



**ASIC**  
Australian Securities &  
Investments Commission

## REGULATORY GUIDE 16

# External administrators and controllers: Reporting of possible offences and misconduct

September 2024

### **About this guide**

This guide is for liquidators, voluntary administrators, receivers and managing controllers.

It provides guidance on their reporting obligations under s422, 438D, 500AE and 533 of the Corporations Act and reg 5.5.05 of the Corporations Regulations.

### About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

**Consultation papers:** seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides:** give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports:** describe ASIC compliance or relief activity or the results of a research project.

### Document history

This guide was issued in September 2024 and is based on legislation and regulations as at the date of issue. In December 2024, we corrected a case citation in the related information.

Previous versions:

- Superseded Regulatory Guide 16 *External administrators: Reporting and lodging*, issued on 1 July 2008
- Practice Note 50 rebadged as Regulatory Guide 16 on 5 July 2007.

### Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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## A Overview

### Key points

External administrators and controllers are required to report to ASIC if it appears to them that a person may have committed an offence or engaged in misconduct in relation to the company.

This guide explains:

- our expectations for preparing the initial statutory report (see Section B);
- when and how to prepare a supplementary statutory report (see Section C);
- how to lodge reports with ASIC (see Section D); and
- how we deal with the reports we receive and the information we will publish about your reports (see Section E).

## Who this guide applies to

RG 16.1 This guide applies to liquidators, voluntary administrators, receivers and managing controllers.

Note: In this guide, we refer collectively to liquidators, voluntary administrators, receivers and managing controllers as ‘external administrators and controllers’.

RG 16.2 It explains the process for complying with the obligation to report possible offences and misconduct to ASIC under s422, 438D, 500AE and 533 of the *Corporations Act 2001* (Corporations Act) and reg 5.5.05 of the *Corporations Regulations 2001* (Corporations Regulations), referred to in this guide as the ‘reporting obligations’.

RG 16.3 External administrators and controllers have a range of other obligations under the Corporations Act. This guide focuses on the reporting obligations.

Note: For additional resources on the obligations of external administrators and controllers, see Information Sheet 29 *External administration, controller appointments and schemes of arrangement: Most commonly lodged forms* ([INFO 29](#)), Regulatory Guide 258 *Registered liquidators: Registration, disciplinary actions and insurance requirements* ([RG 258](#)) and the [Insolvency information](#) on the ASIC website.

RG 16.4 As part of their duties and functions, an external administrator or controller will investigate the company’s affairs to identify property that may be recovered to form part of the funds in the administration to be distributed in accordance with the law. As part of these investigations, information or evidence may be identified that enables them to form a view that it appears an offence has been committed or misconduct has occurred that must be reported.

## Purpose of the reporting obligations

- RG 16.5 The reporting obligations are an important source of ‘front line’ information for ASIC about possible breaches of the Corporations Act and the *Australian Securities and Investments Commission Act 2001* (ASIC Act) by persons involved with the company. If other breaches of the law are identified, we can also share this information with relevant agencies, as appropriate. The reports we receive further provide us with key information to identify systemic issues and risks and to enable us to provide transparency to stakeholders through our ability to publish aggregated information.
- RG 16.6 The reporting obligations contribute to:
- (a) maintaining the integrity of the marketplace; and
  - (b) promoting investor and consumer confidence.
- RG 16.7 For the reporting obligations to be effective, external administrators and controllers should assess the appropriate level of inquiries to undertake, according to the circumstances of the company. Information provided about possible offences and misconduct should be specific and timely.

## Overview of the reporting obligations

- RG 16.8 An external administrator or controller may be required to lodge the following reports with ASIC to comply with the reporting obligations:
- (a) an initial statutory report after forming a view that possible offences or misconduct occurred (s422(1), 438D(1) and 533(1), or s500AE(3)(f) and reg 5.5.05(2)) (see Section B);
  - (b) an initial statutory report by the liquidator of an insolvent company after forming a view that the company may be unable to pay its unsecured creditors more than 50 cents in the dollar (s533(1)(c)) (see Section B); and
- Note: Data obtained from final returns ([Form 5603 End of Administration Returns](#)) shows over 95% disclose actual dividends paid to unsecured creditors in insolvent liquidations of 50 cents in the dollar or less.
- (c) a supplementary statutory report with greater detail of possible offences and misconduct when, in the opinion of the external administrator or controller, it is desirable to bring a matter to the notice of ASIC (s422(2), 438D(2) and 533(2), or s500AE(3)(f) and reg 5.5.05(3)) (see Section C).
- RG 16.9 The reporting obligations, as outlined in RG 16.8, apply to:
- (a) a receiver of property of a corporation (s422);
  - (b) a managing controller of property of a corporation (s422);

- (c) an administrator of a company under administration (s438D);
- (d) a liquidator of a company (s533); and
- (e) a liquidator of a simplified liquidation process (s500AE(3)(f) and reg 5.5.05).

Note: If the external administrator is the liquidator of a pooled group of companies, they must lodge a report in respect of each company in the group, unless the court makes an order to the contrary. This is because the obligation in s533 to lodge a report on possible misconduct refers to a particular company in the singular, not a pooled group of companies.

RG 16.10 The Corporations Act does **not** require reports of possible offences and misconduct to be lodged by:

- (a) a controller who is neither a receiver nor a managing controller;
- (b) a provisional liquidator;
- (c) a restructuring practitioner for a company;
- (d) the restructuring practitioner for a restructuring plan that has been made in relation to the company; or
- (e) an administrator of a deed of company arrangement.

RG 16.11 Initial statutory reports and supplementary statutory reports are to be lodged using the [ASIC Regulatory Portal](#). For information on the timeframes and process for lodging the reports, see Section D.

RG 16.12 ASIC may use the information from initial statutory reports and supplementary statutory reports to commence an investigation and take further action in relation to identified breaches. For information on the way that ASIC uses information in the reports: see Section E.

## B Initial statutory report

### Key points

Extensive investigations are not required to be undertaken, or significant costs incurred, in completing the initial statutory report.

An initial statutory report is required to be lodged with ASIC by:

- external administrators and controllers—after forming a view that a person may have committed an offence in relation to the company or engaged in misconduct;
- liquidators—after forming a view that the company may be unable to pay its unsecured creditors more than 50 cents in the dollar; and
- liquidators in a simplified liquidation process—after forming an opinion that an offence has occurred that may have a material adverse effect on the interests of creditors.

External administrators and controllers must use their reasonably formed professional judgement in investigating and reporting possible offences and misconduct.

### In what circumstances is an initial statutory report required to be lodged with ASIC?

#### Obligation on liquidators

RG 16.13 A liquidator of a company (other than a liquidator in a simplified liquidation process) must:

- (a) lodge an initial statutory report with ASIC as soon as practicable, and in any event within six months, after it appears to the liquidator that:
  - (i) a past or present officer or employee, or a member or contributory, of the company may have been guilty of an offence under Australian law in relation to the company; or
  - (ii) a person who has taken part in the formation, promotion, administration, restructuring, management or winding up of the company may have:
    - (A) misapplied or retained, or become liable or accountable for, money or property of the company; or
    - (B) been guilty of any negligence, default, breach of duty or breach of trust in relation to the company; or

- (iii) the company may be unable to pay its unsecured creditors more than 50 cents in the dollar (see s533(1)); and
- (b) state in any initial statutory report lodged whether they propose to make an application for an examination or order under s597 (see s533(1)(d)).

RG 16.14 A liquidator of a company in a simplified liquidation process must lodge an initial statutory report with ASIC as soon as practicable, and in any event within six months, after first forming the opinion that there are reasonable grounds to believe that a person may have engaged in conduct constituting an offence that has had, or is likely to have, a material adverse effect on the interests of creditors as a whole, or a class of creditors as a whole: see s500AE(3)(f) and reg 5.5.05(2).

### **Obligation on voluntary administrators, receivers and managing controllers**

RG 16.15 Voluntary administrators, receivers and managing controllers must lodge an initial statutory report with ASIC as soon as practicable after forming an opinion that:

- (a) a past or present officer or employee, or a member, of the company may have been guilty of an offence under Australian law in relation to the company; or
- (b) a person who has taken part in the formation, promotion, administration, management or winding up of the company may have:
  - (i) misapplied, retained, or become liable or accountable for, money or property of the company; or
  - (ii) been guilty of any negligence, default, breach of duty or breach of trust in relation to the company: see s422(1) and 438D(1).

### **Court direction for lodgement**

RG 16.16 The court may also, on the application of an interested person, direct an external administrator or controller to lodge a report if:

- (a) it appears to the court that an offence may have been committed or a person has engaged in misconduct in relation to the company; and
- (b) the external administrator or controller has not lodged a report about the matter: see s422(3)–(4), 438D(3) and 533(3), or s500AE(3)(f) and reg 5.5.05(4).



## Guidance for preparing the initial statutory report

- RG 16.17 The Corporations Act does not specify the information to be included in the initial statutory report other than to require the external administrator or controller to report and to give ASIC such information, and such access to—and facilities for—inspecting and taking copies of any documents required: see s422(1)(d), 438D(1)(d) and 533(1)(e), or s500AE(3)(f) and reg 5.5.05(2)(d).
- RG 16.18 We have set out in RG 16.19–RG 16.41 our expectations about the exercise of professional judgement and the minimum steps required to complete and lodge the initial statutory report.

### What inquiries are required?

- RG 16.19 An external administrator or controller is not required to carry out extensive investigations prior to lodging the initial statutory report. It is also not necessary for the external administrator or controller to have completed all inquiries or to have formed definitive views for the initial statutory report.

- RG 16.20 We expect that external administrators and controllers will complete the following steps:
- (a) Exercise professional judgement in deciding what investigations to undertake, taking into account available information on the size and nature of the company’s business and the extent of company property. The use of available funds to complete inquiries should be carefully considered against the use of funds for other purposes—including, the potential for returns to creditors and members.
  - (b) Seek access to the books and records of the company.
  - (c) Interview the director(s) and staff holding key roles (if within jurisdiction) and maintain a written record of the information obtained.
  - (d) Consider whether any offences or misconduct have occurred and whether evidence exists, or is likely to be obtained, to support further action by ASIC.

Note: An external administrator or controller may consider that more extensive inquiries are required to be undertaken in the circumstances following receipt of the books and records and information gained in the interviews.

- RG 16.21 In complying with the reporting obligations, the courts have held the following in respect of the obligation on liquidators under s533(1) (which is similar to the obligation on other external administrators and controllers under s422(1) and 438D(1)):
- (a) It is not necessary for a liquidator to form a ‘concrete opinion’ before reporting—only to report if it appears certain things may have occurred. Further, it is not necessary to express any view or opinion in the report,

or to set out the basis for the view or opinion expressed. Nor is the liquidator required to have reasonable grounds for holding the opinions or views. However, a liquidator is obliged to act bona fide and must not express views which are not genuinely held.

Note 1: See *Murdaca v Australian Securities and Investments Commission* [2009] FCAFC 92 at [100].

Note 2: In considering whether an offence or misconduct should be reported, we encourage external administrators to have regard to the guidance relating to reports funded under the [Assetless Administration Fund](#) in [Annexure A to Grant Guidelines: Allegations of possible misconduct—Substantiation guide](#) on the ASIC website. However, it is not necessary to hold the evidence set out in the guidance when reporting a matter in the initial statutory report, as long as the view expressed is genuinely held.

- (b) If a liquidator has suspicions rather than opinions this should be made clear in the report. If a liquidator expresses an opinion based on supporting evidence, they should believe the evidence is reliable.

Note: See *Joubert and Members of the Companies Auditors and Liquidators Disciplinary Board* [2018] AATA 944 at 94.

- (c) A liquidator may form a view before they obtain all the books and records of the company. The liquidator is required to investigate the affairs of the company in liquidation, but the extent of investigation undertaken will be constrained by the available resources.

Note: See *Australian Securities and Investments Commission v Bettles* [2023] FCA 975 at 745 to 746.

- (d) A liquidator is not required to incur significant expense in getting the books for the purpose of preparing a report.

Note: See the cases cited in *Australian Securities and Investments Commission v Wily & Hurst* [2019] NSWSC 521 at 83 to 87.

- (e) A liquidator is required to perform their duties in accordance with high standards of impartiality, probity and competence.

Note: See *Australian Securities and Investments Commission v Robert John Edge* [2007] VSC 170 at 639.

## How do I complete the initial statutory report?

RG 16.22 ASIC has a form (also referred to as a ‘transaction’) available on the [ASIC Regulatory Portal](#) that external administrators and controllers must use to complete the initial statutory report. The form uses conditional logic, with ongoing questions dependent on the answers to earlier questions. There is an option to provide attachments, if required.

Note: See Section D for further information on lodging the initial statutory report.

- RG 16.23 We encourage external administrators and controllers to select from the standard response options where possible and to keep any free text responses brief (i.e. a maximum of two paragraphs).
- RG 16.24 The information gathered through this form is used to consider what action, if any, will be taken in response to the report.

**What if no possible offences or misconduct are identified (or the only issue is that the company may be unable to pay unsecured creditors more than 50 cents in the dollar)?**

- RG 16.25 We do not expect that an external administrator or controller will identify possible offences or misconduct in all appointments that would require them to lodge an initial statutory report. We consider that the mere fact that a company has failed does not in and of itself create evidence that an offence or misconduct has occurred.
- RG 16.26 If the only issue identified by a liquidator is that the company may be unable to pay its unsecured creditors more than 50 cents in the dollar, the liquidator will need to lodge an initial statutory report only selecting this option (i.e. not selecting any offences) and complete the relevant questions.

**What if there are no company books?**

- RG 16.27 An external administrator or controller has powers under the Corporations Act to obtain and inspect the books of a company to which they have been appointed: see s431, 438B, 477(3) and 530A–530C.
- RG 16.28 An external administrator or controller should take steps to obtain and conduct preliminary investigations into the company's books and affairs before lodging an initial statutory report that alleges possible offences or misconduct. However, it is not necessary to have reviewed all of the books and records prior to reporting.

Note: The level and nature of the investigations conducted will depend on the type of appointment, the company's circumstances and the extent of company property: see RG 16.20–RG 16.21.

- RG 16.29 If an external administrator or controller needs assistance to obtain a [report on company activities and property](#) or the company books, they can submit a *Request assistance for external administration* transaction through the [ASIC Regulatory Portal](#). For assistance with preparing this transaction, see [Request assistance for external administration](#) on the ASIC website.

RG 16.30 Any failure of the company to maintain adequate books and records is an offence and should be reported to ASIC in the initial statutory report.

Note: A person commits an offence if they fail to keep written financial records that:

- correctly record and explain the company's transactions and financial position and performance, and
- would enable true and fair financial statements to be prepared and audited: see s286.

### **What if there are insufficient assets?**

RG 16.31 In many external administration or controller appointments there may be insufficient property available to pay the expenses and remuneration of the external administrator or controller (an unfunded appointee). An unfunded appointee must still comply with their statutory obligation to prepare and lodge an initial statutory report of possible offences or misconduct.

RG 16.32 Where there is finite property available, the level of inquiries that are required to be undertaken will be more limited: see RG 16.20–RG 16.21.

Note: Nothing in s545(1) relieves a liquidator of the obligation to report under any provision of the Corporations Act, even if the liquidator is unfunded: see s545(3).

### **What if there are concurrent appointments?**

RG 16.33 Multiple external administrators or controllers can be appointed to a company, either concurrently or at different times.

RG 16.34 Each external administrator or controller must report possible offences. For joint and several appointments, the external administrators or controllers can report jointly and severally.

RG 16.35 If a first appointee is subsequently replaced, the incoming external administrator or controller should consider whether they need to lodge a report to comply with the reporting obligations. The reporting obligations do not provide that an incoming external administrator or controller can rely on a report lodged by the first appointee. It will be necessary for the incoming external administrator to lodge their own report if required: see s422(1), 438D(1) and 533(1), or s500AE(3)(f) and reg 5.5.05.

RG 16.36 We consider it is appropriate for the incoming appointee to take into account the information in any prior report submitted and any available work papers as a starting point for their reporting to ASIC. The incoming appointee should then exercise their discretion to determine whether any further inquiries are necessary, or would be duplicative or costly.

## What happens after an initial statutory report is lodged?

- RG 16.37 We will assess the initial statutory report once it is lodged. We may use digital tools to make an initial assessment of the report.
- RG 16.38 Our assessment of the report is based on a number of factors, including the nature of the possible offences and misconduct reported, the amount of liabilities, the deficiency suffered, the availability of evidence and any prior misconduct by directors.
- RG 16.39 Following our assessment, we may:
- (a) advise that we propose to take no further action;
  - (b) request that further information be submitted in a supplementary statutory report through the [ASIC Regulatory Portal](#) (see Section D); or
  - (c) use the information in the report for the purposes outlined in Section E.
- RG 16.40 We consider that, in most cases, external administrators and controllers who submit an initial statutory report will have complied with their obligation to report possible offences and misconduct and that no further steps are required.
- RG 16.41 An external administrator or controller may consider that, after completing and submitting the initial statutory report through the [ASIC Regulatory Portal](#), there are other matters that should be brought to ASIC's attention. In these circumstances, the external administrator or controller should consider submitting either:
- (a) another initial statutory report focusing on possible offences or misconduct; or
  - (b) a supplementary statutory report: see Section D.

Note: External administrators and controllers may lodge multiple initial statutory reports with ASIC if they identify possible offences or misconduct that must be reported.

## What if I have further questions in relation to preparing an initial statutory report?

- RG 16.42 If you have additional questions in relation to the preparation of an initial statutory report, you can email [ISRandSSR.Questions@asic.gov.au](mailto:ISRandSSR.Questions@asic.gov.au).

## Qualified privilege

- RG 16.43 In the absence of malice on their part, an external administrator or controller who lodges a report of possible offences or misconduct for the purpose of satisfying the reporting obligations will have statutory immunity (qualified privilege) from liability for defamation in respect of statements made or matters contained in the report: see s426, 442E or 535.
- RG 16.44 Only external administrators, controllers and provisional liquidators have statutory qualified privilege.

## C Supplementary statutory report

### Key points

A supplementary statutory report expands upon the information provided in the initial statutory report.

An external administrator or controller may lodge a supplementary statutory report about matters desirable to bring to our attention or may be directed to lodge the report by the court.

In most cases, we do not expect that it will be necessary for an external administrator or controller to lodge a supplementary statutory report.

We may request lodgement of a supplementary statutory report. We expect external administrators and controllers to critically assess any request from ASIC to lodge a supplementary statutory report and notify us if there are grounds that the report should not be lodged.

### In what circumstances is a supplementary statutory report required to be lodged with ASIC?

RG 16.45 An external administrator or controller may lodge a supplementary statutory report specifying any other matter that, in their opinion, is desirable to bring to our notice: see s422(2), 438D(2) and 533(2), or s500AE(3)(f) and reg 5.5.05(3). If there are concurrent appointments, the external administrators or controllers of each appointment must assess whether a supplementary statutory report is required.

RG 16.46 A supplementary statutory report may be lodged:

- (a) at the exercise of the external administrator's or controller's discretion (which may be informed by a request from ASIC); or
- (b) when a court, on the application of an interested person, directs an external administrator or controller to lodge a report: see s422(3)–(4), 438D(3) and 533(3), or s500AE(3)(f) and reg 5.5.05(4).

Note: An external administrator or controller may lodge multiple supplementary statutory reports if they form the view that there are other matters to bring to ASIC's attention.

RG 16.47 We do not generally expect that it will be necessary for external administrators and controllers to lodge a supplementary statutory report with ASIC.

RG 16.48 The exceptions are where the court has directed lodgement of a report on a matter not covered in any earlier report, or the external administrator or controller considers there are additional matters that in their opinion are desirable to bring to ASIC's attention.

RG 16.49 We assess the information provided in the initial statutory report and/or other intelligence available to ASIC, and may request further information in the form of a supplementary statutory report. This request may also inform the decision of an external administrator or controller to lodge a report.

Note 1: When we request a supplementary statutory report, an external administrator or controller may submit a notice of intention not to lodge a supplementary report transaction: see RG 16.53–RG 16.55.

Note 2: It may be appropriate for an external administrator or controller to lodge a supplementary statutory report even when we have not requested a report and have advised that we will take no further action in relation to the initial statutory report. An external administrator or controller may still conclude that it is desirable to bring any other matter to the notice of ASIC, by lodging a supplementary statutory report.

## Guidance for preparing the supplementary statutory report

RG 16.50 If an external administrator or controller decides to lodge a supplementary statutory report, we request that the report focus on providing additional information on possible offences and misconduct and supporting evidence. We cannot act on every report of possible offences and misconduct and a concise report that focuses on information that is likely to support the existence of a breach will assist us to take further action where appropriate. If we require additional information to assist our assessment, we will contact the external administrator or controller. We do not expect that extensive time and costs should be incurred in preparing the report.

RG 16.51 In deciding whether to report, external administrators and controllers should carefully assess:

- (a) the costs associated with undertaking any additional investigations required to prepare the report. The use of available funds to complete further inquiries should be carefully considered against the use of funds for other purposes—including the potential for returns to creditors and members;
- (b) whether there is significant new information to report, given the content of the initial statutory report; and
- (c) whether there is sufficient supporting evidence in relation to the possible misconduct.

Note 1: In considering whether to prepare a supplementary statutory report, we encourage external administrators and controllers to consider the guidance relating to reports funded under the [Assetless Administration Fund](#) in [Annexure A to Grant Guidelines: Allegations of possible misconduct—Substantiation guide](#) on the ASIC website.

Note 2: Information Sheet 151 *ASIC's approach to enforcement (INFO 151)* sets out guidance for people who report misconduct to ASIC and may also assist external administrators and controllers in assessing whether to complete a supplementary statutory report.

## Qualified privilege

RG 16.52 Qualified privilege will also generally attach to the supplementary statutory report: see RG 16.43–RG 16.44.

## What if ASIC requests a supplementary statutory report and no grounds exist to lodge one, or there are no funds to prepare it?

RG 16.53 When we request that a supplementary statutory report be lodged, we recognise that an external administrator or controller may take the view that:

- (a) they hold no further information or evidence to support the matters reported in their initial statutory report and the matters do not warrant further inquiries by ASIC;
- (b) they have insufficient funds to meet the cost of preparing the supplementary statutory report; or
- (c) for other reasons, it is not appropriate for the supplementary statutory report to be prepared.

RG 16.54 In those cases, we request that an external administrator or controller submit a *Notice of intention not to lodge a supplementary report* transaction through the [ASIC Regulatory Portal](#) as soon as practicable (and prior to commencing any work on preparing the supplementary statutory report). This notice should clearly specify the reasons why they do not propose to lodge a supplementary statutory report.

Note: For assistance with preparing this transaction, see [Notice of intention not to lodge an insolvency supplementary report](#) on the ASIC website.

RG 16.55 Where there are insufficient funds, an unfunded appointee (but not a voluntary administrator or controller) should consider whether it is appropriate to [apply for grant funding from the Assetless Administration Fund](#) to investigate and prepare a supplementary statutory report. To be eligible for funding, the initial statutory report must have been lodged with ASIC. If an unfunded appointee's application for funding is approved, we may have specific requests regarding the content of the report, which we will discuss with them separately.

Note: See the guidance relating to the [Assetless Administration Fund](#) on the ASIC website for further details. If you have questions in relation to making an application to the Assetless Administration Fund, you can email [AAF@asic.gov.au](mailto:AAF@asic.gov.au).



### **What happens after a supplementary statutory report is lodged?**

RG 16.56 We will assess the supplementary statutory report once it is lodged.

RG 16.57 Following our assessment, we may:

- (a) use the information in the report for the purposes outlined in Section E;  
or
- (b) advise that we propose to take no further action.

### **What if I have further questions in relation to preparing a supplementary statutory report?**

RG 16.58 If you have additional questions in relation to the preparation of a supplementary statutory report, you can email.

[ISRandSSR.Questions@asic.gov.au](mailto:ISRandSSR.Questions@asic.gov.au).

## D Lodging an initial statutory report or supplementary statutory report with ASIC

### Key points

External administrators and controllers (other than liquidators) are required to lodge the initial statutory report as soon as practicable after forming the view that a possible offence or misconduct has occurred. Specific timeframes apply to lodgements by liquidators.

We strongly encourage external administrators and controllers to lodge the initial statutory report within four months of their appointment to assist our timely assessment of the issues raised in the report.

There is no specific timeframe for lodgement of the supplementary statutory report. However, we strongly encourage external administrators and controllers to lodge the report within three months of lodging the initial statutory report or receiving a request to lodge from ASIC.

Initial statutory reports and supplementary statutory reports should be lodged through the [ASIC Regulatory Portal](#).

### Timeframes for lodging reports

#### Timeframe for lodging the initial statutory report

- RG 16.59 The statutory timeframe for lodging the initial statutory report is as follows:
- (a) For external administrators and controllers that are not liquidators—**as soon as practicable** after forming an opinion that a possible offence or misconduct has occurred.
  - (b) For liquidators (other than a simplified liquidation process)—**as soon as practicable and in any event within six months** after forming an opinion that a possible offence or misconduct has occurred, or it appears that the company may be unable to pay its unsecured creditors more than 50 cents in the dollar.
  - (c) For liquidators in a simplified liquidation process—**as soon as practicable and in any event within six months** after first forming the opinion that a person may have engaged in conduct that constitutes an offence that has, or is likely to have, a material adverse effect on the interests of creditors as a whole, or a class of creditors as a whole.
- RG 16.60 Notwithstanding the statutory timeframes, we strongly encourage liquidators to lodge the initial statutory report **within four months of the date of appointment**. We also encourage voluntary administrators, receivers and

managing controllers, to report **within four months of the date of appointment** if their appointment will extend beyond four months.

Note: We consider this timeframe is appropriate for liquidators given their separate obligation to report to creditors within three months of appointment: see s70-50 of Sch 2.

RG 16.61 Lodging within four months enables us to promptly receive information about possible offences and misconduct and, where appropriate, either request a supplementary statutory report, commence an investigation or take further action.

RG 16.62 When we decide whether to investigate or take further action in relation to a report, we consider:

- (a) the passage of time since the misconduct occurred;
- (b) the availability of witnesses to give evidence; and
- (c) whether documentary evidence is in our possession, or likely to become available, to prove the alleged misconduct.

Note: [INFO 151](#) sets out our approach to enforcement.

RG 16.63 Our ability to take action for older misconduct can be limited or have less impact simply due to the passage of time. Further, with the passage of time the reliability of witnesses to give accurate evidence can also be impacted.

RG 16.64 Timely lodgement may also assist external administrators and controllers to manage the cost of investigation and reporting.

### **Timeframe for lodging the supplementary statutory report**

RG 16.65 There is no specific timeframe specified in the Corporations Act for lodging the supplementary statutory report.

RG 16.66 We strongly encourage an external administrator or controller to lodge the report **within three months of:**

- (a) lodging the initial statutory report; or
- (b) receiving a request from ASIC to prepare the supplementary statutory report, if applicable.

Note: If a report is prepared with funding from the [Assetless Administration Fund](#), the report should be prepared within the timeframe specified in the grant agreement.

RG 16.67 We consider that this timeframe will generally be achievable for an external administrator or controller based on the level of inquiries expected to be undertaken. Again, the timely provision of information to ASIC is important and assists us to commence an investigation or take further action, where appropriate.

RG 16.68 We recognise that in some cases external administrators and controllers may need additional time to lodge the report. For example, public examinations or litigation may result in further information and a decision to lodge the report at a later time. It may be appropriate to report to ASIC as and when information becomes available.

## How to lodge the reports

RG 16.69 Initial statutory reports and supplementary statutory reports should be submitted electronically through the [ASIC Regulatory Portal](#).

RG 16.70 Electronic lodgement allows us to:

- (a) capture data in a consistent, structured and timely manner; and
- (b) quickly analyse information provided by external administrators and controllers and initiate regulatory and enforcement responses where appropriate.

RG 16.71 Where an external administrator or controller is, for good reason, unable to lodge through the ASIC Regulatory Portal, we may accept a report in paper form if it includes the same information as requested in the online report. A copy of the paper form should be sent to [exadreports@asic.gov.au](mailto:exadreports@asic.gov.au).

## E How ASIC uses initial statutory reports and supplementary statutory reports

### Key points

We may investigate matters raised in reports of possible offences and misconduct lodged by external administrators and controllers.

We cannot act on every report of possible offences and misconduct. We consider a range of factors when deciding whether to investigate, and what enforcement action to take, if any, in relation to reports lodged by external administrators and controllers.

We also use information from these reports for other regulatory, statistical and intelligence purposes.

### How we use information in reports lodged under this guide

- RG 16.72 We use the information in reports of possible offences and misconduct to:
- (a) decide whether further action is required in relation to the affairs of an insolvent company;
  - (b) identify areas for future regulatory action or to provide information and/or guidance; and
  - (c) collate information and use it for statistical purposes. We publish these [insolvency statistics](#) on our website.
- RG 16.73 Our decision about whether further action is required in relation to the affairs of a company is assisted by the provision of specific and timely information.

### Use of the information for enforcement or regulatory action

- RG 16.74 Under s13 or 15 of the ASIC Act, we may investigate matters raised in reports of possible offences and misconduct lodged by external administrators and controllers and may take one or more of the following actions:
- (a) institute enforcement proceedings against a person (by commencing appropriate civil, criminal or administrative proceedings);
  - (b) release information to a more appropriate law enforcement agency in accordance with s127 of the ASIC Act;
  - (c) release (under s25 of the ASIC Act) copies of transcripts of relevant examinations conducted under s19 of the ASIC Act, and of related

books, to the lawyer of an external administrator or controller or another person who is conducting proceedings, or is contemplating them in good faith; or

- (d) having considered the report, inform the external administrator or controller that the matter is one in respect of which we do not intend to institute proceedings or release information.

Note: An external administrator or controller can take action under the general law and/or s534 (if they are the liquidator of the company) by commencing legal proceedings in relation to the misconduct. In addition, they may apply under div 1 of Pt 5.9 (if they are an eligible applicant) for an officer or former officer of the company to which they have been appointed (or a person who may have been guilty of misconduct in relation to the company) to be examined in court about the company's examinable affairs.

RG 16.75 We cannot act on every report of possible offences and misconduct. Factors we consider when deciding whether to investigate, and what enforcement action to take, if any, vary according to the nature and circumstances of the suspected misconduct. Relevant factors are set out in [INFO 151](#).

RG 16.76 Information we receive in statutory reports from external administrators and controllers, whether we take further action or not, may inform other regulatory operations and be used to:

- (a) select future cases for investigation and enforcement action (including sharing of intelligence with other enforcement agencies and taskforces where appropriate and in accordance with the legislative requirements for sharing that information);
- (b) identify future targets for surveillance and inspection; and
- (c) shape future education campaigns or inform our public communications, warnings and guidance.

## Use of information for intelligence and statistical purposes

RG 16.77 We use the information we receive in initial statutory reports for intelligence and statistical purposes. If we publish statistics based on the information we receive in a report, the data is collated in an aggregated and anonymous form and does not identify information about an individual company or person.

Note: For example, information from the initial statutory reports is aggregated and published as [Series 3 statistics](#) on the ASIC website.

RG 16.78 The information we gather and publish from the initial statutory reports provides valuable information to stakeholders about the size and nature of company failures in Australia.

- RG 16.79 To ensure that the information we review and publish is accurate and current, we encourage external administrators and controllers to lodge the initial statutory report within four months from appointment: see Section D.
- RG 16.80 In addition to using supplementary statutory reports to decide whether further regulatory or enforcement action is required, we also extract information and use it for intelligence purposes.

## Release of information

- RG 16.81 The statutory reports lodged with ASIC are not available on ASIC's public register and the fact that the reports may have been lodged is also not publicly available.
- RG 16.82 However, reports and other documents that are not made available on ASIC public registers may be disclosed to persons outside of ASIC in limited circumstances, for example:
- (a) during ASIC-initiated enforcement proceedings;
  - (b) where compelled by compulsory notice (e.g. by subpoena); or
  - (c) in response to a request made under the *Freedom of Information Act 1982* (FOI request); or
  - (d) a release otherwise permitted under the ASIC Act.

Note 1: Before disclosing a report of possible misconduct under an FOI request, we will generally consult the external administrator or controller to enable them to make submissions about the FOI request.

Note 2: For further information on the release of information in accordance with the ASIC Act, see Regulatory Guide 103 *Confidentiality and release of information* ([RG 103](#)).

- RG 16.83 We will also share intelligence obtained from the statutory reports with other agencies as appropriate and permitted under law.

## Key terms

Term	Meaning in this document
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
ASIC public registers	The prescribed registers ASIC maintains under the Corporations Act, including registers of companies, auditors, liquidators and company charges, which are accessible by the public
controller	For the purposes of this guide, a receiver or managing controller appointed in relation to property of a corporation
controller appointment	Where a receiver or managing controller has been appointed in relation to property of a corporation
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of the Act
external administration	For the purposes of this guide, a voluntary administration, and liquidation (but not including a provisional liquidation)
external administrator	A voluntary administrator and liquidator (but not including a provisional liquidator)
reg 5.5.05 (for example)	A provision of the <i>Corporations Regulations 2001</i> (in this example, number 5.5.05)
registered liquidator	A person registered by ASIC under Div 20-30 of Sch 2
RG 16 (for example)	A regulatory guide (in this example, numbered 16)
s422 (for example)	A section of the Corporations Act (in this example, numbered 422), unless otherwise specified
Sch 2	Schedule 2 of the Corporations Act
voluntary administrator	An administrator of a company but not of a deed of company arrangement



## Related information

### Headnotes

external administrators, reporting obligations, initial statutory reports, possible offences and misconduct by a company, dividends of 50 cents in the dollar, supplementary statutory reports, controllers, managing controllers, receivers, receivers and managers, voluntary administrators, administrators of a deed of company arrangement, liquidators, provisional liquidators, qualified privilege

### Regulatory guides

[RG 103](#) *Confidentiality and release of information*

[RG 258](#) *Registered liquidators: Registration, disciplinary actions and insurance requirements*

### Information sheets

[INFO 29](#) *External administration, controller appointments and schemes of arrangement: Most commonly lodged forms*

[INFO 151](#) *ASIC's approach to enforcement*

### Consultation papers

[CP 377](#) *Guidance for reporting by external administrators and controllers: Updates to RG 16*

### Reports

[REP 793](#) *Response to submissions on CP 377 Guidance for reporting by external administrators and controllers*

### Legislation

*Australian Securities and Investments Commission Act 2001*, s13, 15, 19, 25, 127

*Corporations Act 2001*, s286, 422, 426, 431, 438D, 442E, 477(3). 500AE, 530A–530C, 533, 534, 535, 545, 597

*Corporations Regulations 2001*, reg 5.5.05

*Freedom of Information Act 1982*

## **Cases**

*Australian Securities and Investments Commission v Bettles* [2023] FCA 975

*Australian Securities and Investments Commission v Robert John Edge*  
[2007] VSC 170

*Australian Securities and Investments Commission v Wily & Hurst* [2019]  
NSWSC 521

*Joubert and Members of the Companies Auditors and Liquidators  
Disciplinary Board* [2018] AATA 944

*Murdaca v Australian Securities and Investments Commission* [2009]  
FCAFC 92