of Liquidators and Trustees' (2023) 31(2) *Insolvency Law Journal* 97, 110.

33 Symes and Murray (n 32) 110.

34 ILR Bill Explanatory Memorandum (n 3) 244 [9.33].

35 Evidence to Senate Economic References Committee, *Parliamentary Debates*, Parliament of Australia, Canberra, 13 April 2010, E46–7, E54 (Mr Geoff Slater).

36 *2010 Senate Economics References Committee Report* (n 16) 75 [6.37], 76 [6.41].

37 *Bankruptcy Regulations 1996* (Cth) reg 8.34 (replaced by *Insolvency Practice Rules (Bankruptcy)* (n 27) r 50-90).

38 *Albarran v Members of the Companies Auditors and Liquidators Disciplinary Board* (2007) 231 CLR 350, 378 [95].

39 *2010 Senate Economics References Committee Report* (n 16) 150–1 [11.18]–[11.26] (Recommendation 3); *Australian Government Proposals Paper* (n 24) 2 [13].

40 *Insolvency Practice Rules (Corporations)* (n 27) r 40-1; *Insolvency Practice Rules (Bankruptcy)* (n 27) r 40-1. This provision sets out the prescribed 'industry bodies'.

Practice Schedule (Bankruptcy)'). CALDB's jurisdiction over liquidators was transferred into the new disciplinary committees in corporate insolvency.[41]

While the industry bodies can only regulate practitioners who are members, the majority of practitioners in Australia are bound by the leading codes issued by the Accounting Professional and Ethical Standards Board ('APES'), the APES 330 Insolvency Services, and the Australian Restructuring Insolvency and Turnaround Association ('ARITA') *Code of Professional Practice*.[42] The courts acknowledge these as 'a useful guide to the common practice in such matters, and to the profession's own view of proper professional standard'.[43] Under the legislative reforms the disciplinary committees in corporations and bankruptcy were the primary forum for rapid handling of matters that may relate to conduct in more than one insolvency administration.[44] Under the *Insolvency Practice Schedules*, the court,[45] on its own initiative during proceedings before it, or on application by the Regulators, could commence proceedings against a practitioner.[46] It was contemplated this approach would be reserved for more legally complex matters relating to conduct in particular administrations and where extensive use of coercive examination powers was required.[47] Matters where disciplinary remedies alone were insufficient would proceed directly to court, thereby reducing potential issues of procedural overlap between the disciplinary committee and the courts.[48]

The court is given broad powers including to make orders as it thinks fit in relation to a registered liquidator or trustee.[49] These are subject to non-exhaustive matters the court can take into account, including the effect of the registered liquidator's or trustee's actions (or inaction) on 'public confidence in registered liquidators and trustees as a group'.[50]

A practitioner may seek a review by the Administrative Review Tribunal ('ART') (formerly the Administrative Appeals Tribunal of Australia ('AAT')) of certain decisions, including a decision of a disciplinary committee.[51] As the cases analysed in this study were commenced and/or concluded prior to the establishment of the ART on 14 October 2024, discussion throughout this article refers to the AAT.

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41 On 1 March 2017, the CALDB became the Companies Auditors Disciplinary Board: *Insolvency Practice Schedule (Corporations*) div 40; *Insolvency Practice Schedule (Bankruptcy*) div 40; 'About CADB', *Companies Auditors Disciplinary Board (Cth)* (Web Page) <https://www.cadb.gov.au/about-cadb/>.

42 See, eg, Australian Restructuring Insolvency and Turnaround Association ('ARITA'), *Annual Report 2024* (2024) 4.

43 *Bovis Lend Lease Pty Ltd v Wily* (2003) 45 ACSR 612, 653 [163].

44 *Australian Government Proposals Paper* (n 24) 29 [148].

45 *Corporations Act* (n 1) s 58AA.

46 *Insolvency Practice Schedule (Corporations)* ss 45-1(2), 90-20; *Insolvency Practice Schedule (Bankruptcy)* ss 45-1(2), 90-20.

47 ILR Bill Explanatory Memorandum (n 3) 267 [9.145].

48 Ibid.

49 *Insolvency Practice Schedule (Corporations)* (n 46) s 40-15; *Insolvency Practice Schedule (Bankruptcy)* (n 46) s 40-15.

50 *Insolvency Practice Schedule (Corporations)* (n 46) s 45-1(4)(e). See also *Insolvency Practice Schedule (Bankruptcy)* (n 46) s 45-1(4)(e).

51 *Insolvency Practice Schedule (Corporations)* (n 46) s 40-55; *Insolvency Practice Schedule (Bankruptcy)* (n 46) s 40-55. See *Administrative Review Tribunal Act 2024* (Cth), which superseded the *Administrative Appeals Tribunal Act 1975* (Cth), the applicable legislation for the disciplinary cases examined in this study.

A *The Power of ASIC and AFSA to Convene a Disciplinary Committee*

The Regulators are empowered to convene a disciplinary committee where they have first issued a 'show-cause' notice to a practitioner.[52] The power to convene a disciplinary committee can only be enlivened where the Regulators have issued a show-cause notice and have not received an explanation within 20 business days, or are not satisfied by the explanation.[53] There is no requirement in the *Insolvency Practice Schedule (Corporations)* or the *Insolvency Practice Schedule (Bankruptcy)* for the Regulators to give the reasons to the practitioner or the Committee for determining that the practitioners' explanation was unsatisfactory. The matter then proceeds directly to a disciplinary committee and the practitioner cannot challenge the grounds of referral. When making referrals, however, the Regulators are subject to statutory model litigant obligations.[54]

B *An Overview of a Disciplinary Committee's Statutory Functions*

The purpose of a disciplinary committee is to administer the objectives of the legislation in ensuring any person registered as a trustee or liquidator has an appropriate level of expertise and behaves ethically.[55] A committee's broad functions include investigating, preparing a report and deciding disciplinary action, including whether a practitioner's registration is to continue.[56]

The objective for the committee is to ensure a 'fair, timely, effective, and transparent process' for resolving disciplinary matters underpins all proceedings.[57] To effect this, a disciplinary committee is separately constituted for each 'matter' and convened from the time of referral to the committee by ASIC or AFSA.[58]

1 *Committee Processes*

Each disciplinary committee is empowered to make rules to determine the procedures to be followed in proceedings.[59] There is no requirement that these rules are made available publicly and/or to the parties involved, including the practitioner and their representatives. Given the ad hoc composition of a disciplinary committee for each matter, it is likely that each committee establishes unique rules to govern

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52 *Insolvency Practice Schedule (Corporations)* (n 46) s 40-40; *Insolvency Practice Schedule (Bankruptcy)* (n 46) s 40-40.

53 *Insolvency Practice Schedule (Corporations)* (n 46) s 40-50(b); *Insolvency Practice Schedule (Bankruptcy)* (n 46) s 40-50(b).

54 *Legal Services Directions 2017* (Cth) app B.

55 ILR Bill Explanatory Memorandum (n 3) 7.

56 Ibid 167.

57 Institute of Chartered Accountants in Australia, Submission to Australian Government, *Proposals Paper: A Modernisation and Harmonisation of the Regulatory Framework Applying to Insolvency Practitioners in Australia* (8 March 2013) 6.

58 *Insolvency Practice Schedule (Corporations)* (n 46) s 40-50; *Insolvency Practice Schedule (Bankruptcy)* (n 46) s 40-50.

59 *Insolvency Practice Rules (Corporations)* (n 27) r 50-5; *Insolvency Practice Rules (Bankruptcy)* (n 27) r 50-5. See also *Insolvency Practice Schedule (Corporations)* (n 46) s 50-1; *Insolvency Practice Schedule (Bankruptcy)* (n 46) s 50-1.

their processes. When the committees were introduced, this raised concerns that, absent a 'Manual for Committees', the consistency of decision-making and transparency of process across committees would be unknown to affected practitioners and stakeholders.[60] Moreover, due to the private nature of disciplinary committee proceedings, practitioners cannot elect to hold a public hearing, which had been an option under the CALDB.

The principle that quasi-judicial proceedings should be open must be balanced against the principles of natural justice where cases might include allegations such as criminal behaviour, which could inform proceedings against the practitioner.[61] As the cases illustrate, there is potential harm and injustice to the practitioner and their livelihood as well as innocent third parties to have these matters aired in public.[62] There is a real concern with holding open hearings where information can make its way into the public sphere without a right of reply by the practitioner.[63] As will be discussed in Part VI, in cases where the committees have found no wrongdoing, their decisions have not been made available and the limited details on the ASIC website do not exonerate the practitioner.[64] Conducting disciplinary hearings in private preserves the integrity of proceedings as an integral component of the broader justice system.

After a referral is received, the committee is required to make a decision on at least a majority basis[65] and provide a report setting out its decision and reasons to the referring Regulator and the affected practitioner.[66] The committee can make reasonable inquiries of any person for the purposes of making an informed decision, or where the Chair believes it appropriate, in order to have sufficient information to make a decision.[67] The disciplinary committee has wide inquisitorial investigative powers and can inform themselves on any matter as they see fit.[68] Although a disciplinary committee is not bound by the rules of evidence, it is required to observe the principles of natural justice,[69] including '[a]dequate disclosure to the practitioner

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60 David Castle, 'Insolvency Law Reform: Corporate Disciplinary Committees and Natural Justice' (2017) 18 (3–4) *Insolvency Law Bulletin* 73.

61 Robert Lindsay, 'Disciplinary Hearings: What is to be Done?' (2015) 80 *Australian Institute of Administrative Law Forum* 82.

62 *Kukulovski and A Committee Convened under Section 40-45 of the Insolvency Practice Schedule (Corporations)* [2020] AATA 40 ('*Kukulovski* (2020)').

63 Lindsay (n 61) 82.

64 See below n 120 and accompanying text.

65 *Insolvency Practice Schedule (Corporations)* (n 46) s 40-55 read together with *Insolvency Practice Rules (Corporations)* (n 27) rr 50-60(3), 50-65(2); *Insolvency Practice Schedule (Bankruptcy)* (n 46) s 40-55 read together with *Insolvency Practice Rules (Bankruptcy)* (n 27) rr 50-60(3), 50-65(2).

66 *Insolvency Practice Schedule (Corporations)* (n 46) s 40-60(a)–(b); *Insolvency Practice Schedule (Bankruptcy)* (n 46) s 40-60(a)–(b); *Insolvency Practice Rules (Corporations)* (n 27) r 50-95; *Insolvency Practice Rules (Bankruptcy)* (n 27) r 50-95.

67 *Insolvency Practice Rules (Corporations)* (n 27) r 50-75; *Insolvency Practice Rules (Bankruptcy)* (n 27) r 50-75.

68 *Insolvency Practice Rules (Corporations)* (n 27) r 50-55(2); *Insolvency Practice Rules (Bankruptcy)* (n 27) r 50-55(2).

69 *Insolvency Practice Rules (Corporations)* (n 27) r 50-55(1); *Insolvency Practice Rules (Bankruptcy)* (n 27) r 50-55(1); Treasury (Cth), *Explanatory Material: Draft Insolvency Practice Rules (Corporations) 2016; Draft Insolvency Practice Rules (Bankruptcy) 2016* (2016) 6 [32]–[36] <https://treasury.gov.au/sites/default/files/2019-03/C2016-034_Explanatory-Materials-Insolvency-Practice-Rules-2016.pdf>.

so that effective representations may be made'[70] and to observe the statutory model litigant obligations.[71]

If the committee decides to cancel a practitioner's registration, the practitioner would receive notification[72] that an interview will be held as soon as practicable.[73] At the interview, the committee has regard to information and 'any other matter that the committee considers relevant'.[74] Committee members can ask any question they reasonably believed to be related to any matter relevant to their decision to cancel a registration.[75] The evidence before the committee generally comprises the response to a show-cause notice.[76] During and after the interview, the practitioner can make further submissions.[77]

2 *Committee Powers and Enforcement of Committee Decisions*

The *ILR Act* clearly expanded the range of matters on which a committee can make a decision, compared to the former committees in bankruptcy. These matters include: continuing, cancelling or suspending a registered liquidator or registered trustee's registration for a period or indefinitely; and imposing conditions on the liquidator or trustee[78] and other insolvency practitioners preventing them from carrying out functions or duties for a period of up to 10 years.[79]

A disciplinary committee is empowered to disclose information or a document to prescribed bodies, including industry bodies, to administer and enforce the law.[80] Like the CALDB and former committees in bankruptcy, a disciplinary committee cannot enforce its own decision/s. It is the referring Regulators' responsibility to give effect to the committees' decision or apply to a court to secure compliance.[81]

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70 Treasury (Cth) (n 69) 6 [32].

71 *Legal Services Directions 2017* (Cth) (n 54) para 4.2.

72 *Insolvency Practice Rules (Corporations)* (n 27) r 50-85(2)(c); *Insolvency Practice Rules (Bankruptcy)* (n 27) r 50-85(2)(c).

73 *Insolvency Practice Rules (Corporations)* (n 27) r 50-85(2)–(3); *Insolvency Practice Rules (Bankruptcy)* (n 27) r 50-85(2)–(3). Interviews were also required for applications to vary conditions imposed on a registration or lift or shorten a condition on the registration: *Insolvency Practice Rules (Corporations)* (n 27) r 50-80(1)(b)–(c); *Insolvency Practice Rules (Bankruptcy)* (n 27) r 50-80(1)(b)–(c).

74 *Insolvency Practice Schedule (Corporations)* (n 46) s 40-55(3)(e); *Insolvency Practice Schedule (Bankruptcy)* (n 46) s 40-55(3)(e).

75 *Insolvency Practice Rules (Corporations)* (n 27) r 50-85(4); *Insolvency Practice Rules (Bankruptcy)* (n 27) r 50-85(4).

76 *Report of the Committee Convened pursuant to s 40-50 of the Insolvency Practice Schedule (Bankruptcy) to Make a Decision about Ms Louise Thomson, a Registered Trustee* (30 July 2020) ('*Thomson* (2020)') 1 [4], 4 [18].

77 Ibid 6 [29].

78 *Insolvency Practice Schedule (Corporations)* (n 46) s 40-55(1)–(2); *Insolvency Practice Schedule (Bankruptcy)* (n 46) s 40-55(1)–(2).

79 *Insolvency Practice Schedule (Corporations)* (n 46) s 40-55(1)(g); *Insolvency Practice Schedule (Bankruptcy)* (n 46) s 40-55(1)(g).

80 *Insolvency Practice Schedule (Corporations)* (n 46)s 50-35(2)(b)(iv); *Insolvency Practice Schedule (Bankruptcy)* (n 46) s 50-35(2)(b)(iv), *Insolvency Practice Rules (Corporations)* (n 27) r 50-100; *Insolvency Practice Rules (Bankruptcy)* (n 27) r 50-100.

81 *Insolvency Practice Schedule (Corporations)* (n 46) s 40-65; *Insolvency Practice Schedule (Bankruptcy)* (n 46) s 40-65.

Given the intention for disciplinary committees to be the primary forum for efficient handling of matters, it was implicit in the *ILR Act* that a committee conduct proceedings in a timely manner.[82] A committee is required to use its best endeavours to make a decision within 60 days of the matter being referred to it.[83]

This section has detailed the expansion of powers and regulatory tools of the Regulators, the disciplinary committees and industry bodies (collectively, 'the regulatory bodies') to administer the policy objectives of the insolvency law reforms.

IV Methodology to Assess Certainty and Efficiency

The aim of this study was to use classical content analysis to assess the extent to which the committees demonstrate certainty and efficiency in procedural and substantive decision-making.[84] I carried out qualitative analysis of all published disciplinary committee cases from 1 March 2017 to 1 March 2025. The analysis also included the two review decisions of the AAT.[85] Content analysis examines themes in texts, which is suitable for assessing judicial decisions where there are multiple decisions of similar weight.[86] I extend the applicability of this method to the quasi-judicial decisions of the disciplinary committees.[87] This method is applicable to misconduct matters involving insolvency practitioners given my earlier research has shown that only serious breaches of conduct are referred to disciplinary committees.[88] Content analysis also focuses on the patterns across cases and the collective insights from them.[89] This is relevant to misconduct matters where it is in the professional and public interest to identify trends in how cases are decided — particularly those with similar issues and circumstances.

In this article, I build on my analysis of the dataset of disciplinary committee decisions from 1 March 2017 to 1 March 2021 ('2021 study').[90] My 2021 study used qualitative analysis to analyse the demographics and typology of misconduct matters. The research mapped the relationship between types of misconduct and outcomes. I found that the majority (71%) of practitioners before disciplinary committee proceedings were men, and most of them were based in NSW (72%).[91]

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82 *Insolvency Practice Rules (Corporations)* (n 27) r 50-90; *Insolvency Practice Rules (Bankruptcy)* (n 27) r 50-90. See *Australian Government Proposals Paper* (n 24) 31 [164].

83 *Insolvency Practice Rules (Corporations)* (n 27) r 50-90; *Insolvency Practice Rules (Bankruptcy)* (n 27) r 50-90.

84 Classical content analysis is used to examine text or images from documents such as case reports. See Lisa Webley, 'Qualitative Approaches to Empirical Legal Research' in Peter Cane and Herbert M Kritzer (eds), *The Oxford Handbook of Empirical Legal Research* (Oxford University Press, 2010) 926, 941.

85 *Kukulovski and A Committee Convened under Section 40-45 of the Insolvency Practice Schedule (Corporations)* (AAT No 2019/8307, Deputy President SA Forgie, 7 January 2021) ('*Kukulovski* (2021)'); *Kukulovski* (2020) (n 62); *Duncan and A Committee Convened under Section 40-45 of the Insolvency Practice Schedule (Corporations)* [2024] AATA 609 ('*Duncan*').

86 Mark A Hall and Ronald F Wright, 'Systematic Content Analysis of Judicial Opinions' (2008) 96(1) *California Law Review* 63, 66.

87 Robinson, 'CALDB to Pt 2 Committee' (n 17) 169.

88 Ibid 165.

89 Hall and Wright (n 86) 66. See also Michael Quinn Patton, *Qualitative Research and Evaluation Methods* (SAGE Publications, 4th ed, 2015).

90 Robinson, 'CALDB to Pt 2 Committee' (n 17) 163.

91 Ibid 170.

The outcomes imposed by the committees were proportionate to the misconduct and varied, with the most commonly used orders being cancellation of registration followed by suspension, conditional registration, and unconditional registration.[92] I concluded that misconduct matters before the disciplinary committees most commonly related to dealings with funds of an administration, or other types of 'low risk' breaches that together amounted to a serious breach.[93]

In the present article, I focus on two key aspects of committee decision-making and evaluate the extent to which it aligns with the policy and legislative objectives of the *ILR Act* reform. A framework to evaluate the operation of regulatory bodies (including disciplinary committees), or the disciplinary regime of insolvency practitioners, does not exist globally. My approach is a novel application to an insolvency regulatory body. As noted in the Introduction to this article, my study has adapted a version of the framework applied by Armson in the assessment of the Australian Takeovers Panel.[94] In Armson's study, similar indicators of certainty and speed in decision-making were measured along a spectrum of strong, medium, or weak. This method is appropriate here given the commercial nature of the disciplinary committees. In the following section, I outline the methodology that has been adopted to assess certainty and efficiency.

A *How to Measure Certainty*

Certainty in decision-making and the application of law and policy are important features of regulatory bodies. In disciplinary proceedings where determinations can restrict a person practising their profession, there is an imperative for like cases and facts to receive similar procedural treatment and produce like results.[95] More broadly, certainty gives stakeholders confidence in the regime where there is discretion for the Regulators to take enforcement action by reference to broad statutory criteria and where there remains ongoing concern with inconsistencies between AFSA's and ASIC's regulatory approaches.[96] This is reflected in the *ILR Act* objective that the regulatory frameworks for insolvency practitioners should promote 'consistency for practitioners and other stakeholders operating in both the personal and corporate insolvency industries'.[97] Predictability is included as a governance principle in the assessment of the disciplinary regime.[98] As outlined in the Introduction to this article, the term 'consistency' is used throughout this article as an indicator of certainty and predictability.

In my study, certainty has been measured in terms of procedural consistency and substantive consistency:

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92 Ibid 172–3.
93 Ibid 172.
94 'Armson PhD' (n 23).
95 One essential element of the concept of justice is the principle of treating like cases alike: see HLA Hart, 'Positivism and the Separation of Law and Morals' (1958) 71(4) *Harvard Law Review* 593, 624.
96 See *PJC Report* (n 6) 84. For an analysis of the divergence in AFSA and ASIC regulatory approaches see, Catherine Robinson, 'Regulation of Insolvency Practitioners in a Pandemic' (2020) 28(4) *Insolvency Law Journal* 181.
97 *Australian Government Options Paper* (n 20) 4 [24].
98 Stern and Holder (n 22) 33.

(i) whether comparable misconduct cases are subject to a similar range of procedural treatment (procedural consistency);[99] and

(ii) whether similar facts produce similar outcomes (substantive consistency).

My analysis considers whether committee decisions are made within the same range of law and policy (specifically, public interest policy).[100] In respect of predictability, this includes analysis of:

- how disciplinary committees articulate and weigh factors used to determine appropriate orders;
- categorisation of seriousness;
- whether like cases received similar outcomes; and
- differences in outcomes and reasons for any divergence.

As I outlined in Part III above, the legislative framework empowers a disciplinary committee with significant procedural flexibility and broad discretionary powers. This reflects the intention, as previously noted, to create a forum to 'better enable timely and *appropriate* disciplinary action to be taken when misconduct occurs'[101] and be 'empowered to grant a wide range of remedies'.[102] At the same time, there exists a tension between the wide discretionary powers of a committee and the uncertainty in processes or outcomes that such discretion can lead to. As outlined in Part II above, transparency of decisions is a barrier to the assessment of certainty and efficiency where there is discretion for a committee to publish the decision and/or reasons for that decision.[103]

As explained above, my analysis adopts the criteria of strong, medium, and weak from Armson's approach to measuring the certainty of decisions by the Takeovers Panels. A strong form of certainty in decision-making involves a high level of consistency in the treatment and outcomes for practitioners in similar situations. This indicator is derived from decisions of Australian courts and tribunals that recognise that consistency is desirable.[104] The medium form involves similar treatment and outcomes as the general rule, with deviation in a limited number of matters. This measure recognises the wide discretion and flexibility of individually empanelled committees to decide and not be bound by decisions of other committees. A weak form of certainty results in decision-making with variation between the committees' treatment and/or outcomes in relation to similar circumstances.[105] For example, where like cases are being treated and decided unlike

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99 Bryan Finlay and Richard Ogden, 'Consistency in Tribunal Decision-Making' (2012) 25(3) *Canadian Journal of Administrative Law & Practice* 277, 278.

100 Ibid.

101 *Australian Government Proposals Paper* (n 24) 27 [140] (emphasis added).

102 *Australia Government Options Paper* (n 20) 29 [155].

103 *Insolvency Practice Schedule (Corporations)* (n 46) s 40-55(1)(h); *Insolvency Practice Schedule (Bankruptcy)* (n 46) s 40-55(1)(h).

104 Emily Johnson 'Should "Inconsistency" of Administrative Decisions Give Rise to Judicial Review?' (2013) 72 *Australian Institute of Administrative Law Forum* 50.

105 'Armson PhD' (n 23) 226.

each other this could involve review applications and/or committee decisions being overturned by the ART or the courts.

The overarching question with respect to certainty is: does the alignment of the personal and corporate insolvency disciplinary frameworks achieve consistent outcomes for the regulated population?

B *How to Measure Efficiency*

Efficiency in the regulation of insolvency practitioners and, particularly, minimising the time to conclude disciplinary matters was a key aim of the *ILR Act*. This is due to the detrimental impact of delay on practitioners and on third parties who may rely on them (including their employees), as well as stakeholders waiting on the (monetary) resolution of the insolvency proceeding.[106] Serious concerns include uncertainty about whether practitioners can continue with existing matters or take on new matters and then have to transfer these files. The cases of *Kukulovski* (2020)[107] and *Thomson* (2020) illustrate these complexities for practitioners operating in a multinational firm as well as sole practitioners. For firms trading under a national practice brand there are also concerns with disenfranchisement.[108]

Speed of decisions also impacts certainty of the insolvency regime by contributing to a body of precedent. My analysis does not compare the efficiency of disciplinary committees against the former CALDB. Rather, the focus is on the extent to which the committees are meeting the legislative timeframes and policy objectives to be a more efficient method of resolution for disciplinary matters than the CALDB and the courts.

It is also difficult to compare the speed of the decision-making of different bodies due to a lack of consistency in periods used to measure speed and limited reporting by the bodies about resolved matters.[109] In misconducts matters, there are further challenges with comparing speed of regulatory bodies as, generally, misconduct *between* professions (for example, doctors or lawyers) and the complexities of individual cases may affect the timing.[110]

As outlined in Part II above, disciplinary committees are convened upon the referral of matters from ASIC or AFSA. I measure time taken to resolve a matter from the date of referral to the date when the committee makes it decision and assess their speed by analysing 17 cases that have been finalised between 1 March 2017

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106 See, eg, *Kukulovski* (2020) (n 62) 6 [15], where the Administrative Appeals Tribunal of Australia ('AAT') noted that the applicant liquidator 'has a de facto partner who is pregnant, and who experiences health problems. … Mr Kukulovski is also currently providing some financial support to his former partner. He says his capacity for providing all of that assistance and support will be diminished if he is unable to work'.

107 *Kukulovski* (2020) (n 62).

108 Ibid 6 [16].

109 'Armson PhD' (n 23) 147.

110 See Jenni Millbank, 'Serious Misconduct of Health Professionals in Disciplinary Tribunals under the National Law 2010–17' (2010) 44(2) *Australian Health Review* 190. There are, however, a limited number of cases involving legal practitioners that have been applied in disciplinary proceedings concerning health practitioners. See Gabrielle Wolf and Mirko Bagaric, 'Nice or Nasty?: Reasons to Abolish Character as a Consideration in Australian Sentencing Hearings and Professionals' Disciplinary Proceedings' (2018) 44(3) *Monash University Law Review* 567, 575.

and 1 March 2025. As at 1 March 2025, there was one matter before a disciplinary committee in corporate insolvency that had been stayed.[111] Like the discussion on certainty in Part IV(A) above, a limitation of this assessment is that in seven corporate insolvency matters the decisions have not been published, which is explored further in Part VII(C) below.

Like my methodology for assessing certainty, which is adopted from Armson's assessment of the Takeovers Panels, the speed of disciplinary committee decision-making can be assessed as strong, medium, or weak:

- A strong form of efficiency would be making a decision with the 60-day statutory timeframe from referral of a matter by ASIC or AFSA.
- A medium form of efficiency would be the making of a committee decision within three to six months of referral.
- A weak form of efficiency would be decisions being made more than six months after the date of referral to the committee.[112]

The medium and weak parameters reflect the timing goals applied to courts, tribunals, and panels in relation to corporate dispute matters.[113] I consider these to be an appropriate benchmark for the disciplinary committees considering the objects of the *ILR Act*, the purpose of the committees, and the complexity of commercial and professional conduct aspects of matters.[114]

As mentioned earlier in Part IV, there have been two appeals decided by the AAT between 1 March 2017 and 1 March 2025.[115] It is important to assess the efficiency of that decision-making body in light of the 2022 decision to abolish the AAT in its form at that time due to issues of delay.[116] In the 2020–21 and 2022–23 periods, the median time taken by the AAT to finalise taxation and commercial matters was 45 and 51 weeks respectively.[117] As such, I compare the two appeal cases to these benchmarks.

The overarching question with respect to efficiency is: does the disciplinary regime achieve its reform outcomes in an efficient manner, with respect to the speed of disciplinary processes?

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111 See Giles Geoffrey Woodgate entry listed in 'Registered Liquidator Disciplinary Decisions', *ASIC* (Web Page) <https://asic.gov.au/for-finance-professionals/registered-liquidators/your-ongoing-obligations-as-a-registered-liquidator/liquidator-compliance/registered-liquidator-disciplinary-decisions/> ('ASIC Registered Liquidator Disciplinary Decisions'). See also n 124 below and accompanying text.

112 'Armson PhD' (n 23) 155.

113 See Armson PhD (n 23); Emma Armson, 'Certainty in Decision-Making: An Assessment of the Australian Takeovers Panel' (2016) 38(3) *Sydney Law Review* 369.

114 Ibid 151.

115 *Kukulovski* (2021) (n 85); *Duncan* (n 85).

116 Administrative Review Tribunal, 'New Federal Administrative Review Body Commences' (News and Updates, 14 October 2024) <https://www.art.gov.au/about/news-and-updates/new-federal-administrative-review-body-commences>.

117 See 'AAT Statistics', *Administrative Review Tribunal* (Web Page) <https://www.art.gov.au/about-us/accountability-and-reporting/former-administrative-appeals-tribunal/aat-statistics> for: AAT, *AAT Caseload Report 2020–21*; AAT, *AAT Caseload Report 2022–23*.

V An Overview of the Dataset

There is no requirement for the Regulators to publish referrals to the committees. Table 1 below represents ASIC and AFSA referrals to disciplinary committees.

Table 1: ASIC and AFSA referrals to disciplinary committees, 1 March 2017–1 March 2025

	ASIC	AFSA
Referrals to disciplinary committees	13	5
Published decisions of disciplinary committees	7	4
AAT decisions	2	0

The referrals and decisions in corporate insolvency were obtained from ASIC's 'Registered Liquidator Disciplinary Decisions' web page.[118] The two AAT decisions are accessible in the Australasian Legal Information Institute ('AustLII') database.[119]

In respect of the seven corporate insolvency decisions that were not published:

- in two matters, the committees were not satisfied that the practitioners' conduct warranted disciplinary action and the practitioners continue to be registered;[120]
- in one matter, the reprimand and the decision were published as a summary only, and the practitioner continues to be registered with conditions;[121]
- in one matter, the Committee did not consider the case as the practitioner's registration had been cancelled by ASIC following orders of the Federal Court of Australia;[122]
- two matters were reviewed by the AAT (one matter was subject to a non-publication order by the AAT and the practitioner's registration was cancelled by consent of the parties);[123] and
- one decision has been stayed.[124]

[118] 'ASIC Registered Liquidator Disciplinary Decisions' (n 111).

[119] 'Administrative Appeals Tribunal of Australia', *AustLII* (Web Page) <https://austlii.edu.au/cgi-bin/viewdb/au/cases/cth/AATA/>.

[120] In the matters of Katherine Elizabeth Barnet and William John Fletcher there is no further information about why the committees ordered their continued registration: see 'ASIC Registered Liquidator Disciplinary Decisions' (n 111).

[121] ASIC, 'Disciplinary Committee Decision – Nicholas Crouch' (Media Release 22-171MR, 1 July 2022) <https://www.asic.gov.au/about-asic/news-centre/find-a-media-release/2022-releases/22-171mr-disciplinary-committee-decision-nicholas-crouch/> ('Crouch MR').

[122] 'ASIC Registered Liquidator Disciplinary Decisions' (n 111); *Federal Commissioner of Taxation v Iannuzzi (No 2)* (2019) 140 ACSR 497.

[123] *Duncan* (n 85); *Kukulovski* (2021) (n 85). In *Kukulovski* (2021), the AAT set aside the decision of the Disciplinary Committee to direct ASIC to publish the report.

[124] ASIC, *Referral of Matter to Schedule 2 Committee: Giles Geoffrey Woodgate* (23 June 2023) <https://download.asic.gov.au/media/xdjobmck/20230623-form-986-referral-to-committee-woodgate-030874364.pdf> ('*Woodgate Referral*').

Unlike ASIC, AFSA does not have a central register of referrals to committees and their decisions. The information was obtained by contacting AFSA's statistics department.[125] A search of the AustLII databases did not return any results. In one matter, AFSA cancelled the trustee's registration and the Committee did not consider the case.[126]

This research extends the results of my 2021 study from 1 March 2021 to 1 March 2025.[127] Since 2021, there have been five corporate insolvency cases all involving men, with three practitioners from New South Wales (NSW),[128] one from South Australia,[129] and one based in Singapore (originally from NSW).[130]

The predominant matters in corporate insolvency continue to be explained by the larger number of registered liquidators (642) compared to registered trustees (213).[131] As will be discussed in Part VII below, the absence of referrals by AFSA to disciplinary committees during this period remains consistent with AFSA's low levels of referrals generally since commencement of the reforms in 2017. The proportion of practitioners subject to Disciplinary Committee proceedings who are male has increased from 71% to 100%.[132] This differs dramatically from the results of my 2021 study, although gender disproportion remains high in the insolvency profession, with males still comprising about 90% of registered liquidators and 87% of registered trustees.[133] The jurisdictional difference reflects that a majority of insolvency practitioners operate within NSW.[134]

Another important distinction from the 2021 results is that where specified or possible to discern, recent cases have not involved the deliberate misappropriation

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125 AFSA, *Email from AFSA Statistics to Catherine Robinson* (Email, 28 April 2025) ('AFSA Correspondence') (correspondence on file with the author).

126 AFSA, 'Trustee Deregistered for Failure to Meet *Bankruptcy Act* Standards' (Media Release, 5 February 2024) <https://www.afsa.gov.au/newsroom/trustee-deregistered-failure-meet-bankruptcy-act-standards>. See also above n 12.

127 Robinson, 'CALDB to Pt 2 Committee' (n 17) 184.

128 See ASIC, 'Crouch MR' (n 121); ASIC, *Woodgate Referral* (n 124); *Report of the Committee Convened to Make a Disciplinary Decision about Steven Naidenov, A Registered Liquidator* (21 December 2023) ('*Naidenov*').

129 *Report of the Committee Convened to Make a Disciplinary Decision about Richard Ernest Auricht, A Registered Liquidator* (28 June 2023) ('*Auricht*').

130 *Duncan* (n 85) 2 [1].

131 ASIC, 'Annual ASIC Insolvency Data Reveals Increase in Companies Failing' (News, 25 July 2024) <https://asic.gov.au/about-asic/news-centre/news-items/annual-asic-insolvency-data-reveals-increase-in-companies-failing/>; AFSA, *Register of Trustees* (Web Page) <https://services.afsa.gov.au/insolvency-dashboard/practitioner/public/registered-trustee/search>.

132 AFSA correspondence (n 125); 'ASIC Registered Liquidator Disciplinary Decisions' (n 111). ASIC, 'Insolvency Statistics Series 4: Registered Liquidator Statistics, September 1999–March 2025', (April 2025) <https://www.asic.gov.au/about-asic/corporate-publications/statistics/insolvency-statistics> Table 4.4.

133 Ibid cf Robinson, 'CALDB to Pt 2 Committee' (n 17) 170. ASIC, 'Insolvency Statistics Series 4' (n 134) Table 4.4.

134 ASIC, 'Insolvency Statistics Series 4' (n 132) Table 4.1; AFSA, 'Register of Trustees' (n 131). See also Christine Chen, 'AFSA's Positive Discrimination Makes Inroads for Female Trustees', *Accountants Daily* (online, 13 March 2024) <https://www.accountantsdaily.com.au/business/19726-afsa-s-positive-discrimination-makes-inroads-for-female-trustees>.

of funds of an administration and concurrent criminal proceedings.[135] This seems to be a retreat from the proportion of these types of matters in my 2021 study. A possible explanation for this might be the general deterrent effect from two highly publicised matters where the practitioners received the maximum disciplinary outcomes by the disciplinary committees and the courts for their fraudulent conduct: cancellation of registration and imprisonment, respectively.[136]

Since my 2021 study, there has also been an absence of mental health and personal issues that are usually raised by practitioners facing disciplinary hearings.[137] In previous matters, insolvency practitioners have led evidence about their vulnerable state as a result of their circumstances including domestic problems[138] and financial pressures.[139] Textual analysis of the cases indicates that a common theme throughout recent matters relates to issues around:

- diligence and competency of the practitioner resulting in unapproved fees due to a lack of proper business practices;[140]
- lodging an end of administration return and failing to handover possession or control of all books relating to an external administration within a specified period;[141] and
- failing to hold the qualifications, experience and knowledge prescribed by the legislation.[142]

Similar to the results of my 2021 study, in recent cases the committees made various orders including: one cancellation;[143] directions not to accept further

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135 See 'Murray on Leroy' (n 12); Norington (n 12). The 2024 media reporting about Leroy relates to the trustee's historical conduct in the administration of bankrupt estates in 2002 and 2015, which pre-dated the *ILR* Act (n 41).

136 ASIC, 'Former Liquidator David Leigh Sentenced to Seven Years Imprisonment for Fraud' (Media Release 19-104MR, 3 May 2019) <https://www.asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-104mr-former-liquidator-david-leigh-sentenced-to-seven-years-imprisonment-for-fraud/> ('Leigh MR'); ASIC, 'Former Sydney Liquidator Sentenced to Three Years' Imprisonment for Dishonesty and Fraud Offences' (Media Release 22-019MR, 14 February 2022) <https://www.asic.gov.au/about-asic/news-centre/find-a-media-release/2022-releases/22-019mr-former-sydney-liquidator-sentenced-to-three-years-imprisonment-for-dishonesty-and-fraud-offences/> ('Young MR'). See also Sonia Kohlbacher, 'Queensland Liquidator Imprisoned for Embezzlement', *Brisbane Times* (online, 3 May 2019) <https://www.brisbanetimes.com.au/national/queensland/queensland-liquidator-imprisoned-for-embezzlement-20190503-p51jzb.html>; Peter Gosnell, 'Sentencing Delay Helps Ex-Liquidator Avoid Gaol' on Peter Gosnell, *Insolvency News Online* (11 February 2022) <https://insolvencynewsonline.com.au/sentencing-delay-helps-ex-liquidator-avoid-gaol/>.

137 Moore, Buckingham and Diesfeld have noted the findings of academic research in Australia, Canada and the United States that disciplinary cases often involve lawyers who are impaired by physical or mental health conditions, or substance abuse: Jennifer Moore, Donna Buckingham and Kate Diesfeld, 'Disciplinary Tribunal Cases involving New Zealand Lawyers with Physical or Mental Impairment, 2009–2013' (2015) 22(5) *Psychiatry, Psychology and Law* 649, 650.

138 *Report of the Committee Convened to Make a Disciplinary Decision about Amanda Young, A Registered Liquidator* (3 June 2020) ('*Young*') 10 [74].

139 *Report of the Committee Convened to Make a Disciplinary Decision about David John Leigh, A Registered Liquidator* (February 2019) ('*Leigh (corporate)*') 4 [23].

140 *Auricht* (n 129).

141 ASIC, 'Crouch MR' (n 121).

142 *Duncan* (n 85).

143 *Auricht* (n 129).

appointments for a period followed by unconditional registration[144] or conditional registration;[145] one reprimand;[146] and one conditional registration (by consent and on appeal from the AAT).[147] This is important as it reflects the policy and legislative intention to empower the disciplinary committees with a wide range of regulatory tools, and there is no clear preference towards a certain outcome (such as deregistration).[148]

VI Certainty

A *Procedural Consistency*

1 *'Principles of Natural Justice'*

Many disciplinary committee decisions have made specific statements endorsing the requirement to observe natural justice, which includes procedural fairness.[149] This requirement has been interpreted by disciplinary committees to include:

- providing all relevant information about ASIC or AFSA's concerns to the practitioner;[150]
- giving the practitioner the opportunity to be heard and respond to these concerns;[151] and
- affording reasonable flexibility and consenting to extensions of time for practitioners to put forward additional material in written submissions or oral interviews.[152]

The legislation does not require disciplinary committees to interview practitioners as a prerequisite to making their decision.[153] Notwithstanding this, in all published cases practitioners were afforded the opportunity to attend an interview and provide further information to the committee. In *Young*, the Committee invited the practitioner to attend two interviews.[154]

Consistent with the literature on professional misconduct, the majority of cases decided by a Disciplinary Committee have involved multiple grounds and allegations.[155] However, unlike disciplinary matters about lawyers in Australia and

144 *Naidenov* (n 128).
145 ASIC, 'Crouch MR' (n 121).
146 Ibid.
147 *Duncan* (n 85).
148 *Insolvency Practice Schedule (Corporations)* (n 46) s 40-55; *Insolvency Practice Schedule (Bankruptcy)* (n 46) s 40-55.
149 See *Young* (n 138) 4 [20]–[22]; *Auricht* (n 129) [14], [16]–[17]; *Leigh (corporate)* (n 139) 8 [50], 9 [53].
150 *Auricht* (n 129) [16].
151 *Thomson* (2020) (n 76).
152 *Young* (n 138) 3–4 [15], 4 [21].
153 *Insolvency Practice Schedule (Corporations)* (n 46) s 40-55; *Insolvency Practice Schedule (Bankruptcy)* (n 46) s 40-55; *Insolvency Practice Rules (Corporations)* (n 27) r 50-85; *Insolvency Practice Rules (Bankruptcy)* (n 27) r 50-85.
154 *Young* (n 138) 2 [6], 4 [21].
155 See, eg, Moore, Buckingham and Diesfeld (n 137) 650; Katherine J Elkin, Matthew J Spittal, David J Elkin and David M Studdert, 'Doctors Disciplined for Professional Misconduct in Australia and New Zealand, 2000–2009' (2011) 194(9) *Medical Journal of Australia* 452, 455.

other jurisdictions,[156] there have been only two cases involving practitioners with mental health conditions.[157] In those cases involving highly complex issues of fact or law, committees have consistently allowed practitioners more time to adduce further evidence.[158] For example, in *Auricht*, the Committee considered information provided during the interview, and information supplied by the practitioner on six separate occasions over a period of nine months, to determine the issue of drawing remuneration without creditor or court approval.[159] The protracted time to produce evidence was due to the practitioner having to recall events that occurred nine years prior to the disciplinary proceedings, and reconcile all drawings and approvals in the sum of $887,302.75 between 2013 to 2017 (when there had been no system in place at the time). The disciplinary proceedings in *Naidenov* concerned the practitioner's conduct in relation to the intermingled affairs of a group of companies.[160] In addition to being interviewed by the Committee, the practitioner provided written information on at least eight separate occasions.[161]

In *Young* however, the Committee included a clear qualification to their support for natural justice: that affording natural justice is not an absolute requirement particularly where it needs to be balanced with protection of the public.[162] In this matter, the Committee declined to delay their decision pending further information about criminal prosecution the practitioner might face because they viewed it as inappropriate and contrary to the public given the gravity of the conduct.[163] Although the practitioner was subject to dual disciplinary and criminal investigations, the disciplinary process was not paused until the criminal process was concluded. Moreover, the Committee did not require further material from the criminal proceedings to make the determination that the practitioner was not fit and proper to be a registered liquidator.

2 *Case Management*

In all published decisions, the disciplinary committees outlined their case management processes. Figure 1 below illustrates the pathways to resolution before the committees. This demonstrates the highly flexible nature of the committees to adapt their processes to enhance efficiency in the resolution of disciplinary matters, as intended by the *ILR Act* reforms. Following on from the above discussion, cases involving more complex matters are generally afforded more time.

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156 Moore, Buckingham and Diesfeld (n 137).

157 *Auricht* (n 129) [71]–[72]; *Young* (n 138) 10 [74], 11 [88].

158 *Auricht* (n 129) [9], [11], [15]; *Young* (n 138) 3–4 [15]; *Naidenov* (n 128) [9], [29].

159 *Auricht* (n 129) [48].

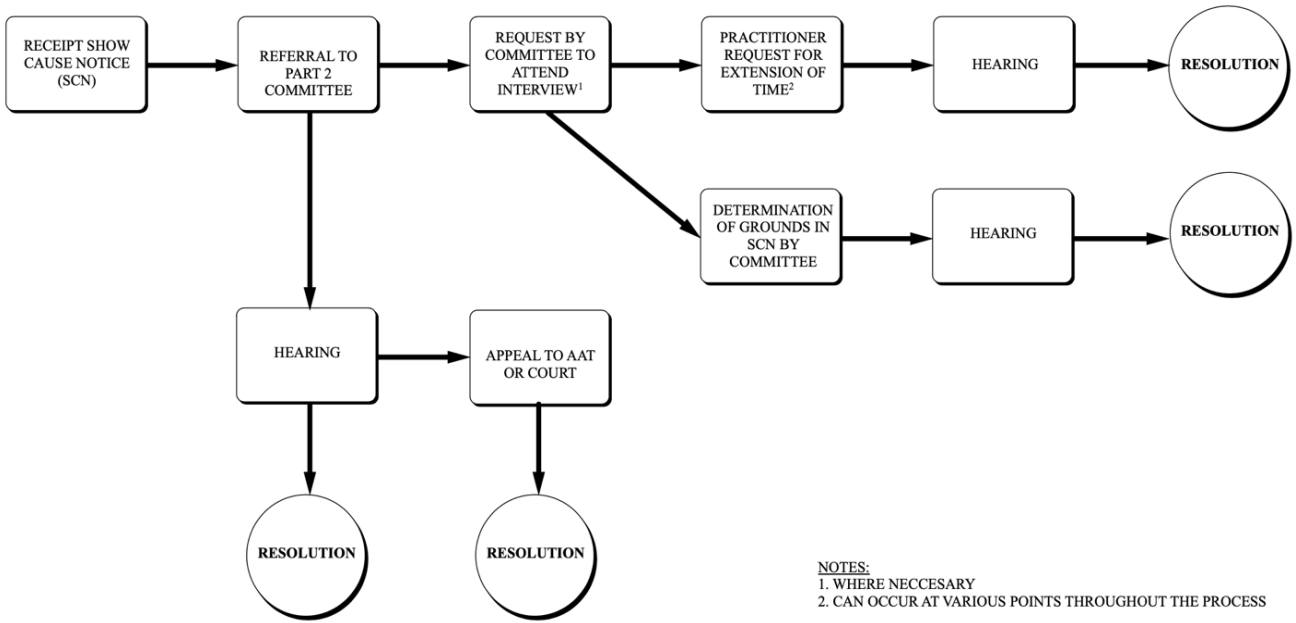
160 The *Corporations Act* (n 1) pt 5.6 div 8 contains the pooling provisions. Since their introduction in 2007, there have only been a few reported cases considering these provisions. See Jason Harris, 'Corporate Group Insolvencies: Charting the Past, Present and Future of "Pooling" Arrangements' (2007) 15(2) *Insolvency Law Journal* 78; Mark Wenn, Alex Myers and Amy Green, 'Pooling: The Broader Application of Pooling Orders' (2022) 34(1) *Australian Restructuring Insolvency & Turnaround Association Journal* 34.

161 The practitioner submitted written evidence on 12 December 2022, 1 February 2022, 9 March 2023, 29 March 2023, 16 July 2023, 18 July 2023, 24 July 2023, and 25 July 2023: *Naidenov* (n 128) [9], [11].

162 *Young* (n 138) 11 [83], 12 [89]–[90].

163 Ibid 12 [89]–[90].

Figure 1: Disciplinary Committee Case Management Pathways



3 *Decision Formats*

Regarding consistency in the presentation of decisions, the average length of Disciplinary Committee decisions is 10 pages — ranging from three pages to 37 pages. The inaugural decision of *Turner* was only three pages long and can be treated as an outlier.[164] Subsequent disciplinary committees have had cases to follow when documenting their decisions, as well as conducting their processes and evaluating outcomes.

Disciplinary committee decisions have generally adhered to the following written structure:

- Decision Name/Citation
- Membership of committee
- Decision
- Reasons for decision
- Introduction
- Factual circumstances around conduct
- Process, procedural matters for consideration including natural justice
- Issues of fact and law
- Decision-making process
- Summary of reasons for decision
- Decision including any direction to ASIC or AFSA to publish
- Signatures and date
- Appendices/ Annexures and Schedules

In mapping the written approaches of the disciplinary committees, it is clear that decisions are structured in a comprehensive and logical manner. Maintaining this system in decision writing is important to promote reasonable uniformity among the committees and contributes to the development of qualitative guidance for future committees and/or practitioners.

B ***Substantive Consistency***

1 *Application of the Public Interest Policy*

Central to the policy objectives of the *ILR Act* is protection of the public interest. In all published decisions, the disciplinary committees have consistently referred to the importance of the public interest policy to their function or decision-making. This

[164] *Summary Decision on Referral of Matter to Schedule 2 Committee: Dennis Anthony Turner, A Liquidator* (8 March 2018).

was emphasised in two separate decisions of committees in bankruptcy relating to the same trustee.

In *Thomson* (2018), a loss of confidence by the Federal Court was sufficient grounds for AFSA to refer the practitioner to a disciplinary committee.[165] The Committee cited the finding of the Court that the practitioner's 'conduct fell short of the high standard expected of a trustee'.[166] Notwithstanding the several swingeing criticisms of the Court,[167] the Committee concluded that the trustee should continue to be registered without conditions. The trustee's registration was, however, ultimately cancelled in a second decision relating to separate issues in *Thomson* (2020), whereby the Committee made it clear that the key objective of the disciplinary process and the Committee's 'primary concern' is 'the protection of the public'.[168]

Support for the public interest policy was made more explicit by the Committee in *Moore*.[169] The Committee emphasised the difference in the private nature of a practitioner's livelihood in the context of the importance of the public interest: 'the impact of the Committee's decision on the practitioner is to be given limited consideration, as the prime concern of the Committee is the protection of the public'.[170] The practitioner had also submitted that publication of the formal conditions to their registration would have adverse economic and reputational effects.[171] In deciding to publish its report, the Committee again placed more weight on the promotion of public confidence in the insolvency system over the practitioner's private concerns.[172]

In *Moore*, the practitioner relied upon several authorities, from which the Committee articulated the following relevant principles:

> The powers to cancel or suspend registration of a trustee are not punitive, the function of the Committee is not to punish or exact retribution. It is entirely protective in the public interest.[173]
>
> and
>
> [The protection of the public] also includes the maintenance of a system under which the public can be confident that trustees will know that breaches of duty will be appropriately dealt with ...[174]

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165 *Report of the Committee Convened Pursuant to Schedule 2, Section 40-45 of the Bankruptcy Act 1966 to Make a Decision about Ms Louise Thomson, a Registered Trustee* (5 April 2018) ('*Thomson* (2018)'); *Re Young (Bankrupt); Young v Thomson (Trustee) (No 4)* [2017] FCA 175.

166 *Thomson* (2018) 3.

167 *Young v Thomson (Trustee) (No 4)* (n 165) [21]–[25].

168 *Thomson* (2020) (n 76) 36 [170].

169 *Report of the Committee Convened under s 40-50 of the Insolvency Practice Schedule (Bankruptcy) to Make a Decision about Mr Daniel Moore, A Registered Trustee* (15 July 2021) ('*Moore*').

170 Ibid 15 [100.4].

171 Ibid 19 [118].

172 Ibid 19 [124].

173 Ibid 14 [100.1], citing *Re Inspector-General in Bankruptcy v Matthews* [1990] FCA 519, [18].

174 Ibid 14 [100.3], citing *NHPT v Members of the Companies Auditors & Liquidators Disciplinary Board* [2015] AATA 245, [18].

These views align with the policy-driven genesis of the disciplinary committees as an alternative dispute forum to the courts. In *Leigh* (*bankruptcy*), the Committee made a strong statement in support of the public policy interest emphasising that:

> Mr Leigh's actions have *severed* the confidence that the court and all stakeholders in insolvency proceedings are entitled to expect and command.[175]

As identified in Part V(A)(1) above, this approach was applied by the Disciplinary Committee in *Young* in refusing the practitioner's request to adjourn the matter because it was 'in the public interest [to] deal with this matter as expeditiously as possible'.[176] In support of this conclusion, the Committee stated that 'suspension [of registration] would be inappropriate and contrary to the public interest [in part] because of the importance of protecting the public, and specifically and generally deterring others, from similar conduct'.[177]

2 *Consistency in Outcomes*

Unlike the courts, the disciplinary committees are not bound by the doctrine of *stare decisis.* This means they are not held to the reasons that led to a previous committee's decision in a like case, nor are they bound by the doctrine of *res judicata*: previous decisions are not binding on disciplinary committees.

Since 1 March 2017, the most serious order, cancellation of registration, has been imposed by disciplinary committees in five matters relating to four practitioners. In the *Leigh* cases, the practitioner was a dual registered liquidator and registered trustee and had been referred to separate disciplinary committees by ASIC and AFSA. While the conduct related to the practitioner's capacity as a liquidator, AFSA was satisfied this could adversely impact their registration as a trustee. The cases of *Leigh* and *Young* involved fraudulent conduct and misappropriation of funds totalling $800,000 and $238,502.23 respectively, and there were crossovers with criminal proceedings whereby the practitioners received custodial sentences.[178] The committees in these matters imposed cancellation orders, with the Committee in *Leigh (corporate)* emphasising 'the conduct showed a lack of honesty, integrity and good character'.[179]

In both *Leigh* cases, the disciplinary committees went further and ordered an 8-year, and 10-year condition be imposed on all other registered trustees and registered liquidators respectively. The Committee in *Leigh (corporate)* reasoned 'it is not appropriate for Mr Leigh to participate in any capacity in the insolvency industry ... [this] would create a danger to others'[180] and 'the regulatory purpose of cancellation would not be achieved if Mr Leigh could still work in the insolvency

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175 *Report of the Committee Convened pursuant to Schedule 2, Section 40-45 of the Bankruptcy Act 1966 to Make a Decision about Mr David Leigh, A Registered Trustee* (31 January 2019) 5 ('*Leigh (bankruptcy)*') (emphasis added).

176 *Young* (n 138) 11 [87].

177 Ibid 12 [90].

178 The Brisbane District Court decision in David John Leigh, and the New South Wales District Court decision in Amanda Young were unreported, but see ASIC, 'Leigh MR' (n 136); Kohlbacher (n 136); ASIC, 'Young MR' (n 136); Gosnell (n 136).

179 *Leigh (bankruptcy)* (n 175) 6.

180 *Leigh (corporate)* 9 [57].

industry under a registered liquidator'.[181] The Committee in *Leigh (bankruptcy)* stressed 'this action is necessary to enforce Mr Leigh's disqualification term and to protect the integrity and reputation of the insolvency profession'.[182] The outcomes in the *Leigh* decisions further demonstrate consistency between two separately convened disciplinary committees whereby different committees with their own members, processes and procedures have arrived at the same decision.

In *Auricht*, the Disciplinary Committee considered a cancellation order was appropriate given the seriousness of the findings.[183] In this case, drawing fees from an administration without any approval system in place was found to be a 'failure of a basic fundamental requirement of a liquidator'.[184] As such, the Committee concluded that the practitioner did not have the 'capacity to adequately and properly perform the duties of a liquidator'.[185] In *Thomson* (2020), a cancellation order was imposed where there had been multiple breaches of the trustee's statutory duties in the investigations of a bankrupt without appropriate recognition of wrongdoing.[186] The failure to undertake these investigations had the detrimental effect of depriving the estate and its creditors. Although the Committee found each breach was, of itself, 'towards the lower end of the scale of seriousness … taken together, and combined with the lack of proper record keeping in Mr M's bankrupt estate', they constituted serious breaches.[187]

The disciplinary committees have consistently made orders for practitioners to continue to be registered in circumstances where, compared to disciplinary matters of former practitioners, 'the nature and extent of the misconduct and seriousness of errors [are] absent'.[188]

3 *Considerations to Applying Outcomes*

The disciplinary committees have regularly taken into account evidence of rehabilitation, such as genuine acceptance of failure, remorse and contrition,[189] as well as remediation efforts as tending towards conclusions of less serious misconduct.[190] Despite there being some 20 areas of concern involving serious and ongoing failure to adequately and properly perform the duties of a liquidator, the Committee in *Ball* found that '[i]ndeed, but for Mr Ball's particular circumstances, the contrition he demonstrated ... such action would have included cancellation of

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181 Ibid.
182 *Leigh (bankruptcy)* (n 175) 6.
183 *Auricht* (n 129) [174]–[178].
184 Ibid [61].
185 *Auricht* (n 129) [175], [177]. For a discussion of the meaning of 'adequately' see *Dean-Willcocks v Companies Auditors and Liquidators Disciplinary Board* (2006) ASCR 698, 709 [24]–[25] (Tamberlin J); *Davies v Australian Securities Commission* (1995) 59 FCR 221, 240–42 (Hill J).
186 *Thomson* (2020) (n 76) 1 [1], 34 [159],[161]–[162]. See also Robinson, 'CALDB to Pt 2 Committee' (n 17) 177.
187 *Thomson* (2020) (n 76) 23 [109].
188 *Moore* (n 169) 16 [107], where the Committee referred to the decisions of *Thomson* (2020) (n 76) and *Re Wong; Inspector-General in Bankruptcy v Pattison* [2008] AATA 487.
189 *Report of a Committee Convened to Make a Disciplinary Decision about Mitchell Warren Ball, A Registered Liquidator* (25 November 2019) 4 ('*Ball*').
190 *Naidenov* (n 128) [6], [36].

his registration'.[191] The Committee in *Ball* was also satisfied with the extent of operational improvements to prevent reoccurrence of past failings such as: implementing an electronic system in place of paper based check-list procedures and using third party consultants to conduct compliance reviews.[192]

Similarly, in *Naidenov* the Committee placed weight on the practitioner's admissions that while their conduct did not meet the requisite standard, the practitioner had rectified improper payments that had been made in breach of their duties. The Committee emphasised 'had Mr Naidenov failed to appreciate the serious and significant dereliction of his obligations that his actions represent, and failed to make any repayments to the company, the Committee may have considered this matter differently'.[193]

These outcomes may be contrasted with the case of *Thomson* (2020), where the Committee found the practitioner had failed 'to recognise the existence of a potential conflict of interest… coupled with [a] failure to appreciate that her continued occupation of this role constituted an ongoing and actual conflict of interest'.[194] The Committee emphasised that this represented a serious misunderstanding of 'one of the most fundamental duties of a trustee under the general law'.[195] Further, the Committee was not satisfied the practitioner had demonstrated any further education or training to address such gap in knowledge.[196] The Committee concluded that it was not appropriate for the practitioner to continue to be registered in circumstances where she had 'failed to carry out adequately and properly her general law duty of independence and various statutory duties … where these failures could have adversely affected the interests of creditors'.[197]

Relatedly, in *Auricht* the Committee concluded that a cancellation order was warranted where the practitioner failed to understand the 'gravitas [sic] of the conduct' in making 14 drawings for fees over an extended period totalling $297,995.67 without approval.[198] Those drawings had occurred because the practitioner did not have sufficient business practices in place to ensure that unapproved fees were not drawn.[199] The Committee rejected that the strategies and business systems the practitioner had subsequently implemented would be sufficient to ensure the same errors would not be made again.[200]

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191 *Ball* (n 189) 4 [15]. The Committee noted 'it is not necessary, given Mr Ball's acknowledgements, to set out his conduct in detail': at 3 [9].

192 Ibid 4 [12].

193 *Naidenov* (n 128) [36].

194 *Thomson* (2020) (n 76) 36 [172]. The leading authority on the requirement for independence arising from a referral relationship is *Australian Securities and Investments Commission v Franklin* (2014) 223 FCR 204, 232 [125] (White J). For a practical guide to referral relationships and the requirement for independence, see *ARITA Code of Professional Practice* (4th ed, 1 January 2020)) ('*ARITA Code*') Insolvency Services s 3. For the rationale of the independence requirement for insolvency practitioners, see *ARITA*, *Practice Statement 1: Insolvency — Independence* (16 September 2019) 1.

195 *Thomson* (2020) (n 76) 36 [172].

196 Ibid 35–6 [168].

197 Ibid 36 [173].

198 *Auricht* (n 129) [123].

199 Ibid.

200 Ibid [69], [168].

C *Review of Committee Decisions*

As outlined in Part III above, decisions of disciplinary committees about suspension or cancellation of registration can be reviewed by the ART.[201] Review mechanisms are an important avenue to provide an incentive against inappropriate decision-making that can impact efficiency and certainty.[202] Given the recency of the establishment of the ART in 2024 and lack of commentary, the following discussion regarding the AAT will likely be applicable to the ART.

While the AAT 'steps into the Committee's shoes when making a decision under s 40-55 [of the *Insolvency Practice Schedule*]',[203] and therefore the discretionary powers under s 40-55 are available to them, the Tribunal is not obliged to suspend or cancel a practitioner's registration.[204] Rather its role is to make the 'correct or preferable decision in all the relevant circumstances'.[205] The focus of the AAT review is not to determine whether the original decision-maker was wrong or at fault.[206] As discussed above, a key determinant of consistency is ensuring that practitioners in like situations receive similar treatment and outcomes.

To date, there have been two appeals of disciplinary committees convened in corporate insolvency to the AAT and in both cases the committees' decisions have not been published.[207] In *Kukulovski*, the matter before the Committee involved a failure to adequately supervise staff. This failure resulted in monies being paid in the sum of $190,000 and $10,000 from two administrations toward legal fees for an unrelated external administration. The error arose as the funds were deposited into the firm account instead of the liquidation bank account. The effect was the practitioner failed to report receipt of monies to creditors and subsequently lodged false or misleading forms with ASIC.

There were two reviewable decisions before the AAT:[208]

(1) the cancellation of Kukulovski's registration; and

(2) the decision to direct ASIC to the publish the report of the Committee decision.

Similar to the approach taken by the disciplinary committees, the AAT applied the public interest policy in its decision. In respect of the first decision, the AAT affirmed the committee's decision as it was satisfied 'the public interest in particular

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201 *Insolvency Practice Schedule (Corporations)* (n 46) s 40-1; *Insolvency Practice Schedule (Bankruptcy)* (n 46) s 40-1.

202 Paul Hughes, Justin Oliver and Rachel Trindade, 'The Role of Courts and Tribunals in Providing Guidance to Regulators' (Conference Paper, ACCC Regulatory Conference, 24 July 2008) 4 [3.1] <https://www.accc.gov.au/system/files/The%20role%20of%20courts%20and%20tribunals.pdf>.

203 *Duncan* (n 85) 3 [5].

204 Ibid (n 85) 3 [6].

205 Ibid. See also Kerrie O'Callaghan and Michelle Howard, 'Promoting Administrative Justice: The Correct and Preferable Decision and the Role of Government Policy in the Determination' (2013) 32(1) *University of Queensland Law Journal* 169.

206 Justice David Thomas 'Contemporary Challenges in Merits Review: The AAT in a Changing Australia' (2019) 96 *Australian Institute of Administrative Law Forum* 1, 5.

207 *Kukulovski* (2021) (n 85); *Duncan* (n 85).

208 *Kukulovski* (2020) (n 62).

weighs against staying the cancellation decision'.[209] Ultimately, the parties agreed to suspension of registration for a period of three years.[210] However, there was a significant difference between the Committee and the AAT in relation to the second decision, which is discussed below.

The AAT set aside the Committee's decision to direct ASIC to publish as it was noted, among other things, that the report of the decision contained 'speculation' that had not been subject to a proper review and had not yet been redacted from the text of the decision.[211] There was also the commercial interests of parties to balance with public interest, with the AAT placing emphasis on the commercial risk of disenfranchisement and reputational damage to the national firm and innocent third parties including employees.[212] The issue of natural justice was a significant factor in the AAT's application of the public interest policy, with the Tribunal outlining a number of circumstances where it would not be in the public interest to publish the decision.[213]

In *Duncan*,[214] the appeal related to the 2023 cancellation by the Committee of the practitioner's registration on the grounds they no longer had the qualifications, experience, knowledge and abilities prescribed under the *Corporations Act.*[215] It was submitted by counsel for the applicant that the Disciplinary Committee's adverse decision had been predicated on the applicant's 'sub-optimal' performance when interviewed by the Committee.[216] The applicant's subsequent performance in the witness box before the AAT led ASIC to 'abandon [its] contention that [the applicant] did not have the experience and knowledge required'.[217] As a result, the AAT set aside the decision cancelling the applicant's registration.

The *Duncan* matter typifies the function of the AAT in considering a different case from that addressed by the original decision-maker. It was conceded that the practitioner had not been able to demonstrate their expertise and knowledge before the Disciplinary Committee, and thereafter *could* exhibit this before the AAT, which resulted in a different outcome.[218]

On the issue of procedural consistency, the applicant submitted that questioning during the Committee meeting did not proceed in a way that was 'fair' to the applicant.[219] Whether this occurred and might have adversely impacted the Committee's performance remains unknown given the Committee did not publish the decision, and the AAT was not asked to consider this issue or the issue of non-

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209 Ibid 10 [28].
210 *Kukulovski* (2021) (n 85) 1.
211 *Kukulovski* (2020) (n 62) 10 [31]. The AAT stated, at 11 [33], that 'ASIC is free to conduct its own review of the text of the reasons for decision and suggest any redactions if it wishes the Tribunal to reconsider the stay decision [against publication] at a future point'.
212 Ibid 6–7 [16]–[18].
213 Ibid 5 [9].
214 *Duncan* (n 85).
215 ASIC, 'Liquidator Disciplinary Committee Cancels Registration of Cameron Duncan' (Media Release 23-065MR, 15 March 2023) ('Duncan MR').
216 *Duncan* (n 85) 6 [18].
217 Ibid 7–8 [24].
218 Ibid.
219 Ibid 6 [18].

publication.[220] Given the allegation of unfair treatment and potentially a denial of procedural justice, which was also adversely reported by the media,[221] this serves as a warning to future committees to minimise this uncertainty by providing guidance on their processes and exercising their powers.

The outcomes in *Kukulovski* (2020), *Kukulovski* (2021) and *Duncan* were consistent with the non-adversarial model of the AAT and demonstrate the importance of the Tribunal in ensuring the disciplinary committees act according to law. In the two appeal cases, the parties (ASIC as the instigator of the disciplinary cases and the applicants) were not so widely divergent in their positions that the AAT had to decide the outcome. Ultimately, in both cases the parties consented to the individual outcomes with the AAT giving effect to the orders consistent with its administrative, not judicial, function. The availability of review, however, necessarily impacts the time for disciplinary committees to make a decision, which is discussed in Part VII below.

D *Assessment of Certainty*

Part III above outlined the method to assess certainty in disciplinary committee decisions, which comprises procedural consistency and substantive consistency. A strong form of consistency involves a high level of consistency in the process and procedure to be applied for like cases and would also involve similar decision outcomes in relation to similar circumstances. A medium form would be where consistency was achieved as a general rule with deviation in a limited number of matters. A weak form would involve inconsistency between the processes and decision outcomes for like cases.

The disciplinary committee processes and outcomes to date have not validated initial concerns regarding the lack of a manual for disciplinary committee process. My analysis demonstrates that, on the whole, the disciplinary committees have achieved high levels of procedural certainty in their decision-making. Cases involving more complex matters of fact or legal issues are afforded more time and opportunities to adduce evidence including by attending a number of pre-hearing interviews. In terms of substantive certainty in decision-making, I conclude that the committees have consistently applied the public interest policy in making orders. Decisions appear to focus on signalling to practitioners the issue of setting high standards of professional conduct. There is consistency in disciplinary committee outcomes where egregious misconduct involving dual criminal proceedings, has resulted in cancellation of registration. For other matters, the disciplinary committees have placed a consistent focus on whether the practitioner demonstrated contrition and remediating conduct in applying greater or less serious orders.

In relation to the seven decisions in corporate insolvency that have not been published, there appear to have been reasonable explanations for non-publication

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220 Ibid 13 [44].

221 See Michael Murray, 'Liquidator Discipline Outcome – Reasons Unknown', *Murrays Legal* (Blog Post, 17 March 2023) <https://murrayslegal.com.au/blog/2023/03/17/liquidator-discipline-outcome-reasons-unknown/>; Peter Gosnell, 'KordaMentha Partner Stripped of Registration', *Insolvency News Online* (17 March 2023) <https://insolvencynewsonline.com.au/kordamentha-partner-stripped-of-registration/>.

including that four practitioners continue to be registered. In light of the sample size justification detailed in Part II above, the insights from my study ground an argument that, on the whole, the disciplinary committees have generally achieved a strong form of certainty in decision-making since commencement of the *ILR Act*.

VII Efficiency

A *Speed of Committee Decision-Making*

The key indicator of efficiency in disciplinary committee decision-making is the time taken from referral of the case by ASIC or AFSA to the committee's decision. Given the difference in the volume of referrals, the decisions of disciplinary committees convened are separately depicted for corporate insolvency (Table 2) and for personal insolvency (Table 3). Tables 2 and 3 each detail the key stages in the disciplinary process:

- time from the issue of ASIC or AFSA's show-cause notice to referral to a disciplinary committee;
- time from the Regulators' referral to committee decision; and
- time to conclusion of the matter calculated from the date of issue of show-cause notice to committee and/or AAT decision.

Tables 2 and 3 also contain the number of cases per year from 1 March 2017 to 1 March 2025.

As Table 2 illustrates, in more than half of the corporate insolvency cases the timing between key events is unknown. Given the sample size, the percentage of missing values being greater than 10% impacts on reliability of the data.[222] The impact of the missing data is significant considering the small sample size. As a result, average calculation of the times for disciplinary committees convened in corporate insolvency are unable to be determined. Notably, from the known cases only one matter was decided within the recommended 60-day statutory timeframe. In terms of overall resolution of the disciplinary matter, there is a great variability between the shortest matter, which was concluded in 79 days, compared to the longest case, which was resolved in 645 days as a result of an appeal to the AAT. This is discussed further below.

On the other hand, the average times can be calculated for disciplinary committees in bankruptcy. As set out at the bottom of Table 3, the average time to committee decision was 112.25 days from referral by AFSA. The average time taken to conclude a disciplinary matter was 205.5 days and ranged from 99 days to 353 days in 2019.

[222] Derrick A Bennett 'How Can I Deal with Missing Data in my Study?' (2001) 25(5) *Australian and New Zealand Journal of Public Health* 464, 464.

Table 2: Time taken from ASIC referral to Disciplinary Committee ('DC') decision, 2017–2025

Year of referral	Matters before DC (number)	Name of case	Time from issuing show-cause notice to referral to DC (days)	Time from referral to DC to decision (days)	Time from issuing show-cause notice to DC or AAT decision date (days)
2017	1	*Turner*[223]	Unknown	Unknown	79
2018	1	*Leigh*[224]	50	50	100
2019	4	*Young*[225] *Ball*[226] *Iannuzzi*[227] (no DC decision) *Kukulovski*[228]	60 Unknown Unknown 131	215 (> 6 months) Unknown Unknown 200 (> 6 months)	275 (> 6 months) 252 (> 6 months) 178 591 (> 1 year and 6 months)
2020	2	*Barnet*[229] *Fletcher*[230]	Unknown Unknown	126 126	Unknown Unknown
2021	1	*Crouch*[231]	296 (> 6 months)	225 (> 6 months)	521 (> 1 year)
2022	2	*Duncan*[232] *Auricht*[233]	Unknown 110	102 202 (> 6 months)	645 (>1 year) 312 (> 6 months)
2023	2	*Naidenov*[234] *Woodgate*[235]	223 Unknown	206 118	429 (> 1 year) Committee decision stayed
2024	0				
2025	0				
Average	**Unable to be determined**				

[223] *Turner* (n 164).
[224] *Leigh (corporate)* (n 139).
[225] *Young* (n 138).
[226] *Ball* (n 189).
[227] 'ASIC Registered Liquidator Disciplinary Decisions' (n 111).
[228] *Kukulovski* (2020) (n 62).
[229] 'ASIC Registered Liquidator Disciplinary Decisions' (n 111).
[230] Ibid.
[231] *Report of the Committee Convened to Make a Disciplinary Decision about Nicholas James David Crouch, A Registered Liquidator* (24 June 2022) ('*Crouch*').
[232] 'ASIC Registered Liquidator Disciplinary Decisions' (n 111). See also *Duncan* (n 85).
[233] *Auricht* (n 129).
[234] *Naidenov* (n 128).
[235] ASIC, *Woodgate Referral* (n 124). Note: decision stayed.

Table 3: Time taken from AFSA referral to Disciplinary Committee ('DC') decision, 2017–2025

Year	Matters before DC (number)	Name of case	Time from issuing show-cause notice to referral to DC (days)	Time from referral to DC to decision (days)	Timing to conclusion of matter (from date of issue of show-cause notice to date of Disciplinary Committee decision)
2017	0				
2018	1	*Thomson*[236]	89	57	146
2019	2	*Leigh*[237] *Thomson*[238]	77 108	20 245 (> 6 months)	99 353 (> 6 months)
2020	0				
2021	1	*Moore*[239]	97	127	224 (> 6 months)
2022	0				
2023	0				
2024	0				
2025	0				
Average			**92.75**	**112.25**	**205.5**

[236] *Thomson* (2018) (n 165).
[237] *Leigh (bankruptcy)* (n 175).
[238] *Thomson* (2020) (n 76).
[239] *Moore* (n 169).

B *The Kukulovski Matter and the Administrative Appeals Tribunal*

The speed of disciplinary committee decision-making was significantly impacted in the *Kukulovski* matter. As discussed above, the matter involved two AAT decisions in 2020 and 2021. Table 4 below details the timeline of events. It shows that the time taken from the ASIC referral to conclusion (the second AAT decision) was 591 days. This far exceeds the timing of the majority of other disciplinary committee matters in corporate and personal insolvency. The *Kukulovski* matter took six times longer to conclude than *Turner*, which was resolved in 79 days and was not subject to appeal.

Table 4: *Kukulovski* timeline of events

Date	**Event**
16 January 2019	ASIC issue show-cause notice
27 May 2019	ASIC referral to Disciplinary Committee
13 December 2019	Decision of Disciplinary Committee to cancel registration
16 December 2019	Applicant lodged review of Disciplinary Committee decision
23 December 2019	Interlocutory hearing
6 January 2020	First AAT decision
15 January 2020	Publication of decision delayed by order of AAT
22 December 2020	Parties reach agreement
7 January 2021	Second AAT decision

Importantly, the timeline highlights that the initial AAT review was concluded in an efficient manner, less than one month from the time of lodgement by the applicant. This was significantly less time than the average time of 45 weeks for commercial and taxation matters in the AAT.[240] There was a short delay due to ASIC's consent to stay proceedings over the Christmas break and delay in publication of decision from the date of decision on 6 January 2020 until 15 January 2020. The significant delay of 365 days was the time between AAT hearings and the time taken for the Disciplinary Committee and the applicant to reach agreement. The 2020 AAT hearing and subsequent decision was straightforward in giving effect to that agreement.

In *Duncan*, there were no details about what occurred between the time from the Committee's decision to cancel the liquidator's registration on 28 February 2023, and the subsequent decision of the AAT on 4 April 2024.[241] Given the timing of the applicant's witness statement and supplementary witness statements in June and August 2023, it can be reasonably inferred the delay between decisions related to the Tribunal proceedings. A key distinction between the *Kukulovski* matter and *Duncan* is that the applicant's livelihood in the former was directly impacted by the

[240] AAT, *AAT Caseload Report 2020–21* (n 117).
[241] *Duncan* (n 85) ASIC, 'Duncan MR' (n 215).

cancellation of his registration,[242] whereas in the latter case the applicant maintained a practice overseas focusing on Singaporean and Indonesian clients and had not lived and worked as a registered liquidator in Australia since 2012.[243]

C *Assessment of Efficiency*

As for certainty, in this study I assessed efficiency of the disciplinary committees' processes and decision-making against benchmarks involving strong, medium, and weak forms. Efficiency is indicated by the speed of decision-making. A strong form of speed in decision-making involves consistently making decisions within the 60-day statutory timeframe from referral by ASIC or AFSA to a Disciplinary Committee. A medium form of speed includes making decisions within three to six months, and a weak form would involve decision-making more than six months from referral.

Disciplinary proceedings can take time to resolve because they may involve highly complex matters and impact a practitioner's livelihood as well as third parties who rely on them. While speed is important, affording natural justice and ensuring that the correct decision is made are paramount. The discussion on certainty in Part VI(A) also identified three factors that may impact the speed of the disciplinary committees: natural justice, non-publication of decisions and/or reasons, and right of review. First, the cases of *Auricht*, *Young*, *Leigh (corporate)*, and *Naidenov* are examples of where the committees have applied the principles of natural justice to give the practitioner more time to respond to allegations. Second, a valid assessment of efficiency is only possible through transparency of the committees' decisions. The seven unpublished decisions impacted the calculation of average times for corporate insolvency matters. Although, as discussed above, in cases where decisions were not published and no further information was released by ASIC, there appear to be cogent reasons for non-publication including that the practitioners continue to remain registered, or the practitioner's registration was cancelled at the time, but they continue to be a partner of a large international firm. Similar to the reasons for conducting hearings in private, it can be argued there is a protective interest in keeping disciplinary matters confidential to minimise the impact upon the practitioners' livelihood and commercial interests. Finally, the *Kukulovski* matter demonstrates the significant impact of an AAT review on the speed of disciplinary committees taking 591 days to conclude the matter from referral by ASIC to the Committee.

For the period between 1 March 2017 and 1 March 2025, the average time from referral to decision for the disciplinary committees convened by ASIC was unable to be determined. By contrast, the average time for committees convened in bankruptcy was able to be determined. The committees took an average of 112.25 days to make a decision, with half of the matters being decided within the 60-day statutory timeframe. The long time to decision in the *Thomson* (2020) case was due to the practitioner's request that the Disciplinary Committee first decide whether ASIC's grounds had been made out.[244] Support for this approach was said

[242] *Kukulovski* (2020) (n 62) 6 [15].
[243] *Duncan* (n 85) 2 [1].
[244] *Thomson* (2020) (n 76) 4 [25].

to be found in a decision of the AAT.[245] The *Moore* case was impacted by the lockdowns imposed during the COVID-19 pandemic that delayed the interviews by two months.[246] Notwithstanding this, all disciplinary matters in bankruptcy were concluded within one year, with the majority being concluded within six months.

A possible explanation for the efficiency of the bankruptcy cases may be due to corporate insolvency matters typically involving more highly complex or contentious issues as evidenced by the *Kukulovski* and *Duncan* appeal matters.[247] In another example, the corporate insolvency Disciplinary Committee in *Leigh* took twice as long to make a decision as the counterpart committee in bankruptcy.[248] This was because the original matter concerned the practitioner's conduct as a liquidator. On the other hand, the Committee in bankruptcy had a more straightforward case to consider, whether the practitioner's conduct as a liquidator meant they were no longer a fit and proper person to carry out adequately and properly the duties of a trustee.[249]

Speed of bankruptcy disciplinary matters can also be attributed to the lower volume, with the committees in corporate insolvency hearing three times as many cases. As highlighted in Table 3, the disciplinary committees in bankruptcy did not hear any matters in 2017, 2020, 2022–24 and, as at 28 April 2025, none in 2025.[250] The lack of serious misconduct matters warranting disciplinary action accords with the generally low levels of misconduct reported by AFSA.[251]

As identified in Table 4, the *Kukulovski* appeal to the AAT had a significant impact on the speed of the disciplinary committees. It took 591 days to conclude, which could be explained by the need for the parties to reach mutual agreement. Notwithstanding the delay in the overall outcome, the AAT demonstrated a strong form of efficiency in hearing the matter within seven days of the application and making a decision within 21 days over the public holiday period. Similarly, the *Crouch* case had a long timeframe: the Committee took more than six months to make its decision and the matter was concluded in 521 days.[252] There was nothing to explain the reasons for delay as the decision was issued as a summary only, although the practitioner continues to be registered and practices in a small firm.[253]

Despite the small number of decisions, the dataset provides a sufficient basis upon which to make an assessment for the disciplinary committees in bankruptcy. The committees in bankruptcy have achieved a medium speed, taking between three to six months to make a decision. However, for the disciplinary committees in corporate insolvency an assessment of efficiency is unable to be determined.

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245 Ibid, citing *Joubert v Members of the Companies Auditors and Liquidators Disciplinary Board* [2018] AATA 944.

246 *Moore* (n 169) 3 [13].

247 See *Kukulovski* (2021) (n 85); *Duncan* (n 85).

248 *Leigh (corporate)* (n 139).

249 *Insolvency Practice Schedule (Bankruptcy)* (n 46) s 40-40(1)(n): *Leigh (bankruptcy)* (n 175) 2.

250 AFSA correspondence (n 125).

251 See AFSA, 'Practitioner Surveillance, Enforcement and Compliance Statistics', *Inspector-General Statistics* (Web Page, July 2024–March 2025) <https://www.afsa.gov.au/about-us/statistics/practitioner-surveillance-enforcement-and-compliance-statistics>.

252 'ASIC Registered Liquidator Disciplinary Decisions' (n 111).

253 Ibid.

VIII Conclusion

Efficiency and certainty in disciplinary proceedings is important for insolvency professionals given their central role in administering and resolving external administrations for companies, consumers, and stakeholders. It is relevant to examine these proceedings as the disciplinary committees are responsible for determining whether practitioners continue to be registered, which can have a significant impact upon their livelihoods and of those who depend on them. Further, data about the incidence of serious misconduct before the committees is important for trust and confidence in both the profession and those who regulate it. More broadly, from a policymaking and lawmaking perspective a high level of efficiency and certainty in disciplinary committees is central to demonstrating good governance and maintaining confidence in the integrity of the insolvency framework — key objectives of the 2016 insolvency law reforms.

Through a content analysis approach of the first eight years of available cases (March 2017–March 2025), I have evaluated whether there has been efficiency and certainty in the disciplinary committees' decision-making. First, I defined certainty as consistency, which comprised procedural (process-related) and substantive (outcomes-related) consistency. The disciplinary committee decisions demonstrate a highly consistent approach to adhering to the principles of natural justice, including affording practitioners with complex matters more opportunities to be heard. The committees regularly applied the public interest policy to their determinations, which required consideration of whether the practitioner posed future risk to the public and profession and if there was possibility of reform. Cancellation, the most restrictive order, was used where the gravity of the practitioner's conduct was such that removing them from practice was the only option available to protect the public. This was reserved for cases that involved criminality, or where the practitioner did not appreciate the inappropriateness of their conduct or had failed to satisfy a committee of the efficacy of changes made to their practice to avoid repeating past behaviour. The small sample of the case study is representative of the low levels of serious misconduct appearing before the pt 2 disciplinary committees. Along with the justification explained in my discussion on the limitations of my study (Part II), these provide a sufficient basis upon which to conclude that overall, the disciplinary committees' decisions demonstrate a strong form of certainty. This is important in terms of the consistent emphasis on deterrence and maintenance of high standards of professional conduct. It also provides clear educative signals to the profession and public in the determination of committee outcomes.

I interpreted the second element, efficiency, to mean speed of committee decision-making as evaluated against the statutory timeframes and policy objectives of the disciplinary committees to be an expeditious alternative to the courts. Efficiency of the disciplinary committees in corporate insolvency generally, was unable to be determined due to the significant number of unpublished decisions. As explained in the methodology this was an overall limiting factor for the assessment of both certainty and efficiency. However, some thematic observations emerge, related to the reasons for non-publication and public interest factors including harm or prejudice to third parties. Given the strong public and professional interest in disciplinary matters where committees decide their reports should not be made

available, it is suggested they direct the Regulators to communicate those factors leading to non-publication.[254]

For the disciplinary committees in bankruptcy, I found that, overall, they exhibited a medium form of efficiency, with half of the cases decided within the statutory timeframe. For matters in both corporate insolvency and bankruptcy that were not decided within the statutory timeframes, there appeared to be objectively justifiable reasons for the delay, such as COVID-19 pandemic impacts or allowing more time for the practitioner to provide additional information or for the parties to agree on an outcome. Further, as I noted earlier in this article, ensuring the correct decision is made is a greater consideration than speed of decision-making. As my study highlights, AAT reviews of committee decisions materially increased the time to overall resolution of the matter.

These findings build on my previous work by extending the disciplinary proceedings dataset to the present time. My research confirms that only cases involving allegations of serious breaches of duties continue to appear before the disciplinary committees. More broadly, it provides renewed support for the argument that there are a few 'bad apples' rather than a systemic failure in the insolvency profession, with only 18 referrals to the disciplinary committees over an eight-year period.[255] Tempering public discourse surrounding insolvency practitioners to reflect this, along with continued government and industry education across communication platforms, could better inform consumers about the harmful implications of engaging untrustworthy insolvency advisers.

My findings also support further consideration of the ongoing criticism of ASIC's enforcement activities. As seen in the *Leigh* matter, there also appears to be an unnecessary duplication of resources given that at the time the *ILR Act* was implemented the majority of registered trustees were dual registered liquidators.[256] In light of the recent *Administrative Arrangements Order*, which unifies corporate and personal insolvency laws under the Treasury,[257] it is suggested the next step for the Australian Government is optimising supervisory functions and reducing complexity for vulnerable debtors in the system who are dealing with separate regulators. This could be achieved by a single insolvency practitioner regulator whose approach should be modelled on AFSA's best practice and good relationship with the regulated population.[258]

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254 ASIC, 'Duncan MR' (n 215). In this media release ASIC noted, '[t]he Committee determined that its report on Mr Duncan's matter should not be published by ASIC. ASIC will not comment further on the reasons for the Committee's decision'.

255 See Elizabeth Jean Streten, 'Practitioners' Perspectives: Experiences Adhering to Legal and Ethical Regulatory Standards' (PhD Thesis, Queensland University of Technology, 2019) 166; Robinson, 'An Early Response to Regulatory Changes' (n 20) 212.

256 Robinson, 'An Early Response to Regulatory Changes' (n 20) 214.

257 Department of the Prime Minister and Cabinet (Cth) (n 7) pt 15.

258 In support of the proposition for AFSA as a single regulator see ARITA, Submission No 36 to the Parliamentary Joint Committee on Corporations and Financial Services, Parliament of Australia, *Inquiry into Corporate Insolvency in Australia* (30 November 2022) 38; Robinson, 'Regulation of Insolvency Practitioners in a Pandemic' (n 96); Robinson, 'An Early Response to Regulatory Changes' (n 20) 212.