Australian Securities and Investments Commission

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30 June 2025

Mr Simon John Raftery
s 47F [redacted]
BURRANEER NSW 2230

Dear Mr Raftery

Notice of disqualification from managing corporations

I have decided to disqualify you from managing corporations for two years and six months.

I enclose by way of service:

1. a copy of the Notice of disqualification from managing corporations dated 30 June 2025, which takes effect when it is given to you;
2. my reasons for decision;
3. an extract of s206A of the *Corporations Act 2001*; and
4. an information sheet called "*ASIC decisions - your rights*", which sets out the rights you have relating to my decision.

Yours faithfully

Phillip Mines

Phillip Mines
Delegate of the Australian Securities and Investments Commission

Form 587

Corporations Act 2001
Subsection 206F(3)

Notice of disqualification from managing corporations

IN THE MATTER of Simon John Raftery

ASIC has given you notice in the prescribed form requiring you to demonstrate why you should not be disqualified from managing corporations and has given you an opportunity to be heard on the question.

TAKE NOTICE THAT having regard to the Notice to Demonstrate Why Disqualification Should Not Occur dated 15 August 2024 issued by Melanie Baxter and your opportunity to be heard ASIC is satisfied that your disqualification pursuant to section 206F of the Corporations Act 2001 is justified.

YOU ARE DISQUALIFIED from the time of service of this notice for a period of **TWO YEARS AND SIX MONTHS** from managing corporations without the leave of ASIC.

Your attention is specifically directed to section 206A of the Corporations Act 2001.

Dated this 30th day of June 2025

Phillip Mines

Signed

Phillip Mines
Delegate of the Australian Securities and Investments Commission

Private and Confidential

In the matter of s206F of the Corporations Act 2001 (Cth)

and Simon Raftery

ASIC delegate: Phillip Mines

Date of decision: 30 June 2025

DECISION

That Simon John Raftery be disqualified from managing corporations under s206F of the *Corporations Act 2001 (Cth)* for a period of two years and six months.

REASONS FOR DECISION

All statutory references are to the Corporations Act 2001 unless otherwise specified.

Background

1. Mr Raftery has been the director of five failed corporations which formerly operated in the food business, namely :

   a. Aussie Frozen Fruit Pty Ltd ACN 629 996 130 (**AFF**)
   b. In2Food (WA) Pty Limited A.C.N. 654 116 391 (**In2 Food WA**)
   c. In2Food (Industrial) Pty Limited ACN 654 114 913 **(In2 Food Industrial)**
   d. In2Food (Manufacturing) Pty Limited ACN 654 113 381 (**In2 Food Manufacturing)** and
   e. In2Food (Operations) Pty Limited ACN 654 111 476 (**In2 Food Operations)**.

2. In2 Food WA, In2 Food Industrial, In2 Food Manufacturing and In2 Food Operations were effectively run as a single enterprise known as In2Food Group (**In2Food Group**) .

3. Both AFF and In2Food Group were run as two arms of a business under the name of Produce Republic. AFF operated a business for the processing and production of frozen fruit for retail sale. In2Food Group operated a business which sourced fresh fruit and vegetables for customers and also offered prepared produce for food service, catering, corporate and retail customers.

4. Mr Raftery is the managing director of a private investment firm Remagen Capital Management Pty Ltd (**Remagen**), which managed a pool of funds on behalf of high net worth investors and institutional investors. Remagen was the primary source of funding and of working capital for AFF and In2Food Group. Mr Raftery also contributed significant funding from personal and family sources.

5. Mr Raftery was the controller and guiding mind of both AFF and the members of In2Food Group. For both AFF and In2Food Group, he engaged a professional

management team with appropriate qualifications and experience to run the businesses on a daily basis.

6. In his role as director of AFF and of the members of In2Food Group, Mr Raftery engaged with the respective management teams on a regular basis and was involved in the making of key decisions, as well as receiving regular email reports regarding business issues.

7. In2Food Group's business had been purchased from a related company which had entered insolvency. Mr Raftery stated that the business had deteriorated financially between the decision to purchase it and the change of control and that ultimately it had become a black hole for funding.

8. Both businesses suffered adverse external events. AFF's business and reputation were affected when fruit from overseas was falsely represented as being Australian. There were shortages; some suppliers provided poor-quality fruit which needed to be disposed of; and the Covid pandemic affected the operation of the business. Both businesses had considered plans for turnaround, however neither were successful.

9. Ultimately, further funding from Remagen ceased and Mr Raftery resigned as a director of all five corporations. Mr Raftery has stated that he resigned due to the conflict of interest arising from his position with Remagen at the time when Remagen had decided not to provide further funding, which caused the immediate cessation of AFF and In2Food Group's trading.

10. The liquidators have estimated that investors will receive no more than $50c in the dollar. Remagen and Mr Raftery are the major losers in the collapse of AFF and In2Food. There are also significant sums owed to ATO.

11. ASIC does not allege any fraud or dishonesty on the part of Mr Raftery. In addition, I do not draw any adverse inferences from the fact that Mr Raftery resigned as director immediately before the appointment of insolvency practitioners.

<u>What is this matter about?</u>

12. ASIC was concerned that Mr Raftery may have contravened his obligations as a director of each of the above corporations. ASIC therefore sought the making of a disqualification order against Mr Raftery under s206F.

13. Given its concerns, on 15 August 2024 ASIC issued to Mr Raftery a Notice to demonstrate why he should not be disqualified from managing corporations. The Notice was accompanied by a document marked "Attachment A" which set out details of ASIC's concerns in relation to Mr Raftery's conduct

14. ASIC's concerns, asset out in Attachment A, can be summarised as follows:

a. Section 588G insolvent trading with respect to both AFF and In2Food Group.
b. Section 344(1) failure to keep required records for AFF
c. Section 180 lack of care and diligence leading to breach of obligations to file Business Activity Statements for In2FoodWA

15. In response to ASIC's concerns, Mr Raftery made written submissions and attended a hearing on 4 February 2024. In making my decision I have taken Mr Raftery's written and oral submissions into account.

16. Mr Raftery accepts that both AFF and In2Food Group were unprofitable for an extended period but does not accept that they were insolvent. Mr Raftery submits that that sufficient working capital was always available from Remagen and from his personal sources.

17. The issues before me are:

    a. Does ASIC have the power to disqualify Mr Raftery under s206F?
    b. If so, what action should ASIC take in response?

18. Based on the materials before me, I am satisfied that ASIC has the power to disqualify Mr Raftery under s206F.

19. I find that ASIC should make an order disqualifying Mr Raftery for a period of two years and six months.

<u>Does ASIC have the power to disqualify Mr Raftery under s206F?</u>

20. Section 206F provides that ASIC may disqualify a person from managing corporations for up to 5 years if, within 7 years immediately before ASIC gives a Notice to demonstrate under s206F(1)(b)(i):

    a. The person has been an officer of 2 or more corporations (**s206F(1)(a)(i)**); and
    b. While the person was an officer, or within 12 months after the person ceased to be an officer of those corporations, each of the corporations was wound up and a liquidator lodged a report under subsection 533(1) about the corporation's inability to pay its debts (**s206F(1)(a)(ii)**);
    c. ASIC has given the person a Notice (**s206F(1)(b)(i)**) and an opportunity to be heard (**s206F(1)(b)(ii)**).

    and

    d. ASIC is satisfied that the disqualification is justified (**s206F(1)(c)**).

21. Mr Raftery accepts that the preconditions for the making of a disqualification order set out in s206F(1)(a) and s206F(1)(b) have been met.

<u>Is disqualification justified for the purpose of s206F(1)(c)?</u>

22. Section 206F(2) provides that in determining whether disqualification is justified, ASIC must have regard to whether any of the relevant corporations were related to one another. In addition, ASIC may have regard to the following:

    a. the person's conduct in relation to the management, business or property of any corporation
    b. whether the disqualification would be in the public interest; and
    c. any other matters that ASIC considers appropriate.

Were the relevant corporations related?

23. The issue of whether the relevant corporations are related is relevant when considering whether the failure of each corporation should be regarded as a discrete collapse, or whether multiple failures should in fact be regarded as the failure of a single overall operation.

24. In the present matter, I am satisfied that all members of In2Food Group were run as a single enterprise and that In2Food and AFF were together operated as divisions of a single business. AFF and In2Food had common management teams, back-office staff, supplied and financiers.

25. For the purpose of s206F(2), I find that all five relevant corporations were related.

26. I accept that this is a factor against any finding that disqualification would be justified in the present matter. However, I note that even if all relevant corporations are related, ASIC may nevertheless be satisfied that that disqualification is justified, provided the circumstances of the case and other relevant matters support that conclusion.

<u>What was Mr Raftery's conduct in the management of corporations?</u>

27. As a general matter, and noting my finding above that all relevant corporations were operationally related , I accept Mr Raftery's submission that his conduct in the management of AFF and the members of In2Food Group should be assessed on the basis that it occurred within the context of a single business failure rather than a succession of business failures.

28. I note however that Mr Raftery in his position as director of each of the five relevant corporations was still required to comply with his specific duties as a director of each relevant corporation.

<u>Mr Raftery's conduct in AFF</u>

29. Mr Raftery was appointed as a director of AFF on 4 July 2019 and ceased to be a director on 10 May 2023.

30. AFF was would up on 12 May 2023 with an estimated total deficiency of $45,710,568.

31. Unsecured creditors totalled $10,364,278 and included $18,720 owing to ATO for Running Balance Account (RBA) deficit debt in respect of BAS amounts as at 12 May 2023, and $148,603 owing to the Department of Employment and Workplace Relations.

32. The liquidator considers the causes of AFF's failure were:

    a. Poor financial control including lack of records
    b. Inadequate cash flow or high cash use
    c. Trading losses; and
    d. Directors Breaches, including continued accrual of liabilities.

33. Mr Raftery was a director of AFF and was therefore responsible for its day-to day management, which included the preparation and maintenance of written financial records.

<u>Section 588G</u>

34. ASIC was concerned that Mr Raftery may have contravened s588G in that:

    a. AFF made losses throughout the three years and required continual injections from Remagen to fund ongoing operations. The net losses before tax for the 2021, 2022 and 2023 financial year to the date of liquidation were:

        i. 2021 financial year : $7,171,000
        ii. 2022 financial year: $8,794,000
        iii. 1 July 2022 to 12 May 2023: $11,712,000

    b. AFF was insolvent at the time it incurred those debts as it had been insolvent from 1 October 2021.
    c. There were reasonable grounds for suspecting AFF was insolvent at the time it incurred the debts as:

        i. Between 1 October 2021 to 12 May 2023:
            1. Financial statements disclosed a history of serious shortage of working capital and unprofitable trading.
            2. Poor or deteriorating cash flow or evidence of dishonoured payments.
            3. Difficulties in paying debts when they fell due (e.g., evidenced by letters of demand, recovery proceedings, increasing age of accounts payable)
            4. Non-payment of statutory debts (e.g., PAYGW, SGC, GST).
            5. Poor or deteriorating working capital.
            6. Increasing difficulties collecting debts.
            7. Overdraft and/or other finance facilities at their limit.
            8. Evidence of creditors attempting to obtain payment of outstanding debts.

ii. From September 2021, AFF's asset position fell to a point that it did not hold sufficient liquid assets that it could quickly realise to provide funds to help meet current liabilities.

iii. As at 30 September 2021, the current ratio was 0.93 and the date of insolvency determined to be 1 October 2021 as current ratio continued to diminish past this point.

iv. As at the date of liquidation, 82% of AFF's trade creditor debts were 90+ days overdue.

d. As at 15 May 2024, the liquidator has provided ASIC with the proof of debts which amount to $6,213,289.37.

e. Mr Raftery was a director of AFF at the time it incurred the debts.

f. Mr Raftery was aware that at the time AFF incurred the debts, there were grounds for suspecting AFF was insolvent, or a reasonable person in Mr Raftery's position in AFF's circumstances would have been so aware.

g. Mr Raftery failed to prevent AFF from incurring the debts.

35. Mr Raftery has submitted that the majority of outstanding debts were incurred during the period from December 2022 onwards, and were incurred largely for the purchase of fruit on a seasonal basis. Mr Raftery further submitted that he had provided millions of dollars from his own resources towards working capital during this period.

36. Based on materials available to me, I am satisfied that AFF was insolvent during the final six months of trade, during which it incurred significant additional debts to trade creditors. I am satisfied that Mr Raftery was aware of the insolvency of AFF throughout this period.

37. Based upon this, I am satisfied that Mr Raftery has contravened s588G.

<u>Section 344(1)</u>

38. ASIC was concerned that Mr Raftery had contravened s344(1) by by failing to take all reasonable steps to secure compliance by AFF with its obligation to keep the written financial records required by s286(1).

39. The liquidator reported that that the following documents were not provided by the directors:

a. Financial statements
b. Monthly or other Management Accounts
c. Taxation records

d. General ledgers and Journals, or Working Papers
e. Bank Statements
f. Cash Records (or electronic equivalent)
g. Sales and Debtor Records
h. Creditor and Supplier Records
i. Invoices and Statements received and paid, unpaid Invoices
j. Superannuation Records
k. Contracts and Agreements, Deeds, Debentures, Loan Documents
l. Intercompany Transactions
m. File notes, Transcripts of Records of Conversation, Correspondence, Emails
n. Internal Memorandums, Letter of Interviews or Examinations of current and/or former officers
o. Interview or Examinations of third parties such as employees, suppliers, customers, bankers, and other witnesses concerning actions taken by a relevant person or actions not taken that should have been taken
p. Legal Accounting or other advice made by the relevant person concerning any relevant transaction(s) and their effects

40. Importantly, and as noted by Mr Raftery in his submissions, ASIC did not allege that Mr Raftery had failed to deliver up records to the liquidator.

41. Mr Raftery has stated that AFF kept all records required to be kept under s286, and that following his resignation he did not retain the company records and that these were instead stored at AFF's trading site.

42. Mr Raftery stated that in the course of his duties as director he regularly received documents such as management accounts from employees via email. Mr Raftery has provided a small sample of records to ASIC with his submissions, indicating that at least some such records were in fact kept by AFF.

43. Mr Raftery also notes in his submissions that the liquidator's report refers to at least some of the categories of records listed above when referring to AFF's financial position, indicating that such records were in fact kept and were ultimately obtained by the liquidator.

44. Based on materials available to me, I am not satisfied that the records referred to above were not kept by AFF in breach of s286.

45. Therefore, I find that ASIC's concern that Mr Raftery has breached s344(1) with respect to AFF is not made out.

In2Food Group

46. Mr Raftery was a director of each member of In2Food Group and was subject to obligations to each member corporation arising from his role as a director of each member corporation.

47. The liquidator considered that the causes of failure for each of the four group members consisted of the following:

    a. Under capitalisation
    b. Poor financial control including lack of records
    c. Poor management of accounts receivable
    d. Poor strategic management of business
    e. Inadequate cash flow or high cash use; and
    f. Trading losses

48. Across the four members of In2Food Group, unsecured creditors totalled at least $33 million, which included more than $330,000 owing in employee entitlements.

49. ASIC was concerned that Mr Raftery may have failed to exercise his powers and discharge his duties as a director of In2Food WA with the degree of care and diligence required by s180 in that he failed to ensure that In2Food WA complied with its statutory obligations since:

    a. Business Activity Statements for the period March 2022 to March 2023 were not lodged as required; and

    b. As at 1 June 2023, In2Food WA owed $238,163 to the ATO, including the Super Guarantee Charge of $142,251 as at 29 February 2024.

50. Mr Raftery made no submissions in response to this concern. However, I am not satisfied that it is sufficiently supported by materials provided to ASIC by the liquidator. Therefore, I make no finding that Mr Raftery has breached his duties under s180.

51. ASIC was further concerned that Mr Raftery had breached his obligations under s588G with respect to each of the four members of In2Food Group. In his submissions, Mr Raftery denied that he had breached his obligations under s588G with respect to the members of In2Food Group.

52. The available evidence indicates that considered as a single enterprise, In2Food Group consistently operated at a loss and had difficulty in meeting debts as they became due from at least mid-2022 onwards. However, the financial situation of each member of In2Food Group throughout its respective period of operation is less clear to me from the materials provided to ASIC by the liquidator.

53. Given my finding above that Mr Raftery breached s588G with respect to the related corporation AFF, which effectively operated as an arm of the same larger enterprise run under Produce Republic, I consider that any potential finding that Mr Raftery had contravened s588G with respect to one or more members of In2Food Group would not add appreciably to the seriousness of his conduct when determining whether disqualification is justified.

54. Therefore, I consider that it is unnecessary for me to make any finding as to whether Mr Raftery may have contravened s588G with respect to one or more members of In2Food Group.

Summary of Findings

55. As set out above, I find that Mr Raftery has breached his obligations under s588G with respect to AFF.

Would disqualification be in the public interest?

56. Mr Raftery has submitted that disqualification would not be in the public interest as:
    a. He is aware of his duties as director and has shown insight into the causes of the failure of AFF and In2Food Group. His actions, including his decisions to obtain appropriate legal advice and to resign as a director to avoid conflicts reflect his deep understanding of the duties of a director. This is also reflected in his appropriate performance of the role of director in other business restructures and turnarounds.
    b. There is no evidence of fraud or dishonesty by him in the present matter.
    c. This is not a case of phoenixing or of serial unrelated business failures. Instead, the failure of AFF and In2Food Group represents a single and isolated failure.
    d. He sincerely believed that both AFF and In2Food could be returned to profitability, and therefore he had implemented detailed business plans with respect to both businesses. This was reasonable given his knowledge and experience of the turnaround of insolvent businesses.
    e. The majority of creditors in AFF were connected parties, being Remagen and himself. He had provided money over a long period in the honest and reasonable belief that AFF and In2Food would become profitable.
    f. The purpose of disqualification under s206F is to protect the public, not to punish entrepreneurs where their investments are unsuccessful on particular occasions.

57. In making my decision, I have taken Mr Raftery's submissions into account.

58. The power in s206F to disqualify a person from managing corporations for up to 5 years is to be exercised for protective, not punitive, purposes.

59. Disqualification orders are designed to protect the public from the corporate structure being misused or being used contrary to proper commercial standards and by safeguarding the public interest in companies being transparent and accountable and in the suitability of directors to hold office. Protecting the public also envisages protecting individuals that deal with companies, including consumers, creditors, shareholders and investors.

60. A purpose of the s206F disqualification power is to protect persons dealing with companies from the consequences of the actions of corporate officeholders and maintaining professional management standards in the public interest.

61. I consider that Mr Raftery has failed to perform adequately his duties as a director of AFF in breaching his obligations under s588G. Insolvent trading may have serious consequences for unsecured creditors of corporations, and I consider that the making of a disqualification order against Mr Raftery in this matter would serve the need for specific and general deterrence.

62. In addition, Mr Raftery has been the director of five failed companies with total losses to unsecured creditors of more than $43 million. While the majority of losses have been incurred by Mr Raftery, Remagen and related parties, there have also been significant losses by statutory creditors.

63. I consider that it is not in the public interest to allow Mr Raftery as a director of multiple failed corporations that are unable to pay any or any substantial part of the debts owed to unsecured creditors to continue being concerned in the management of corporations. This is so even where, as in this case, the relevant corporations are related.

64. I accept that disqualification may have adverse consequences for Mr Raftery. Given the nature of the concerns I have found against him above I am satisfied it is in the public interest that he be disqualified from managing corporations, and that public protection considerations outweigh the consequences of a disqualification order on him.

65. As required by the Australian Securities and Investments Commission Act 2001, I have considered the effect that my decision may have on competition in the financial system, and I am satisfied that disqualifying Mr Raftery would have negligible effect upon competition.

66. Based on the materials available to me, and taking into account Mr Raftery's submissions, I am satisfied that making a disqualification order would be in the public interest.

Conclusions

67. To summarise my findings for the purpose of s206F(1)(c):

    a. I am satisfied that the five relevant corporations are related.
    b. I am satisfied that Mr Raftery has breached his obligations as a director of AFF under s588G
    c. I am satisfied that disqualification of Mr Raftery would be in the public interest.

68. Based upon this, I am satisfied that disqualification is justified for the purpose of s206F.

69. I find that ASIC should disqualify Mr Raftery under s206F.

70. Under s206F a disqualification order may be for a period of up to 5 years, with the maximum period normally reserved for individuals who have engaged in the most serious misconduct.

71. Mr Raftery has submitted that if any disqualification order is made then it should be for no more than 12 months.

72. I consider that Mr Raftery has engaged in misconduct towards the mid-range of the maximum period, noting that there is no material before me which suggests that Mr Raftery has acted dishonestly.

73. I will therefore disqualify Mr Raftery from managing corporations for a period of 2 years and 6 months.

Phillip Mines

Delegate of the Australian Securities and Investments Commission

Extract from the Corporations Act 2001

Section 206A

206A(1) A person who is disqualified from managing corporations under this Part commits an offence if:

(a) they make, or participate in making, decisions that affect the whole, or a substantial part, of the business of the corporation; or

(b) they exercise the capacity to affect significantly the corporation's financial standing; or

(c) they communicate instructions or wishes (other than advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors or the corporation) to the directors of the corporation:

(i) knowing that the directors are accustomed to act in accordance with the person's instructions or wishes; or

(ii) intending that the directors will act in accordance with those instructions or wishes.

Note: Under section 1274AA, ASIC is required to keep a record of persons disqualified from managing corporations.

206A(1A) For an offence based on subsection (1), strict liability applies to the circumstance, that the person is disqualified from managing corporations under this Part.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

206A(1B) It is a defence to a contravention of subsection (1) if the person had permission to manage the corporation under either section 206GAB or 206G and their conduct was within the terms of that permission.

Note: A defendant bears an evidential burden in relation to the matters in subsection (1B), see subsection 13.3(3) of the *Criminal Code*.

206A(2) A person ceases to be a director, alternate director or a secretary of a company if:

(a) the person becomes disqualified from managing corporations under this Part; and

(b) they are not given permission to manage the corporation under section 206GAB or 206G.

Note: If a person ceases to be a director, alternate director or a secretary under subsection (2) the company must notify ASIC (see subsection 205B(5)).

ASIC decisions: Your rights

This is **Information Sheet 9 (INFO 9)**.

ASIC makes many decisions about corporations, securities and financial products and services that might affect you. If we have made a decision that directly affects you, you may have rights connected with the decision. This information sheet sets out an overview of your rights and how to exercise them. You may have other rights in addition to those discussed here.

Note: Under certain circumstances ASIC can waive late lodgement fees. If your inquiry is about withdrawing a late lodgement fee, you can find more details in Information Sheet 87 *Fee waivers* (INFO 87).

Exclusion: Reports of misconduct do not involve a 'decision' by ASIC and are excluded from the processes below. You can find out more in Information Sheet 153 *How ASIC deals with reports of misconduct* (INFO 153).

What can you find out from us?

Talk to us about the decision	**ASIC decision maker** - If you need to clarify anything relating to the decision, you may find it helpful to discuss it with the ASIC staff member who made the decision. **Administrative Law Team** - You can also contact the Senior Manager, Administrative Law Team by email to senior.manager.alt@asic.gov.au or by mail to: Senior Manager, Administrative Law Team Australian Securities and Investments Commission GPO Box 9827 Melbourne VIC 3001 The Senior Manager, Administrative Law Team can explain how to exercise the rights set out in this information sheet. It would be best to do this promptly because there is a 28-day time limit on some applications.
Get our reasons in writing	If we have not told you why we made the decision when we notified you about it, you may be entitled to ask for a written statement of reasons. **How to apply** You must write to the person who made the decision within 28 days of being told about the decision.

	If you are unsatisfied with the statement of reasons, you can apply to the Administrative Review Tribunal (ART) for a decision on whether the statement contains adequate information about specified matters.
Ask for access to other documents	You may seek access to documents about the decision under the *Freedom of Information Act 1982*. **How to apply** You must apply to ASIC in writing stating clearly which documents you want to obtain. You may send your application by email to FOIrequest@asic.gov.au or by mail to: Senior Manager, FOI Team Australian Securities and Investments Commission GPO Box 9827 Melbourne VIC 3001 Charges may be imposed for the time spent in searching for and retrieving relevant documents, decision-making time, photocopying and postage. For more information contact the FOI Team at FOIrequest@asic.gov.au.

Can you get an independent review?

You may have a right to seek review of the decision by the ART. The ART is an independent body that can review some of ASIC's decisions. The ART can, among other things:

- confirm our decision
- vary our decision, or
- set our decision aside and replace it with its own decision.

How to apply to the ART

In writing	You must apply to the ART for review in writing. This can be done via letter or email. Alternatively, the ART has an application form that you may choose to use. The ART website contains further details on how to apply to the ART for review of a decision.

In time	You can apply for review from the day of the decision. Ordinarily, you must apply for the review within 28 days of the day after being told why the decision was made.
Pay the fee	You must pay the application fee of $1,121 with your application. The circumstances in which a person may be eligible for a lower application fee, a waiver or a refund are available in Part 5 of the *Administrative Review Tribunal Rules 2024*. If you want to apply for the application fee to be reduced or waived you can obtain the application form from the AAT.

If you have any questions about the ART's procedures and requirements, you can visit the ART website, call the ART on 1800 228 333 or write to the ART at GPO Box 9955 in your capital city.

If you are unhappy with how we handled your matter

Talk to us	If you have concerns about the way we have handled a matter, you can lodge a complaint with ASIC. We have provided information about lodging a complaint on the ASIC website.
Take it further	You may also have the right to complain to the Commonwealth Ombudsman. However, the Ombudsman usually prefers that you discuss your complaint with ASIC first. There is an office of the Commonwealth Ombudsman in each capital city. For further information call 1300 362 072 or visit the Commonwealth Ombudsman website.

Where can I get more information?

- Contact ASIC online
- Visit the ART website
- Visit the Commonwealth Ombudsman website
- Visit the Office of the Australian Information Commissioner website
- You may wish to seek legal advice.

Important notice

Please note that this information sheet is a summary giving you basic information about a particular topic. It does not cover the whole of the relevant law regarding that topic, and it is not a substitute for professional advice.

You should also note that because this information sheet avoids legal language wherever possible, it might include some generalisations about the application of the law. Some provisions of the law referred to have exceptions or important qualifications. In most cases your particular circumstances must be taken into account when determining how the law applies to you.

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

This information sheet was reissued in October 2024.

Australian Securities and Investments Commission

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www.asic.gov.au/

Mr Simon John Raftery
[redacted]
BURRANEER NSW 2230

15 August 2024

Dear Mr Raftery

Notice to demonstrate why disqualification should not occur

ASIC has concerns about your conduct as an officer of two or more failed corporations. ASIC has issued a notice requiring you to demonstrate why you should not be disqualified from managing corporations for a period of up to five years.

The notice is enclosed. It has two attachments. They are:

- Attachment 'A', being the Areas of concern; and
- Attachment 'B', being the List of documents upon which the concerns are based.

An information sheet about ASIC's administrative hearings is also enclosed.

What do you need to do?

You have the right to appear at a hearing and/or make written submissions about whether you should be disqualified from managing corporations. If you would like to do this, you must advise me within 14 days from the date that you receive this letter. I can be contacted by email at [redacted] or by phone on [redacted].

Would you like a copy of the documents upon which ASIC's concerns are based?

You can request a copy of the documents listed in Attachment 'B'. Some of these documents are confidential. The confidential documents will be provided on the strict condition that they:

- are only to be used by you or your legal representatives to respond to ASIC's concerns; and
- must not be copied or disclosed to a third party unless you have ASIC's prior written consent.

If you would like a copy of the documents, please email:
s 47F [redacted]

What happens if I do not hear from you?

If you do not advise me within 14 days from the date you receive this letter that you would like to appear at a hearing and/or make written submissions, I will decide whether you should be disqualified without contacting you again. ASIC will notify you of my decision in writing.

Privacy

If you appear at a hearing and/or make submissions, material that you provide might contain personal information about you or other people. The purposes for which ASIC will use the personal information include to enable your hearing to be conducted (if you request one), to decide your matter and to write the reasons for decision.

More information about how ASIC handles and uses personal information is contained in our Privacy Policy, which can be found at www.asic.gov.au/privacy. This includes information about when ASIC may disclose personal information and how to complain about breaches of privacy by ASIC.

If you provide a statement from a witness:

- you should inform the witness about ASIC's Privacy Policy; and
- ASIC will assume that the witness has been made aware of our Privacy Policy.

Yours faithfully

s 47F [redacted]

ASIC Hearing Delegate

Administrative hearings

This information sheet (INFO 1) briefly explains how we conduct administrative hearings. It covers the following topics:

Why we conduct hearings

ASIC has a statutory obligation to give people a hearing in certain circumstances.

Part 4 of ASIC's Hearings Practice Manual (RG 8) summarises when this statutory obligation may arise. Information about how you can obtain a copy of the manual is set out at the end of this information sheet.

Telling you about a hearing

If you have a right to have a hearing we will give you a 'notice of hearing', which will tell you, among other things:

- under what law and provision/s we are conducting the hearing
- the purpose of the hearing
- the issues that are of concern to us

  Note: In the case of s206F of the Corporations Act, the issues will be identified in a notice given to the person under s206F(1)(b)(i) requiring them to demonstrate why they should not be disqualified from managing a corporation. Arrangements for a hearing will be made if the person asks to be heard on why they should not be disqualified.

- who you can contact if you have questions about the hearing
- when the hearing will be held and how long we estimate it will take
- where the hearing will be held
- what happens if you do not respond, namely that we will make a decision based on the information we already have.

You can ask for copies of the documents that we rely on in relation to the issues that are of concern to us.

What you should do if you receive a notice of hearing

If you receive a notice of hearing you should carefully consider:

- the issues of concern to us
- any material we give you
- whether you want to appear in person at the hearing or send us a written submission
- what material you want to present to us
- whether you want to be represented at the hearing
- the consequences if you do not respond to the notice.

You normally have 28 days from the date of receiving the notice of hearing to appear at the hearing in person or to send us a written submission. If the date is not convenient or you consider that the time estimated is not sufficient you should contact us as soon as possible.

How hearings are conducted

Our administrative hearings are conducted informally and as promptly as possible. You may give us any relevant material, including giving evidence or making submissions verbally, or providing written statements, documents or submissions.

Do not think of our hearings as being a court or other judicial process. The rules of evidence and usual court rules of procedure and practice do not apply in our hearings. A hearing should not be approached on the basis of a contest between you and us.

Being represented at a hearing

You can choose whether you want a legal representative at the hearing. Your legal representative can assist you to prepare your submissions and to present any evidence that you want to give at the hearing.

We may allow you to be represented by an employee, a friend or a non-legal adviser. Whether they will be allowed to attend will depend on whether their presence will help the hearing, for example, by assisting you to present your evidence and to make submissions.

If you want to be represented by someone other than a lawyer, you should contact us as soon as possible after receiving the notice of hearing.

Our role

The hearing will be conducted by one of our staff members who has the power to hold the hearing (the delegate). If you decide to appear in person at the hearing, the delegate:

- will listen to your evidence and submissions
- may ask you, and any witness called, questions so that the evidence is clear
- having heard this evidence, will make a decision based on all the information.

The delegate will make their decision based on your material or submissions and any other relevant material.

If you do not appear in person or do not send any written submissions, the delegate will make their decision on whatever relevant information they have.

Public or private hearings

Sometimes we must hold the hearing in private. On other occasions we can choose whether to hold it in public or private. The notice of hearing will tell you whether the delegate proposes to hold the hearing in public or private.

Witnesses and documents

Usually, it will not be necessary for witnesses to appear in person at a hearing as a written statement from them or a copy of relevant documents will be sufficient. Before we agree to summon a witness we will need to be satisfied, among other things, that:

- the person can give relevant evidence and/or produce relevant documents
- it is necessary to summon them.

The person who asks for the summons must pay the fees, allowances and expenses of that witness.

Costs

We are responsible for our costs of the hearing. However, you must pay your own costs, those of your legal representative or other representative, if any, and of any witness you call.

Reasons for our decision

The delegate will usually give you the reasons for their decision when they tell you what their final decision is. If you do not get reasons at the time you are notified of the delegate's decision you can ask the delegate to give you the reasons for the decision. Your request must be made in writing within 28 days of our telling you the final outcome.

Where you can get more information

There is a full explanation of how we conduct our hearings in our Hearings Practice Manual (RG 8) available from our website at www.asic.gov.au/hearingsmanual.

The general legislative provisions dealing with our administrative hearings are set out in Division 6 of Part 3 of the *Australian Securities and Investments Commission Act 2001*.

For more information call our Customer Contact Centre on 1300 300 630 or contact us online.

Important notice

Please note that this information sheet is a summary giving you basic information about a particular topic. It does not cover the whole of the relevant law regarding that topic, and it is not a substitute for professional advice.

You should also note that because this information sheet avoids legal language wherever possible, it might include some generalisations about the application of the law. Some provisions of the law referred to have exceptions or important qualifications. In most cases your particular circumstances must be taken into account when determining how the law applies to you.

This is **Information Sheet 1 (INFO 1)**, issued in May 2021.

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