

Report to Creditors

Meeting of Creditors

Date: 31 March 2020

Time: 3pm

Place: The offices of the Chartered
Accountants Australia and
New Zealand,
Level 18, Bourke Place,
600 Bourke Street,
Melbourne VIC 3000

*Australian Public
Custodian Ltd (In
Liquidation) (the
Company)*

ACN 131 251 968

13 March 2020

Forms to be completed

Please complete and return the following forms which are enclosed within this report by 4:00pm on 30 March 2020.

If you wish to attend the meeting of creditors by telephone, please contact Adrian D'Aprano by email or telephone by 23 March 2020.

Please note only creditors of Australian Public Custodian Limited (In Liquidation) are entitled to attend and vote at the meeting of creditors.

In order to be recognised as a contingent creditor, each Scheme investor **(Investor)** must complete a Proof of Debt Form provided at Appendix D and provide adequate particulars of their claim(s) to the Liquidation for review and acceptance.

1. Appointment of Proxy
2. Proof of Debt

Please return these forms to:

Mail: GPO Box 1331
Melbourne VIC 3001

Fax: +61 3 8603 1999

Email: adrian.daprano@pwc.com

Contact: Adrian D'Aprano

Telephone: +61 3 8603 2308

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Glossary of Terms

Abbreviation	Definition
Act	Corporations Act 2001
AFSL	Australian Financial Services Licence
ASIC	Australian Securities and Investments Commission
ARITA	Australian Restructuring Insolvency and Turnaround Association
ATO	Australian Taxation Office
Blacks Beach Investments	Blacks Beach Investments Pty Ltd (ACN 612 156 493) is mortgagee of land at Driftwood
BPH	Bundoorra Project Holdings Pty Ltd (ACN 169 386 136) was incorporated to develop an apartment complex and retail space in Bundoorra, Victoria known as 'Parc Vue'
Committee of Inspection	A small group of creditors representing the overall creditor group
Company	Australian Public Custodian Limited (In Liquidation) (ACN 131 251 968)
DIRRI	Declaration of Independence, Relevant Relationships and Indemnities
Directors of the Company	Mr Benjamin Anderson, Mr Mark Hamilton and Mr Jeremy Toole
Driftwood	Undeveloped block of land located at 33 – 34 Bourke Street, Blacks Beach QLD 4740
FEARPF	Future Estate Australian Residential Property Fund (ARSN 134 516 724)
FEDOF	Future Estate Development Opportunity Fund (ARSN 164 525 973)
FEG	Future Estate Group Pty Ltd (ACN 155 880 363)
Investors	Investors in the Schemes
Lynter	Lynter Group Investment Management Pty Ltd (ACN 150 627 151)

<i>MIS</i>	Managed investment schemes
<i>Parc Vue</i>	Apartment complex and retail space in Bundoora, Victoria
<i>RATA</i>	Report as to Affairs
<i>RE</i>	Responsible Entity
<i>Riviera Mackay</i>	64 units at Riviera Mackay, 5-7 Nelson Street, Mackay QLD 4740
<i>Schemes</i>	FEDOF & FEARPF collectively
<i>SRVF</i>	SRVF No. 1 Pty Ltd (ACN 158 264 094)

1 *Executive Summary*

I was appointed Liquidator of the Company on 21 April 2017 by the Federal Court of Australia, pursuant to an application made by the Deputy Commissioner of Taxation.

The Company held an Australian Financial Services Licence (**AFSL**) with the Australian Securities and Investments Commission (**ASIC**) and acted as the Responsible Entity (**RE**) for two registered managed investment schemes (**MIS**):

- Future Estate Australian Residential Property Fund (ARSN: 134 516 724) (**FEARPF**), and
- Future Estate Development Opportunity Fund (ARSN: 164 525 973) (**FEDOF**)

(Collectively the Schemes)

Further background on MIS is provided in Section 3.

Please note this report is prepared for the benefit of creditors of the Company acting in its own right and also as RE of the Schemes. Nevertheless, an update is also provided herein on the realisation of Scheme assets.

1.1 Dividend/Distribution Prospects

As is required under the Corporations Act 2001 (**the Act**), the Australian Taxation Office's (**ATO**) costs as petitioning creditor have been paid in full from the Company's assets.

It is unlikely a dividend will be paid to any class of creditors of the Company or a distribution paid to the Investors. Any return will be contingent upon recoveries from potential voidable transactions and/or successful claims being brought against the directors, officers and/or related parties.

Please refer to Section 4 of this report for further details.

1.2 Assets

I have realised cash held in the Company's pre-appointment bank account totalling \$116,456. There are no other known assets of the Company.

I have also realised the following FEARPF assets:

- rental income (net of costs) of \$80,736; and
- six units at 5-7 Nelson Street, Mackay QLD 4740 (**Riviera Mackay**), although those units were subject to secured finance and no return was available to FEARPF.

Additional unrealised assets identified in the Scheme books and records include investments in other property developments and loans to related parties. These amounts are either disputed by the borrower or the borrower/investment entity has entered into a formal insolvency process. Further detail is provided in section 5.

1.3 Creditors

The known creditors of the Company and the Schemes as at the date of my appointment total \$8,333,254 and comprise secured and unsecured creditors, including a number of related party creditors.

Investors are not automatically entitled to claim as a creditor of the Company. Whether an investor is a creditor is a question which must be determined upon the facts of each case.

Subject to the Act, certain obligations and duties are to be performed by the RE for the benefit of Investors. Should the RE breach its statutory duties in respect of a particular scheme, an Investor in that scheme may be entitled to claim as a creditor of the Company.

Since the date of my appointment, I have received a number of notifications from Investors regarding potential claims against the Company. I have classified these claims as contingent creditor claims and I have not yet estimated the quantum of these potential claims.

1.4 Investigations

My investigations into the affairs of the Company and the Schemes have identified a number of potential breaches of the Act by the directors, which I have reported to ASIC. In addition, there are potential voidable transactions that may be recovered for the benefit of creditors. These include uncommercial loans to related parties, unexplained bank transfers, as well as other potential uncommercial agreements entered into.

I have insufficient funds available to conduct further investigations. It is my intention to seek funding from ASIC to enable more expansive investigations be undertaken.

Please refer to Section 6 of this report for further details.

1.5 Future Actions

Detailed below are my proposed future actions:

- convene and hold a meeting of creditors on 31 March 2020
- form a Committee of Inspection (**COI**) (subject to creditor approval)
- seek Court approval for my remuneration for tasks carried out for the benefit of the Schemes
- seek funding from ASIC to carry out further investigations into the affairs of the Company and the Schemes
- carry out further investigations into the affairs of the Company and the Schemes (subject to funding)
- determine the commerciality of legal actions to pursue assets and/or potential claims
- declare and pay a dividend to unsecured creditors (if sufficient recoveries are made)
- complete the necessary statutory duties to wind up the Schemes
- complete the necessary statutory duties to finalise the liquidation of the Company

1.6 Remuneration

I am seeking approval from creditors for my remuneration associated with the liquidation of the Company as summarised below:

	Period	Amount (excluding GST)
The Company	21 April 2017 to 21 February 2020	\$132,228.50

This remuneration excludes the costs associated with Scheme related tasks (**Scheme Costs**).

I am obliged to seek Court approval (**Court Application**) for my remuneration in respect of Scheme Costs. It is my intention to seek this approval in April/May 2020. Members of the Schemes will be notified of the Court Application and provided with the relevant details.

For the purpose of transparency, please note I will be seeking Court approval for my remuneration in relation to Scheme Costs as per below:

Scheme	Period	Amount (excluding GST)
FEDOF	21 April 2017 to 21 February 2020	\$148,592.75
FEARPF	21 April 2017 to 21 February 2020	\$238,736.25

The total remuneration approvals sought from creditors and through the forthcoming Court Application totals \$519,557.50 (**Total Remuneration**).

Where possible, I have allocated tasks to a specific Scheme. Costs have been attributed equally where tasks were carried out:

- for the benefit of both Schemes
- for the benefit of the Schemes and the Company

Please note, Scheme Costs, subject to an order of the Court, will be deducted from the gross proceeds of Scheme assets.

My Total Remuneration claim will only be paid to the extent of the funds available to the Company and the Schemes. If the costs of administering the Schemes exceed the estimated funds available, the shortfall is payable by the Company (to the extent Company assets are available).

If there are no Company assets available, the Liquidator will bear the shortfall on these costs. Based on actual and expected realisations, the Liquidator is likely to bear a significant fee write off.

Please refer to my Remuneration Approval Report attached at **Appendix C** for full details of key activities undertaken by me, my partners and staff and the remuneration approval sought in respect of work carried out in relation to the Company.

2 Appointment

I was appointed Liquidator of the Company on 21 April 2017 by the Federal Court of Australia, pursuant to an application made by the Deputy Commissioner of Taxation. My Declaration of Independence, Relevant Relationships and Indemnities (**DIRRI**) is attached at **Appendix A**.

3 Company and business history

FEDOF and FEARPF

As noted in Section 1, the Company held an AFSL with ASIC and acted as the RE for two registered MIS, FEDOF and FEARPF.

Future Estate Group Pty Ltd (**FEG**) is a property investment and development business specialising in residential real estate. The Schemes represent two of a number of property investments associated with FEG.

I understand:

- Mr Benjamin Anderson, a director of the Company, managed the day to day operations of the Company and continues to manage the operations of FEG.
- FEG oversaw the administrative and ‘back office’ function in relation to the developments undertaken by the Schemes as well as numerous other developments not associated with the Company.

The Schemes had approximately 200 Investors who contributed funds to obtain ‘an interest’ in the respective Schemes. The Schemes then made investments in various residential property developments.

I also understand that:

- FEARPF operated property developments in Far North Queensland known as the Riviera Mackay and Driftwood developments.
 - The Riviera Mackay development consisted of 64 apartments at 5-7 Nelson Street, Mackay QLD 4740
 - The Driftwood development (**Driftwood**) consisted of an undeveloped block of land located at 33 – 34 Bourke Street, Blacks Beach QLD 4740. The land remained undeveloped at the date of my appointment due to complications obtaining finance for the development.
- FEDOF invested in other related property developments including the ‘Parc Vue’ Bundoora apartment project. Please refer to Section 5.1.5 for further details.

I understand the Company’s financial difficulties were as a result of insufficient cash flow, poor strategic management of the business and a decline in the Queensland property market.

Background to MIS

A MIS is an investment mechanism where members (investors) contribute funds in anticipation of producing a financial benefit in return for their investment.

The RE acts as a trustee for the schemes’ members and is responsible for the conduct of the schemes. Scheme assets are generally held in the name of a custodian, for the benefit of the RE, who in turn holds scheme assets on behalf of investors.

A MIS is not a legal entity and cannot incur liabilities on its own behalf. A RE incurs debts on behalf of a scheme and is liable for those debts. The RE is entitled to pay liabilities out of the scheme assets and is entitled to be indemnified from scheme assets.

The role and obligations of a RE

A RE has a number of fiduciary obligations that extend for the life of the scheme. According to s601FC of the Act, the statutory duties of the RE include, but are not limited to, the duty to:

- act honestly
- exercise the degree of care and diligence that a reasonable person would exercise if they were in the RE’s position

- act in the best interests of the members and, if there is a conflict between the members' interests and its own interests, give priority to the members' interests
- treat the members who hold interests of the same class equally and members who hold interests of different classes fairly
- not make use of information acquired through being the RE in order to:
 - gain an improper advantage for itself or another person
 - cause detriment to the members of the scheme
- ensure that the scheme's constitution meets the requirements of sections 601GA and 601GB
- ensure that the scheme's compliance plan meets the requirements of section 601HA
- comply with the schemes' compliance plan
- ensure that scheme property is:
 - clearly identified as scheme property; and
 - held separately from property of the RE and property of any other scheme;
- ensure that the scheme property is valued at regular intervals appropriate to the nature of the property
- ensure that all payments out of the scheme property are made in accordance with the scheme's constitution and the Act
- report to ASIC any breach of the Act that:
 - relates to the scheme
 - has had, or is likely to have, a materially adverse effect on the interests of members as soon as practicable after it becomes aware of the breach
 - carry out or comply with any other duty, not inconsistent with the Act, conferred on the RE by the scheme's constitution.

4 Dividend/Distribution Prospects

The petitioning creditor's costs have been paid in full.

I have not identified any employee creditors who would enjoy priority for payment over ordinary unsecured creditors.

During my investigations a number of potential claims have been identified which, if successfully recovered, would be for the benefit of the Company's creditors and Investors. As previously mentioned in this report, there are limited funds available in the liquidation.

It is unlikely a dividend will be paid to the Company's creditors. Furthermore, there are insufficient assets in the Schemes to enable a distribution to Investors.

5 Financial Position and deficiency at Liquidation

The directors provided me with a Report as to Affairs (**RATA**) for each of the Schemes in May 2017. Please note a RATA was not provided to me in respect of the Company.

The RATAs provided are summarised in the table overleaf and would suggest that significant funds are available for Investors in FEARPF (c\$2.4m) and FEDOF (c\$4.5m). However, for the reasons outlined in the accompanying notes to that table, I believe the asset values have been materially overstated.

I was provided with limited hard copy books and records of the Company and the Schemes. I was also provided with copies of specific electronic folders located on a FEG server. It is not known if access was provided to all relevant electronic folders.

The table below provides details of the estimated financial position of the Company at the date of appointment.

\$AUD	Notes	Directors' RATA Estimated Value (\$)	Liquidator's Estimated Value (\$)			
		FEARPF	FEDOF	FEARPF	FEDOF	RE
Assets						
Interest in Land						
Riviera Mackay	5.1.1	1,800,000	N/A	Nil	N/A	N/A
Driftwood	5.1.1	N/A	Nil	N/A	Nil	N/A
Sundry Debtors	5.1.2	732,866	173,437	To de determined		N/A
Cash	5.1.3	1,071	621	Nil	Nil	116,456
Related party loans	5.1.4	3,620,554	3,533,707	To de determined		N/A
Other	5.1.5	2,458,956	2,907,930	To de determined		N/A
Rental Income	5.1.6	Nil	Nil	80,736	N/A	N/A
Total known Assets		8,613,447	6,615,695	80,736	Nil	116,456
Liabilities						
Secured creditor		(1,262,195)		TBC	TBC	TBC
Unsecured creditors		(4,992,113)	(2,078,946)	TBC	TBC	TBC
Total known Liabilities		(6,254,308)	(2,078,946)	TBC	TBC	
Surplus / (Deficiency)*		2,359,139	4,536,749	TBC	TBC	TBC

* subject to costs of the liquidation

5.1.1 Interest in land Riviera Mackay

FEARPF held six (6) unsold units (subject to secured finance) at Riviera Mackay upon my appointment.

The Liquidator was engaged by the secured financier to sell the remaining units. Each unit was sold and the sales resulted in a shortfall of approximately \$70,000 to the mortgagee. Accordingly, there were no proceeds from the sales available to FEARPF Investors.

The Driftwood Development

Driftwood consisted of an undeveloped block of land located at 33 – 34 Bourke Street, Blacks Beach QLD 4740. This property was held by a related entity, SRVF No.1 Pty Ltd (**SRVF**). There is a mortgage held over the vacant land in favour of Blacks Beach Investments Pty Ltd (**Blacks Beach Investments**).

I understand the land remained undeveloped at the date of my appointment due to complications in obtaining finance.

At the time of writing this report, Blacks Beach Investments has taken possession of the land and it is currently on the market for \$950k. I do not anticipate any proceeds of the sale will be available to the FEARPF after the mortgagee's debt and realisation costs.

5.1.2 Sundry Debtors

The Schemes' RATAs include debtors totalling \$906,303 comprised:

- FEARPF \$732,866
- FEDOF \$173,437

The FEDOF debtor related to a supposed Goods & Services Tax refund from the ATO and is not collectible.

The FEARPF debtors relate to amounts due from related party entities and Investors.

I have engaged solicitors to assist me with the recovery of certain debtor amounts and my collection activities are ongoing.

5.1.3 Cash at Bank

I recovered an amount of \$116,456 from the Company's pre-appointment bank account.

5.1.4 Related Party Loans

The Schemes records detailed related party loans of \$7,154,261 upon my appointment, comprised as follows:

- \$5,922,461 from SRVF
- \$1,231,800 from Lynter Group Investment Management Pty Ltd (**Lynter**)

I am unsure how the Directors of the Company calculated the loan balances reported in the RATAs.

SRVF

I understand that the SRVF loans were provided to fund the acquisition of vacant land and development costs associated with Driftwood. My investigations to date have been unable to determine how the funds were applied. As previously noted, this development did not commence.

I have engaged solicitors to assist with the recovery of this loan which is disputed by SRVF.

As noted above, I understand Blacks Beach Investments has taken control of the property with a view to selling it and repaying debt.

Lynter

Lynter was placed into liquidation on 17 January 2017. I understand there will not be a dividend paid to creditors.

5.1.5 Other

FEARPF

The Company's directors disclosed in the FEARPF RATA 'Unitholder redeemed funds', as an asset totalling \$2,458,956.

I understand from the financial statements for the half year ended 31 December 2016 this refers to the Investor funds provided to the proposed serviced apartment manager of the Riviera development.

To date, these funds have not been recovered. I have engaged legal advisors to endeavour to recover these monies.

FEDOF

The RATA recorded that FEDOF holds 2,907,930 preference shares in Bundoora Project Holdings Pty Ltd (**BPH**). I understand BPH was incorporated to develop an apartment complex and retail space in Bundoora, Victoria known as 'Parc Vue'.

I understand that a Receiver has been appointed to BPH and it is unlikely that there will be any return in respect of FEDOF's investment.

5.1.6 Rental income

Rental income of \$80,736 has been recovered from short term lettings at Riviera Mackay. This was not recorded as an asset in the Directors' RATA.

6 Investigations

6.1 Books and Records

As mentioned above, I have recovered books and records from the directors, including electronic files associated with the Company and the Schemes. However, despite my requests, I was not provided with full access to the FEG server for the purpose of obtaining a forensic image.

It is therefore unclear whether all Company and Scheme books and records have been provided.

The books and records recovered include (but are not limited to):

- financial statements for the Schemes and supporting documents
- access to the Company's accounting software
- bank statements
- minutes of meetings of directors and/or members
- compliance documents
- internal reports and workings; and
- documents relating to activities undertaken by the Schemes (e.g. Investor registers, Product Disclosure Statements, property valuation reports, Investor updates, financial records pertaining to the Schemes etc.)

I am not currently in a position to determine whether the books and records comply with Section 286 of the Act. This section of the Act requires a company to keep written financial records that correctly record and explain their transactions and enable true and fair financial statements to be prepared and audited.

Please note, to date, I have not sought to verify specific Investor allegations of director misconduct including:

- breaches of due care and diligence; and
- misappropriation of funds (movement of Investor funds between Schemes and/or related entities in breach of Product Disclosure Statements issued by the Company)

6.2 Insolvent Trading

Pursuant to Section 588G of the Act, I am able to seek compensation from the directors for debts incurred at a time when the Company was insolvent and which remain unpaid.

My investigations indicate that the Company (and ultimately the Schemes) may have been insolvent from at least 30 June 2015. However, further analysis is required to ascertain the precise date the Company (and ultimately the Schemes) become insolvent, and to quantify the debts which were incurred after this time.

The directors may have a defence if they can establish that when the debt was incurred, they had reasonable grounds to suspect that the Company remained solvent.

Regardless of the merits of any insolvent trading claim, in order for a claim to be considered commercially viable to pursue, it would be necessary for a director to have assets of value to satisfy any such claim or an appropriate insurance policy. Further investigation in this regard is required.

It should be noted that any action for insolvent trading involves the risk of litigation which is expensive with an uncertain outcome.

6.3 Voidable Transactions

Pursuant to Part 5.7B of the Act, a Liquidator may recover certain voidable transactions entered into by the Company prior to its winding up. These transactions are commonly known as:

- unfair preference payments
- uncommercial transactions
- unfair loans
- unreasonable director related transactions; and
- fraudulent dispositions.

6.3.1 SRVF Loan

In my view, the SRVF Loan of \$5,922,461 provided by the Schemes may constitute an uncommercial transaction. The circumstances surrounding the loan warrant further investigations.

6.3.2 Unexplained Transfer Claims

A number of undocumented/unverified payments have been identified from the Company's bank accounts to related entities. I consider these payments may constitute voidable transactions; however further investigation is required.

6.3.3 Management Rights

In February 2016, the Company entered into a Sale of Management Rights agreement whereby it sold the management rights for the Riviera Mackay development to a related entity, Riviera Apartment Hotel Management Pty Ltd.

I understand the purchase price under the Sale of Management Rights agreement was not paid in full. A subsequent Sale of Management Rights Agreement was executed to a related entity for no consideration.

The circumstances surrounding the sale of the management rights of the Riviera Mackay apartment complex warrant further consideration and may constitute a voidable transaction.

6.3.4 Management Fees

Management fees were payable to FEG by the Schemes in its capacity as development manager. Further investigations are required to determine:

- whether the payments made were in accordance with the terms of agreements in place between FEG and the Schemes
- whether the agreements in place were at fair value

6.4 Director duties

During my investigations, I noted breaches of the Act by the Company in its capacity as RE of the Schemes. As previously noted, I have also received correspondence from a number of Investors who claim breaches of the Act have been committed by the directors of the Company.

Matters that require further investigation include (but are not limited to):

- any potential misleading or deceptive conduct engaged in by the Company, the directors or officers
- the potential non-disclosure of material information regarding the viability of the Schemes
- how Scheme monies were applied
- compliance with AFSL requirements

6.4.1 Public Examination

I conducted a public examination of Mr Benjamin Anderson, a director of the Company, on 20 November 2018 for the purpose of obtaining further information regarding the recovery of assets identified in this report.

As I intend to rely on the information and documentation obtained as part of the public examination process, I will not disclose any information that may prejudice my investigations or recoveries.

Subject to securing ASIC funding, further public examinations of persons of interest will likely be conducted.

6.5 Winding up of Schemes

In due course, it is my intention to conduct the winding up of the Schemes in accordance with the Act and the Schemes' constitutions. Correspondence will be issued to Investors in this regard.

7 Reporting to ASIC

I have submitted a confidential report to ASIC which sets out the offences I believe may have been committed by the Company's directors. ASIC has requested that I conduct further investigations into the Company's affairs in light of the information provided. The liquidation is without funding, I have been liaising with ASIC to secure funding to conduct further investigations.

Please note that all discussions with ASIC remain confidential.

8 Committee of Inspection

A COI is a small group of creditors representing the overall creditor group and provides assistance and guidance to the Liquidator regarding certain matters. A COI also has the power to approve the Liquidator entering into agreements and the Liquidator's remuneration.

Please note a minimum of two members is required to form a COI.

We consider upcoming matters (such as the aforementioned voidable transactions and other ongoing investigations) are likely to require the guidance and approval of creditors. We therefore recommend that a COI is formed at the meeting of creditors on 31 March 2020.

For a person to be eligible for appointment as a member of a COI, they must either:

- be a creditor of the Company; or
- a creditor may appoint a general power of attorney on their behalf; or
- a creditor may authorise a person in writing to be a member of the COI on their behalf.

Creditors should consider whether they are in a position to be a COI member, as membership of a COI requires attendance at meetings (telephone conference facilities are available, so members do not have to attend in person).

Meetings would typically be held every three to six months with a duration of no more than 30-60 minutes. Importantly, members of the COI must have regard for the overall creditors' interests and not their own interests or the interests of the creditor they represent.

9 Meeting of Creditors

A meeting of the Company's creditors will be held on 31 March 2020 at 3pm AEST in the meeting rooms of the Chartered Accountants Australia and New Zealand, Level 18 Bourke Place, 600 Bourke Street, Melbourne, Victoria 3000.

The purpose of the meeting is to:

1. To receive and consider a report from the Liquidator.
2. To fix or determine the remuneration of the Liquidator.
3. To fix or determine the future remuneration of the Liquidator.
4. To consider the Liquidator's internal disbursements for the period 1 September 2017 to the completion of the liquidation.
5. To consider the appointment of a COI and, if so, who will be the committee members.
6. Any other business.

Please note only creditors of the Company are entitled to attend and vote at the meeting of creditors.

It has not yet been determined whether Investors will ultimately be creditors. The Liquidator will allow Investors to vote as contingent creditors for a nominal amount of \$1.00 at the meeting of creditors.

In order to be recognised as a contingent creditor, each Investor **must complete a Formal Proof of Debt Form provided at Appendix D and provide adequate particulars of their claim(s) to the Liquidator for review and acceptance.**

Meeting documentation is attached at **Appendix D** including:

- Notice of Meeting
- Appointment of Proxy Form
- Formal Proof of Debt Form.

Please complete and return the Appointment of Proxy Form and the Formal Proof of Debt Form to my office by 4:00pm on 30 March 2020.

If you wish to attend the meeting of creditors by teleconference, please contact Adrian D'Aprano by 23 March 2020.

10 Your rights as a creditor

Information regarding your rights as a creditor is provided in the Information Sheet attached at **Appendix E**. This includes your right to:

- make reasonable requests for information
- make reasonable requests for a meeting
- give directions to me
- appoint a reviewing Liquidator
- replace me as the Liquidator.

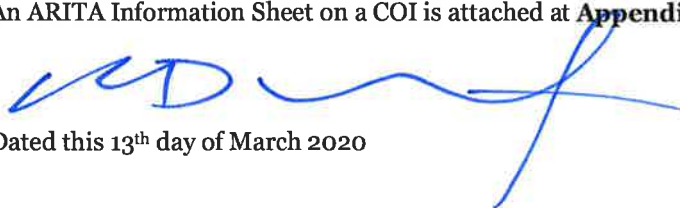
11 Where can you get more information?

You can access additional information on the following websites:

- Australian Restructuring Insolvency & Turnaround Association (**ARITA**) at www.arita.com.au/creditors
- ASIC at <http://asic.gov.au/regulatory-resources/insolvency/insolvency-information-sheets/>

A general Information Sheet from ASIC is attached at **Appendix F**.

An ARITA Information Sheet on a COI is attached at **Appendix G**.



Dated this 13th day of March 2020

Robert Ditrich
Liquidator

Appendices

Appendix A – Declaration of Independence, Relevant Relationships and Indemnities

Declaration of Independence, Relevant Relationships and Indemnities

**Australian Public Custodian Ltd
(In Liquidation) (the Company)
ACN 131 251 968**

A Practitioner appointed to an insolvent entity is required to make declarations as to:

- A. their independence generally
- B. relevant relationships, including:
 - i. the circumstances of the appointment
 - ii. any relationships with the Company and others within the previous 24 months
 - iii. any prior professional services for the Company within the previous 24 months
 - iv. that there are no other relationships to declare and
- C. any indemnities given, or up-front payments made, to the Practitioner.

On 1 August 2018, PPB Advisory merged with PricewaterhouseCoopers (**PwC**). As a result, the majority of PPB Advisory's partners and staff joined PwC. I am a former partner of PPB Advisory.

This declaration is made in respect of me, the partners and staff of PwC, and all members of the PwC global network in Australia.

A. Independence

I, Robert Ditrich, a partner of PwC, 2 Riverside Quay, SOUTHBANK VIC 3006, undertook a proper assessment of the risks to my independence prior to accepting the appointment as Liquidator of the Company in accordance with the law and applicable professional standards.

The assessment identified no real or potential risks to my independence. I am not aware of any conflicts at the time of my appointment or any reasons that would prevent me from accepting this appointment.

A further assessment of risks to my independence as a result of the merger of PPB Advisory and PwC was undertaken prior to the merger completion on 1 August 2018. This additional assessment did not identify any real or potential risks to my independence.

In the event that any conflict arises, I will seek independent legal advice or court directions if appropriate.

In the event that this declaration needs to be updated I will issue written notice to all known creditors as per the Company's records.

B. Declaration of Relationships

i. Circumstances of appointment

This appointment was referred to me by Mary Nemeth (**Nemeth**) previously of Hunt & Hunt Lawyers (**H&H**).

I confirm I had no prior meetings with the Company prior to my appointment. I was appointed Liquidator by the Court on the application of the Deputy Commissioner of Taxation. I consented to act on the request of Nemeth of H&H on 22 March 2017. Nemeth and H&H are known to me on a professional basis. In my opinion, this does not affect my independence for the reason that

giving a consent to act to a creditor does not result in any duty owed to that creditor that would conflict with my duties. There are no other prior professional or personal relationships that should be disclosed.

I did not provide other information or advice to the Company or its directors prior to my appointment, beyond that outlined in this Declaration of Independence, Relevant Relationships and Indemnities (**DIRRI**).

ii. Relevant relationships (excluding professional services to the insolvent)

PwC undertakes assignments for a large number of corporate and government entities in Australia and may have acted for some creditors of the Company. I am not aware of any such relationship that would influence my ability to be able to fully comply with the statutory and fiduciary obligations associated with the liquidation of the Company in an objective and impartial manner.

The partners and staff of PPB Advisory who joined PwC from 1 August 2018 may also have previously acted for some creditors of the Company. I am not aware of any such relationship that would influence my ability to be able to fully comply with the statutory and fiduciary obligations associated with the liquidation of the Company in an objective and impartial manner.

I, or a member of my firm, have, or have had within the preceding 24 months, a relationship with:

Ms Mary Nemeth, formerly of H&H

Nature of relationship	Reasons why no conflict of interest or duty
<p>H&H acts for the petitioning creditor and referred this matter to me.</p> <p>I have had previous professional relationships with H&H and a number of the Firm's staff for a number of years. I have previously undertaken formal and informal assignments for companies referred to me by H&H.</p>	<p>I believe that this relationship does not result in a conflict of interest or duty because:</p> <ul style="list-style-type: none"> • My previous relationships with H&H were not in relation to the Company's and/or the directors' affairs, or related parties of the Company and/or their directors. • I have a wide referral base and H&H is one of my many referrers of work in the past 24 months. • Referrals from solicitors, business advisors or accountants are commonplace and do not impact on my independence in carrying out my duties as Liquidator.

La Trobe Financial

Nature of relationship	Reasons why no conflict of interest or duty
<p>La Trobe Financial held a security interest over property assets at the date of my appointment. I have professional relationships with the majority of the major banks and lenders in Australia, particularly in the credit and workout areas. I have had previous professional relationships with La Trobe Financial.</p>	<p>I believe that this relationship does not result in a conflict of interest or duty because my previous relationships with La Trobe Financial were not in relation to the Company and/or the directors' affairs, or related parties of the Company and/or their directors.</p>

iii. Prior professional services to the insolvent

Neither I, nor my firms (i.e. PPB Advisory and PwC), have provided any professional services to the Company in the previous 24 months.

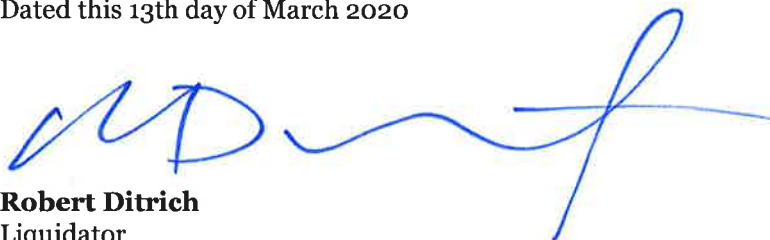
iv. No other relevant relationships to disclose

There are no other known relevant relationships, including personal, business and professional relationships, from the previous 24 months with the Company, an associate of the Company, a former insolvency practitioner appointed to the Company or any person or entity that has security over the whole or substantially the whole of the Company's property that should be disclosed.

C. Indemnities and up-front payments

I have not been indemnified in relation to this administration, other than any indemnities that I may be entitled to under statute. I have not received any upfront payments in respect of my remuneration or disbursements.

Dated this 13th day of March 2020



Robert Ditrich
Liquidator

Note:

- *If circumstances change, or new information is identified, I am required under the Corporations Act 2001 and the Australian Restructuring Insolvency & Turnaround Association (ARITA) Code of Professional Practice to update this Declaration and provide a copy to creditors with our next communication as well as table a copy of any replacement declaration at the next meeting of the insolvent's creditors.*
- *Any relationships, indemnities or up-front payments disclosed in the DIRRI must not be such that the Practitioner is no longer independent. The purpose of components B and C of the DIRRI is to disclose relationships that, while they do not result in the Practitioner having a conflict of interest or duty, ensure that creditors are aware of those relationships and understand why the Practitioner nevertheless remains independent.*

Appendix B – Initial Remuneration Notice

Initial Remuneration Notice

Australian Public Custodian Ltd
(In Liquidation) (the Company)
ACN 131 251 968

The Company held an Australian Financial Services Licence with the Australian Securities and Investments Commission (**ASIC**) and acted as the responsible entity for two registered managed investment schemes:

- Future Estate Australian Residential Property Fund (ARSN: 134 516 724) (**FEARPF**), and
- Future Estate Development Opportunity Fund (ARSN: 164 525 973) (**FEDOF**)

(Collectively the Schemes)

The purpose of this Initial Remuneration Notice is to provide you with the information about how I propose my remuneration for undertaking the liquidation of the Company will be set. I am obliged to seek Court approval for my remuneration in respect of costs associated with the Schemes.

A. Remuneration Method

There are four basic methods that can be used to calculate the remuneration charged by an insolvency practitioner. They are:

1. Time based / hourly rates

This is the most common method. The total fee charged is based on the hourly rate charged for each person who carried out the work, multiplied by the number of hours spent by each person on each of the tasks performed.

2. Fixed Fee

The total fee charged is normally quoted at the commencement of the administration and is the total cost for the administration. Sometimes a practitioner will finalise an administration for a fixed fee.

3. Percentage

The total fee charged is based on a percentage of a particular variable, such as the gross proceeds of assets realisations.

4. Contingency

The practitioner's fee is structured to be contingent on a particular outcome being achieved.

B. Method chosen

Given the nature of this administration I propose that my remuneration as Liquidator be calculated on **Time based / Hourly Rates**. This is because:

- It ensures that creditors are only charged for work that is performed.
- As Liquidator I am required to perform a number of tasks which do not necessarily relate to realisations of assets for example, responding to creditor enquires, reporting to ASIC, distributing funds in accordance with the Corporations Act 2001 (**the Act**). Generally, it is difficult to estimate with accuracy the total amount of fees necessary to complete all tasks required in the administration.
- My firm has a time recording system that can produce a detailed analysis of time spent on each task type, by each individual staff member utilized in the administration.

C. Explanation of Hourly Rates

The hourly rates charged by PricewaterhouseCoopers for remuneration are set out in the table below together with a general guide showing the qualifications and experience of staff engaged in the liquidation and the role they take in the liquidation. The hourly rates charged encompass the total cost of providing professional services and should not be compared to an hourly wage. Time is charged in 6 minute increments.

Remuneration is approved by a resolution of the creditors, a creditor's committee or a court.

PwC hourly rates as at 1 July 2016 and guide to level of insolvency classification *

Title	Description	Hourly rate (ex GST) \$
Partner/Appointee	A registered Liquidator or bankruptcy trustee who is a leading practitioner with extensive experience in all forms of insolvency administrations. A senior member of management with ultimate responsibility for the conduct of the administration.	685.00
Director / Principal	Highly experienced in insolvency matters at a senior level, including managing complex administrations and supervising teams. Capable of deputising for the Appointee where required and may be qualified to accept appointments in his/her own right. Alternatively, may have specialist business or industry skills, and management experience at a senior level, or a combination of skills.	625.00
Senior Manager	Experienced in insolvency matters with strong technical knowledge and commercial skills. Capable of supervising teams, having primary responsibility for small to medium matters, or complex aspects of larger matters. Answerable to the Appointee and/or senior team members. Alternatively, may have specialist business or industry skills, and management experience at a senior level, or a combination of skills.	550.00
Manager	Experienced in insolvency matters with well-developed technical and commercial skills. Capable of supervising smaller teams and can take day-to-day responsibility of smaller to medium matters, or aspects of more complex matters. Alternatively, may have management, business, or industry skills, or a combination of skills. Generally reports to senior team members, or directly to the Appointee on smaller matters.	500.00
Assistant Manager	Experienced in insolvency matters with well-developed technical and commercial skills. Capable of supervising smaller teams and can take day-to-day responsibility of smaller to medium matters, or aspects of more complex matters. Alternatively, may have management, business, or industry skills, or a combination of skills. Generally reports to senior team members, or directly to the Appointee on smaller matters.	460.00
Senior Consultant	Generally a qualified accountant with postgraduate qualifications in insolvency subjects. Assists with the planning and control of various aspects of the administration. Has day-to-day responsibility for overseeing fieldwork and can supervise staff.	415.00
Consultant	Generally a qualified accountant. Assists with the planning and control of various aspects of the administration, including fieldwork under the supervision of more senior staff.	350.00
Graduate	Graduated from University with minimal insolvency experience. Required to assist in day to day field work and other routine tasks under supervision of more senior staff.	275.00
Undergraduate	Completed HSC and plans to undertake at least part-time degree/diploma, required to assist in administration and day to day field work under supervision of more senior staff.	275.00
Offshore Professional	Generally a qualified accountant. Assists with planning and control of various aspects of the administration but is primarily responsible for completing office work under the supervision of more senior staff.	250.00
Bookkeeper	Has specialist skills and experience in bookkeeping and other administrative tasks connected to statutory and other reporting obligations of the administration.	160.00
Personal Assistant	Appropriate skills including general administration duties on jobs.	160.00
Administration	Has appropriate skills to provide administrative support to the team including high-speed and accurate document preparation and data entry, records control and management, and general data analytics.	160.00

* The above rates are reviewed from time to time. The description of each grade is a general guide only. From time to time there may be persons employed who, because of their skills and experience, are employed in positions where they may not necessarily meet all of the above qualifications.

The hourly rates set out in this schedule are exclusive of GST and do not include disbursements.

Future remuneration is approved subject to a maximum or cap. Sometimes the actual cost of the administration will exceed the maximum which has been approved, in which case, I may seek another resolution for additional remuneration. I will not pay any amount exceeding the maximum without this approval.

Where funds are available, I will usually pay approved remuneration at intervals not less than one month. Where funds are not available, remuneration will not be paid.

D. Estimate of Total Remuneration

Having considered the nature of the administration, likely tasks to be completed and complexity, I estimate my remuneration to be \$160,000.00 (exclusive of GST) for the period up to completion. Further details and an explanation of how this amount has been calculated are found in the attached Remuneration Approval Notice.

E. Disbursements

Disbursements are divided into three types:

- **Externally provided professional services** – these are recovered at cost. An example of an externally provided professional service disbursement is legal fees.
- **Externally provided non-professional costs** – these are recovered at cost. Examples of externally provided professional service disbursements are travel, accommodation, search fees, lodgment fees, storage, outsourced printing and photocopying services.
- **Internal disbursements** such as photocopying, printing and postage. These disbursements, if charged to the Administration, would generally be charged at cost; though some expenses such as telephone calls, photocopying and printing may be charged at a rate which recoups both variable and fixed costs. The recovery of these costs must be on a reasonable commercial basis.

I am not required to seek creditor approval for disbursements paid to third parties but must account to creditors. I must be satisfied that these disbursements are appropriate, justified and reasonable.

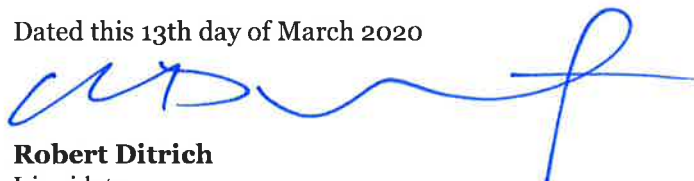
I am required to obtain creditor approval for the payment of internal disbursements where there is a profit or advantage prior to these disbursements being paid from the administration. Creditors will be asked to approve my internal disbursements prior to these disbursements being paid from the administration.

Details of the basis of recovering disbursements in this administration are provided below. Full details of any actual costs incurred will be provided with future reporting.

Basis of disbursement claim

Disbursements	Rate (Excl GST)
Externally provided professional services	At cost
Externally provided non-professional services	At cost
Internal disbursements	
Staff vehicle use	65 cents per kilometre for first 150km of return trip and 40 cents per kilometre thereafter

Dated this 13th day of March 2020



Robert Ditrich
Liquidator

Appendix C – Remuneration Approval Report

Remuneration Approval Report

1. Remuneration declaration
2. Executive summary
3. Remuneration
4. Disbursements
5. Summary of receipts and payments
6. Queries

Australian Public
Custodian Ltd
(In Liquidation) (the
Company)
ACN 131 251 968

The Company held an Australian Financial Services Licence (**AFSL**) with the Australian Securities and Investments Commission (**ASIC**) and acted as the Responsible Entity (**RE**) for two registered managed investment schemes:

- Future Estate Australian Residential Property Fund (ARSN: 134 516 724) (**FEARPF**)
- Future Estate Development Opportunity Fund (ARSN: 164 525 973) (**FEDOF**)

(Collectively the Schemes)

This Remuneration Approval Report (**the Report**) provides creditors with the information you need to be able to make an informed decision regarding the approval of my remuneration for tasks associated with the liquidation the Company.

The Report **excludes** the costs associated with Scheme related tasks (**Scheme Costs**).

I am obliged to seek Court approval (**Court Application**) for my remuneration in respect of Scheme Costs. It is my intention to seek this approval in April/May 2020. Members of the Schemes will be notified of the Court Application and provided with the relevant detail.

You should read this report and the other documentation that I have sent you and then attend the meeting of creditors in order to voice your opinion by casting your vote on the resolutions put to the meeting. The meeting will also give you an opportunity to ask any questions that you may have.

Alternatively, you can appoint a representative to attend on your behalf by lodging a proxy form. Lodging a specific proxy form allows you to specify how your proxy must vote. Lodging a general proxy form allows your representative to choose how your vote is exercised.

1 Declaration

I, Robert Ditrich of PwC, have undertaken a proper assessment of this remuneration claim for my appointment as Liquidator of Australian Public Custodian Ltd in accordance with the law and applicable professional standards. I am satisfied that the remuneration claimed is in respect of necessary work, properly performed, or to be properly performed, in the conduct of the administration.

Dated this 13th day of March 2020


Robert Ditrich
Liquidator

2 Executive summary

To date, no remuneration has been approved and paid in this Liquidation.

I am seeking approval for my remuneration as summarised below:

Period	Report Reference	Amount (ex GST)
Current remuneration approval sought:		
Liquidation		
Resolution 1: 21 April 2017 to 21 February 2020	Sch. A1 of App. A	\$132,228.50
Resolution 2: 22 February 2020 to completion*	Sch. A2 of App. A	\$160,000.00
Total		\$292,228.50

* Approval for the future remuneration sought is based on an estimate of the work necessary to the completion of the administration. Should additional work be necessary beyond what is contemplated, further approval may be sought from creditors.

The total remuneration for the liquidation of the Company is estimated to be \$292,228.50 (excluding GST). As noted on page 1, this excludes Scheme Costs.

For the purpose of transparency, please note I will be seeking Court approval for my remuneration in relation to Scheme Costs as per below:

Scheme	Period	Amount (ex GST)
FEDOF	21 April 2017 to 21 February 2020	\$148,592.75
FEARPF	21 April 2017 to 21 February 2020	\$238,736.25

Please refer to **Appendix A** for full details of the calculation and composition of the remuneration approval sought in relation to the Company. **Appendix B** provides full details of the key activities undertaken by me and my staff.

3 Remuneration

3.1 Remuneration claim resolutions

I will be seeking approval of the following resolutions to approve my remuneration. Details to support these resolutions are included in section 3.2 and attached schedules.

Resolution 1

“To approve the Liquidator’s remuneration for the period 21 April 2017 to 21 February 2020 of \$132,228.50 plus GST as set out in the Remuneration Approval Report dated 13 March 2020 to be drawn from available funds immediately or as funds become available to the Company.”

Resolution 2

“To approve the Liquidator’s remuneration for the period 22 February 2020 to the conclusion of the Liquidation up to a maximum of \$160,000.00 plus GST, as set out in the Remuneration Approval Report dated 13 March 2020 to be drawn from available funds as incurred or as funds become available to the Company.”

Future remuneration is approved subject to a maximum or cap. Sometimes the actual cost of the administration will exceed the maximum which has been approved, in which case I may seek another resolution for additional remuneration. I will not pay any amount exceeding the maximum without this approval.

Where funds are available, I will usually pay approved remuneration at intervals of not less than one month. Where funds are not available, remuneration will not be paid.

3.2 Details of remuneration

The basis of calculating the remuneration claims are summarised in the schedules in **Appendix A**.

The details of the major tasks performed and the costs associated with each of those major tasks are contained in **Appendix B**.

3.3 Total remuneration reconciliation

In preparing this Report, I have made my best estimate at what I believe the Liquidation of the Company will cost to complete and I do not anticipate that I will have to ask creditors to approve any further remuneration. However, should the Liquidation not proceed as expected, I will advise creditors and I may seek approval of further remuneration and provide details on why the remuneration has changed.

As noted on Page 1, I am obliged to make a Court Application for my remuneration in respect of Scheme Costs.

3.4 Likely impact on dividends

The Corporations Act 2001 (**the Act**) sets out the order for payment of claims against the Company and it provides for remuneration of the Liquidator to be paid in priority to other claims. This ensures that when there are sufficient funds, the Liquidator receives payment for the work done to recover assets, investigate the company’s affairs, report to creditors and distribute any available funds. Even if creditors approve my remuneration, this does not guarantee that I will be paid, as I am only paid if sufficient assets are recovered.

It is unlikely a dividend will be paid to any class of creditors of the Company or a distribution paid to investors in the Schemes. Any return will be contingent upon successful claims being brought against the directors, officers and/or related parties.

3.5 Remuneration recovered from external sources

I have not received any funding from external sources for my remuneration. Please note a fee of \$30k was agreed with LaTrobe Financial for work carried out to oversee the sale of the Riviera apartments, given these are FEARPF assets, this remuneration has not been included in this report.

4 Disbursements

Disbursements are divided into three types:

- **Externally provided professional services** – these are recovered at cost. An example of an externally provided professional service disbursement is legal fees (for transparency I note that in this administration I will be paying legal fees as a direct expense of the administration rather than as a disbursement).
- **Externally provided non-professional costs** – these are recovered at cost. Examples of externally provided non-professional costs are travel, accommodation and search fees.
- **Internal disbursements** such as photocopying, printing and postage. These disbursements, if charged to the administration, would generally be charged at cost, although some expenses such as telephone calls, photocopying and printing may be charged at a rate which recoups variable and fixed costs. The recovery of these costs must be on a reasonable commercial basis.

I have undertaken a proper assessment of external disbursements claimed in accordance with the law and applicable professional standards. I am satisfied that the disbursements claimed are necessary and proper.

I will be seeking creditor approval to pay my disbursements for the period 1 September 2017 to the completion of the Liquidation.

4.1 Disbursement claim

The following disbursements have been incurred and paid to PPB Advisory (my previous firm) for the period 21 April 2017 to 6 June 2017 in accordance with the rates set out below.

Disbursements 21 April 2017 to 6 June 2017	Total (Excluding GST)
Disbursements paid	
Internal disbursements	
Photocopies and Printing	\$1,005.70
Scanning	\$18.05
Disbursements incurred (but not paid)	
External disbursements	
Postage	\$37.59
Advertising	\$333.06
Courier	\$11.60
Search fees	\$1,503.28
Search fees (non-taxable)	\$9.30
Total (excluding GST)	\$2,918.58
GST	\$290.93
Total (including GST)	\$3,209.51

The disbursements below have been incurred and remain unpaid for the period 7 June 2017 to 31 August 2017 in accordance with the rates set out below. Please note, I am not required to obtain creditor approval for the payment of disbursements during this period.

Disbursements	Total
7 June 2017 to 31 August 2017	(Excluding GST)
Disbursements paid	
Internal disbursements	
Photocopies and Printing	522.10
Scanning	36.40
Disbursements incurred (but not paid)	
External disbursements	
Postage	174.59
IT Consumables	177.27
Search fees	16.80
Travel	52.48
Total (excluding GST)	979.64
GST	97.96
Total (including GST)	\$1,077.60

The following disbursements have been incurred and remain unpaid for the period 1 September 2017 to 31 January 2020 in accordance with rates set out below. I require creditor approval to pay such disbursements.

Disbursements	Total
1 September 2017 to 31 January 2020	(Excluding GST)
Disbursements paid	
Internal disbursements	
ASIC Levy (non-taxable)	77.02
Photocopies and Printing	288.00
Scanning	40.80
Disbursements incurred (but not paid)	
External disbursements	
Postage	4.32
Search fees	2,152.68
Storage fees	112.18
Total (excluding GST)	\$2,675.00
GST	\$259.80
Total (including GST)	\$2,934.80

4.2 Future basis of internal disbursements (if required)

Future disbursements incurred by us will be charged to the administration on the following basis:

Basis of disbursement claim

Disbursements	Rate (Excluding GST)
Externally provided professional services	At cost
Externally provided non-professional services	At cost
Internal disbursements	
Postage	At cost*
Staff vehicle use	65 cents per kilometre for first 150km of return trip and 40 cents per kilometre thereafter (per prescribed ATO rates)*

Rates applicable as at 1 January 2018

* These internal disbursements do not require approval to be paid as they are charged at Cost

4.3 Internal disbursement claim resolution

From 1 September 2017, I am required to obtain creditor approval for the payment of internal disbursements where there is a profit or advantage prior to these disbursements being paid from the administration. I will be seeking approval for these internal disbursements prior to payment from the administration.

Resolution 3

“To approve the Liquidator’s internal disbursements for the period 1 September 2017 to the completion of the Liquidation up to a maximum of \$5,000.00 plus GST, in accordance with the rates set out in Section 4.2 of the Remuneration Approval Report dated 13 March 2020.”

5 Summary of receipts and payments

A summary of receipts and payments for the period from 21 April 2017 to 21 February 2020 is contained in **Appendix C**.

6 Queries

Please contact Adrian D’Aprano on +61 (3) 8603 2308 or by email to adrian.daprano@pwc.com should you have any queries or require any further information. You can access additional information on the following websites:

- ARITA at www.arita.com.au/creditors
- ASIC at <http://asic.gov.au/regulatory-resources/insolvency/insolvency-information-sheets/>

Appendices

Appendix A – Calculation of remuneration schedule

Australian Public Custodian Ltd (In Liquidation)
Schedule A1
Calculation of Remuneration
For the period 21 April 2017 to 21 February 2020

Australian Public Custodian Ltd (In Liquidation)

ACN 131 251 968

Calculation of Remuneration

For the period 21 April 2017 to 21 February 2020

Employee	Position	\$/hours	Total Actual	Total	Assets		Creditors		Investigation		Administration	
		(Ex GST)	Hrs	\$	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs
Craig Crosbie	Partner	685.00	8.9	6,119.33	0.00	0.00	1,370.00	2.00	2,534.50	3.70	2,214.83	3.23
Robert Ditrich	Partner	685.00	13.2	9,019.17	205.50	0.30	137.00	0.20	6,964.17	10.17	1,712.50	2.50
Rod Slattery	Partner	685.00	0.1	68.50	0.00	0.00	0.00	0.00	0.00	0.00	68.50	0.10
Richie Dobson	Director	625.00	10.3	6,458.33	0.00	0.00	0.00	0.00	6,458.33	10.33	0.00	0.00
Christopher Sequeira	Senior Manager	550.00	13.8	7,590.00	440.00	0.80	715.00	1.30	4,876.67	8.87	1,558.33	2.83
Cliona Waters	Senior Manager	550.00	100.0	55,018.33	2,328.33	4.23	29,241.67	53.17	16,316.67	29.67	7,131.67	12.97
Leah Campbell	Senior Manager	550.00	0.5	275.00	0.00	0.00	55.00	0.10	0.00	0.00	220.00	0.40
Patrick Sakowski	Manager	500.00	22.2	11,100.00	100.00	0.20	350.00	0.70	8,233.33	16.47	2,416.67	4.83
Sylvia Young	Manager	500.00	0.8	400.00	0.00	0.00	0.00	0.00	0.00	0.00	400.00	0.80
Patrick Sakowski	Assistant Manager	460.00	39.7	18,262.00	322.00	0.70	966.00	2.10	14,229.33	30.93	2,744.67	5.97
Adrian D'Aprano	Senior Consultant	415.00	13.3	5,519.50	0.00	0.00	2,697.50	6.50	1,535.50	3.70	1,286.50	3.10
Kim Neill	Senior Consultant	415.00	0.5	207.50	0.00	0.00	0.00	0.00	207.50	0.50	0.00	0.00
Elizabeth Meng	Senior Consultant	415.00	0.4	166.00	0.00	0.00	0.00	0.00	0.00	0.00	166.00	0.40
Erin Blake	Consultant	350.00	2.2	770.00	105.00	0.30	227.50	0.65	402.50	1.15	35.00	0.10
Jonny Robin	Consultant	350.00	0.0	11.67	0.00	0.00	0.00	0.00	0.00	0.00	11.67	0.03
Spencer Rath	Consultant	350.00	1.8	641.67	0.00	0.00	11.67	0.03	0.00	0.00	630.00	1.80
Chris Prowse	Graduate	275.00	11.4	3,144.17	0.00	0.00	0.00	0.00	2,374.17	8.63	770.00	2.80
Erin Blake	Graduate	275.00	2.9	788.33	82.50	0.30	137.50	0.50	165.00	0.60	403.33	1.47
Jonny Robin	Graduate	275.00	1.1	302.50	0.00	0.00	0.00	0.00	229.17	0.83	73.33	0.27
Lachlan McLeish	Undergraduate	275.00	2.6	715.00	0.00	0.00	0.00	0.00	165.00	0.60	550.00	2.00
Sam Lang	Undergraduate	275.00	0.1	18.33	0.00	0.00	0.00	0.00	0.00	0.00	18.33	0.07
Will Hays	Undergraduate	275.00	0.2	45.83	0.00	0.00	0.00	0.00	0.00	0.00	45.83	0.17
Anshu Agrawal	Offshore Professional	250.00	1.3	333.33	0.00	0.00	0.00	0.00	333.33	1.33	0.00	0.00
Anuj Kumar	Offshore Professional	250.00	7.0	1,750.00	0.00	0.00	1,100.00	4.40	600.00	2.40	50.00	0.20
	Bookkeeper	160.00	21.9	3,504.00	0.00	0.00	0.00	0.0	0.00	0.00	3,504.00	21.90
Total			276.3	132,228.50	3,583.33	6.8	37,008.83	71.7	65,625.17	129.9	26,011.17	67.9
GST				13,222.85								
Total (Including GST)				145,451.35								
Average rate (excluding GST)				478.57	524.39		516.52		505.26		382.89	

Australian Public Custodian Ltd (In Liquidation)
Schedule A2
Calculation of Remuneration
For the period 22 February 2020 to completion

Australian Public Custodian Ltd (In Liquidation)

ACN 131 251 968

Calculation of Remuneration

For the period 22 February 2020 to completion

Employee	Position	\$/hours	Total Actual	Total	Creditors		Investigation		Administration	
		(Ex GST)	Hrs	\$	\$	Hrs	\$	Hrs	\$	Hrs
Craig Crosbie	Partner	685.0	23.36	16,000.00	6,000.00	8.8	8,000.00	11.7	2,000.00	2.9
Cliona Waters	Senior Manager	550.0	58.18	32,000.00	12,000.00	21.8	16,000.00	29.1	4,000.00	7.3
Adrian D'Aprano	Senior Consultant	415.0	154.22	64,000.00	24,000.00	57.8	32,000.00	77.1	8,000.00	19.3
SDC Team	Offshore Professional	250.0	128.00	32,000.00	12,000.00	48.0	16,000.00	64.0	4,000.00	16.0
	Specialist	160.0	100.00	16,000.00	6,000.00	37.5	8,000.00	50.0	2,000.00	12.5
Total			463.8	160,000.00	60,000.00	173.9	80,000.00	231.9	20,000.00	58.0
GST				16,000.00						
Total (Including GST)				176,000.00						
Average rate (excluding GST)				345.01	345.01		345.01		345.01	

Appendix B – Table of major tasks for remuneration

Schedule B1

Resolution 1

The below table provides a description of the work undertaken in each major task area for the period 21 April 2017 to 21 February 2020.

Task Area	General Description	Includes
Assets 6.8 hours \$3,583.33	Other Assets	Corresponded with ASIC regarding the Company's AFSL Corresponded with the bank regarding pre-appointment bank accounts Considered a replacement RE/sale of the Company's shares
Creditors 71.7 hours \$37,008.83	Creditor enquiries	Prepared written correspondence to potential creditors Dealt with creditor enquiries via telephone Liaised with the Australian Taxation Office (ATO) regarding their debt Maintained creditor correspondence files
	Secured creditor reporting	Corresponded with secured financiers
	Creditor reports	Prepared this report to creditors
	Dealing with proofs of debt	Attended to creditor queries Reviewed creditor correspondence Reviewed and updated internal management system
Investigation 129.9 hours \$65,625.17	Conducting investigation	Reviewed and prepared background and history of Company Carried out statutory searches Prepared comparative financial statements Reviewed various agreements Reviewed accounting software and banking records Reviewed other books and records Reviewed and investigated specific transactions Corresponded with directors Corresponded with ASIC Reviewed documentation received through ATO Freedom of Information (FOI) request Reviewed obligations regarding AFSL Prepared a report pursuant to Section 533(1) of the Act Prepared an application to the ASIC Assetless Administration Fund Prepared investigation file

Administration 67.9 hours \$26,011.17	Examinations	<p>Liaised with legal advisors regarding the merits of Public Examination</p> <p>Prepared brief to legal advisors</p> <p>Reviewed legal documents in relation to examination summons of Mr Ben Anderson</p> <p>Attended to examination of Mr Anderson</p> <p>Reviewed examination transcripts</p> <p>Liaised with legal advisors regarding outcome of public examinations and further actions</p>
	Litigation / Recoveries	<p>Discussed a potential Company reinstatement application with legal advisors</p> <p>Liaised with legal advisors in respect to breaches of the Act identified and potential voidable transactions</p>
	ASIC reporting	<p>Prepared statutory investigation reports for ASIC</p> <p>Corresponded with ASIC</p> <p>Prepared investigation memorandum</p> <p>Prepared statutory lodgements</p>
	Correspondence	<p>Prepared standard letters and other correspondence</p>
	Document maintenance/file review/checklist	<p>Filed documents</p> <p>Updated checklists</p>
	Bank account administration	<p>Prepared correspondence to banks regarding opening and freezing accounts</p> <p>Corresponded with the bank</p> <p>Prepared bank account reconciliations</p> <p>Prepared receipt and payment vouchers</p>
	ASIC Form 524 /5062 and other forms	<p>Prepared and lodged statutory ASIC forms</p> <p>Reviewed ASIC requirements regarding funding and supplementary report</p>
	ATO and other statutory reporting	<p>Corresponded with ATO</p> <p>Lodged FOI request via ATO portal</p> <p>Prepared and lodged BAS Statements</p>
	Planning/review	<p>Discussed planning and strategy</p> <p>Updated Insol checklist</p>
	Books and records/storage	<p>Attended to archiving of books and records</p>

Schedule B2

Resolution 2

The below table provides a description of the work to be undertaken in each major task area for the period 22 February 2020 to completion.

Task Area	General Description	Includes
Creditors 173.9 hours \$60,000.00	Creditor Enquiries	Deal with creditor enquiries via telephone Maintaining creditor enquiry files Review and prepare correspondence to creditors and their representatives
	Secured creditor reporting	Provide verbal updates to secured creditor Responding to secured creditor's queries
	Creditor reports	Preparing creditor reports
	Dealing with proofs of debt	Receipting and filing POD when not related to a dividend
	Meeting of Creditors	Preparation of meeting notices, proxies and advertisements Forward notice of meeting to all known creditors including contingent creditors Preparation of meeting file, including agenda, certificate of postage, attendance register, list of creditors, reports to creditors, advertisement of meeting and draft minutes of meeting Conducting meeting of creditors Preparation and lodgement of minutes of meetings with ASIC Responding to stakeholder queries and questions immediately following meeting
Investigation 231.9 hours \$80,000.00	Conducting investigation	Further investigation of specific transactions and liaising with directors regarding certain transactions Preparation and lodgement of additional reports to ASIC Conducting further investigations as required in order to pursue claims identified (subject to funding)
	Examinations	Liaising with legal advisors regarding potential further examinations of Company directors. If this action is taken the following tasks will be required: <ul style="list-style-type: none"> Preparing brief to legal advisors Attendance at examination Reviewing examination transcripts Liaising with legal advisors regarding outcome of examinations and further actions available
	Litigation / Recoveries	Preparing further briefs to legal advisors Liaising with legal advisors regarding recovery actions Potentially initiating legal actions and if necessary attending to: <ul style="list-style-type: none"> negotiations settlement matters trial
	ASIC reporting	Preparing further investigation reports

Task Area	General Description	Includes
Administration 58.0 hours \$20,000.00		Liaising with ASIC
	Correspondence	Attending to administration of correspondence and circulars required
	Document maintenance/file review/checklist	Filing of documents File reviews Updating checklists
	Bank account administration	Preparing bank account reconciliations Correspondence with bank regarding specific transfers
	ASIC Form 5602 and other forms	Preparing and lodging ASIC forms Correspondence with ASIC regarding statutory forms
	ATO and other statutory reporting	Preparing and lodging BAS
	Finalisation	Notifying ATO of finalisation Cancelling ABN / GST Completing checklists Finalising WIP
	Planning / Review	Discussions regarding status of administration
	Books and records / storage	Dealing with records in storage Sending job files to storage

***Appendix C - Summary of
receipts and payments for the
period 21 April 2017 to 21
February 2020***

Summarised Receipts & Payments

Australian Public Custodian Ltd (In Liquidation)

A.C.N. 131 251 968

Transactions from 21 April 2017 To 21 February 2020

Account	Net	GST	Gross
RECEIPTS			
Real property	1,564,545.45	130,454.55	1,695,000.00
Trading revenue (Taxable)	171,649.70	17,164.97	188,814.67
Cash at bank	116,457.52	0.00	116,457.52
Other professional fees (Taxable)	27,272.70	2,727.30	30,000.00
Suspense account	23,634.36	0.00	23,634.36
GST clearing account	8,097.00	0.00	8,097.00
Interest received	430.12	0.00	430.12
	\$1,912,086.85	\$150,346.82	\$2,062,433.67
PAYMENTS			
Non circulating secured creditor	1,336,428.03	0.00	1,336,428.03
GST clearing account	151,707.36	0.00	151,707.36
Asset Realisation Costs	121,446.73	11,125.62	132,572.35
Legal fees	95,698.30	9,329.46	105,027.76
Property management - Strata levies	78,244.67	5,002.04	83,246.71
Other professional fees (Taxable)	47,065.36	4,706.54	51,771.90
Council Rates	25,823.50	0.00	25,823.50
Appointee's disbursements (Taxable)	2,909.28	0.00	2,909.28
Petitioners costs	2,503.00	0.00	2,503.00
Input tax credits	290.93	0.00	290.93
Storage costs (Taxable)	59.98	5.97	65.95
Bank charges	27.20	0.00	27.20
Appointee's disbursements (Non taxable)	9.30	0.00	9.30
	\$1,862,213.64	\$30,169.63	\$1,892,383.27

Cash at Bank as at 21 February 2020

\$170,050.40

Appendix D – Meeting Documentation

NOTICE OF MEETING OF CREDITORS
of
Australian Public Custodian Ltd
(In Liquidation) (the Company)
ACN 131 251 968

Notice is given that a meeting of the creditors of the Company will be held in the meeting rooms of the Chartered Accountants Australia and New Zealand, Level 18 Bourke Place, 600 Bourke Street, Melbourne, Victoria 3000 on 31 March 2020 at 3pm.

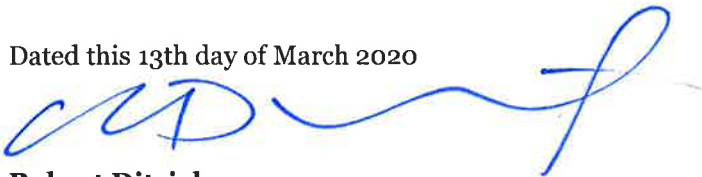
AGENDA

1. To receive and consider a report from the Liquidator.
2. To fix or determine the remuneration of the Liquidator.
3. To fix or determine the future remuneration of the Liquidator.
4. To consider the Liquidator's internal disbursements for the period 1 September 2017 to the completion of the liquidation.
5. To consider the appointment of a Committee of Inspection and, if so, who will be the committee members.
6. Any other business.

Creditors wishing to attend are advised that proofs of debt and proxies must be submitted to the Liquidator by 4.00pm on 30 March 2020.

There will be access to telephone conference facilities for creditors who cannot attend the meeting in person. Please contact Adrian D'Aprano by 23 March 2020 if you require access to teleconference facilities.

Dated this 13th day of March 2020



Robert Ditrich
Liquidator

- A person, or the proxy or attorney of a person, who wishes to participate in the meeting by telephone must notify me by **23 March 2020**, and give to me a written statement (email to adrian.daprano@pwc.com will be accepted) by **30 March 2020** setting out:
 - i. the name of the person and of the proxy or attorney (if any); and
 - ii. an address to which notices to the person, proxy or attorney may be sent; and
 - iii. a telephone number at which the person, proxy or attorney may be contacted; and
 - iv. any facsimile transmission number to which notices to the person, proxy or attorney may be sent.
- A person, or the proxy or attorney of a person, who participates in the meeting by telephone must pay any costs incurred by the person, proxy or attorney in participating and is not entitled to be reimbursed for those costs from the assets of the company.

Section 75-85 of the Insolvency Practice Rules (Corporations) sets out the entitlement to vote at meetings of creditors:

- (1) A person other than a creditor (or the creditor's proxy or attorney) is not entitled to vote at a meeting of creditors.
- (2) Subject to subsections (3), (4) and (5), each creditor is entitled to vote and has one vote.
- (3) A person is not entitled to vote as a creditor at a meeting of creditors unless:
 - (a) his or her debt or claim has been admitted wholly or in part by the external administrator; or
 - (b) he or she has lodged, with the person presiding at the meeting, or with the person named in the notice convening the meeting as the person who may receive of the debt or claim:
 - (i) those particulars; or

- (ii) if required—a formal proof of the debt or claim.
- (4) A creditor must not vote in respect of:
 - (a) an unliquidated debt; or
 - (b) a contingent debt; or
 - (c) an unliquidated or a contingent claim; or
 - (d) a debt the value of which is not established;
unless a just estimate of its value has been made.
- (5) A creditor must not vote in respect of a debt or a claim on or secured by a bill of exchange, a promissory note or any other negotiable instrument or security held by the creditor unless he or she is willing to do the following:
 - (a) treat the liability to him or her on the instrument or security of a person covered by subsection (6) as a security in his or her hands;
 - (b) estimate its value;
 - (c) for the purposes of voting (but not for the purposes of dividend), to deduct it from his or her debt or claim.
- (6) A person is covered by this subsection if:
 - (a) the person's liability is a debt or a claim on, or secured by, a bill of exchange, a promissory note or any other negotiable instrument or security held by the creditor; and
 - (b) the person is either liable to the company directly, or may be liable to the company on the default of another person with respect to the liability; and
 - (c) the person is not an insolvent under administration or a person against whom a winding up order is in force

FORM 535
Corporations Act 2001

FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

To the Liquidator of Australian Public Custodian Ltd (In Liquidation) (**the Company**)

1. This is to state that the Company was on 21 April 2017, and still is, justly and truly indebted

to(**Creditor**)
(name of creditor)

of
(address of creditor)

for \$.....

Particulars of the debt are:

Date (date when the debt arose)	Consideration (state how debt arose and attach supporting documentation)	Amount (\$)	Remarks (include details of voucher substantiating payment)

2. To my knowledge or belief the Creditor has not, nor has any person by the Creditor's order, had or received any satisfaction or security for the sum or any part of it except for the following
(insert particulars of all securities held. If the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, show them in a schedule in the following form).

Date	Drawer	Acceptor	Amount (\$c)	Due Date

*3A. I am employed by the Creditor and authorised in writing by the Creditor to make this statement. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.

*3B. I am the Creditor's agent authorised in writing to make this statement in writing. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.

** Items 3A & 3B - delete both if the Creditor is a natural person and this proof is made by the Creditor personally. In other cases, if, for example, you are the director of a corporate Creditor or the solicitor or accountant of the Creditor, you sign this form as the Creditor's authorised agent (delete item 3A). If you are an authorised employee of the Creditor (credit manager etc), delete item 3B.*

I have attached the following documents (tick as many as appropriate):

- | | | | |
|---|---|---|---|
| <input type="checkbox"/> Invoices | <input type="checkbox"/> Judgement from Court | <input type="checkbox"/> Letters of demand | <input type="checkbox"/> Orders from Company |
| <input type="checkbox"/> Monthly statements | <input type="checkbox"/> Statutory demand | <input type="checkbox"/> Credit application | <input type="checkbox"/> Guarantee from Company |
| <input type="checkbox"/> Creditors authority letter | <input type="checkbox"/> Other documents | | |

Dated/...../..... NameSignatory.....

Phone Email address.....

FORM 532
Corporations Act 2001
APPOINTMENT OF PROXY

Australian Public Custodian Ltd
(In Liquidation) (the Company)
ACN 131 251 968

A. Appointment of a proxy

I/We,
(If a company, strike out "I" and set out full name of the company)

of
(address)

a creditor of the Company appoint.....

as my/our proxy, or in his/her absence....., to vote at the meeting of creditors to be held on 31 March 2020 in the meeting rooms of the Chartered Accountants Australia and New Zealand, Level 18 Bourke Place, 600 Bourke Street, Melbourne, Victoria 3000 at 3pm or at any adjournment of that meeting.

B. Voting directions

Option 1: ☐ If appointed as a general proxy, as he/she determines on my/our behalf
(Please proceed to section C ie do not complete the table below)

and/or

Option 2: ☐ If appointed as a special proxy in the manner set out below:
(Please complete the table below before proceeding to section C)

No	Resolution	For	Against	Abstain
1	To approve the Liquidator's remuneration for the period 21 April 2017 to 21 February 2020 of \$132,228.50 plus GST as set out in the Remuneration Approval Report dated 13 March 2020 to be drawn from available funds immediately or as funds become available to the Company.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2	To approve the Liquidator's remuneration for the period 22 February 2020 to the conclusion of the Liquidation up to a maximum of \$160,000.00 plus GST, as set out in the Remuneration Report dated 13 March 2020 to be drawn from available funds as incurred or as funds become available to the Company.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3	To approve the Liquidator's internal disbursements for the period 1 September 2017 to the completion of the Liquidation up to a maximum of \$5,000.00 plus GST, in accordance with the rates set out in Section 4.2 of the Remuneration Approval Report dated 13 March 2020.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4	To appoint a Committee of inspection comprising of creditors or their authorised representatives as nominated at the meeting of creditors to be held on 31 March 2020 or any adjournment thereof.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

C. Signature (in accordance with Sections 127 or 250D of the Corporations Act 2001)

If the creditor is an individual

.....

If the creditor is a Company

.....
Director/Company Secretary

.....
Print name

Dated this day of 2020

CERTIFICATE OF WITNESS

Please Note: *This certificate is to be completed only where the person giving the proxy is blind or incapable of writing. The signature of the creditor is not to be attested by the person nominated as proxy.*

I, _____ of

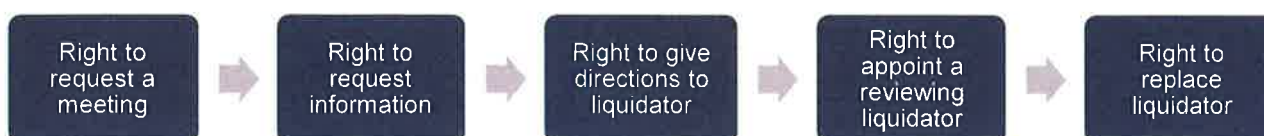
_____ certify that the
Above instrument appointing a proxy was completed by me in the presence of and at the request of the person appointing the proxy
and read to him before he attached his signature or mark to the instrument.

Signature of witness: _____

Appendix E – ARITA Information Sheet: Creditor Rights in Liquidations

Creditor Rights in Liquidations

As a creditor, you have rights to request meetings and information or take certain actions:



Right to request a meeting

In liquidations, no meetings of creditors are held automatically. However, creditors with claims of a certain value can request in writing that the liquidator hold a meeting of creditors.

A meeting may be requested in the first 20 business days in a creditors' voluntary liquidation by $\geq 5\%$ of the value of the debts held by known creditors who are not a related entity of the company.

Otherwise, meetings can be requested at any other time or in a court liquidation by:

- $> 10\%$ but $< 25\%$ of the known value of creditors on the condition that those creditors provide security for the cost of holding the meeting
- $\geq 25\%$ of the known value of creditors
- creditors by resolution, or
- a Committee of Inspection (this is a smaller group of creditors elected by, and to represent, all the creditors).

If a request complies with these requirements and is 'reasonable', the liquidator must hold a meeting of creditors as soon as reasonably practicable.

Right to request information

Liquidators will communicate important information with creditors as required in a liquidation. In addition to the initial notice, you should receive, at a minimum, a report within the first three months on the likelihood of a dividend being paid.

Additionally, creditors have the right to request information at any time. A liquidator must provide a creditor with the requested information if their request is 'reasonable', the information is relevant to the liquidation, and the provision of the information would not cause the liquidator to breach their duties.

A liquidator must provide this information to a creditor within 5 business days of receiving the request, unless a longer period is agreed. If, due to the nature of the information requested, the liquidator requires more time to comply with the request, they can extend the period by notifying the creditor in writing.

Requests must be reasonable.

They are not reasonable if:

Both meetings and information:

- (a) complying with the request would prejudice the interests of one or more creditors or a third party
- (b) there is not sufficient available property to comply with the request
- (c) the request is vexatious

Meeting requests only:

- (d) a meeting of creditors dealing with the same matters has been held, or will be held within 15 business days

Information requests only:

- (e) the information requested would be privileged from production in legal proceedings
- (f) disclosure would found an action for breach of confidence
- (g) the information has already been provided
- (h) the information is required to be provided under law within 20 business days of the request

If a request is not reasonable due to (b), (d), (g) or (h) above, the liquidator must comply with the request if the creditor meets the cost of complying with the request.

Otherwise, a liquidator must inform a creditor if their meeting or information request is not reasonable and the reason why.

Specific queries about the liquidation should be directed to the liquidator's office.

Right to give directions to liquidator

Creditors, by resolution, may give a liquidator directions in relation to a liquidation. A liquidator must have regard to these directions, but is not required to comply with the directions.

If a liquidator chooses not to comply with a direction given by a resolution of the creditors, they must document their reasons.

An individual creditor cannot provide a direction to a liquidator.

Right to appoint a reviewing liquidator

Creditors, by resolution, may appoint a reviewing liquidator to review a liquidator's remuneration or a cost or expense incurred in a liquidation. The review is limited to:

- remuneration approved within the six months prior to the appointment of the reviewing liquidator, and
- expenses incurred in the 12 months prior to the appointment of the reviewing liquidator.

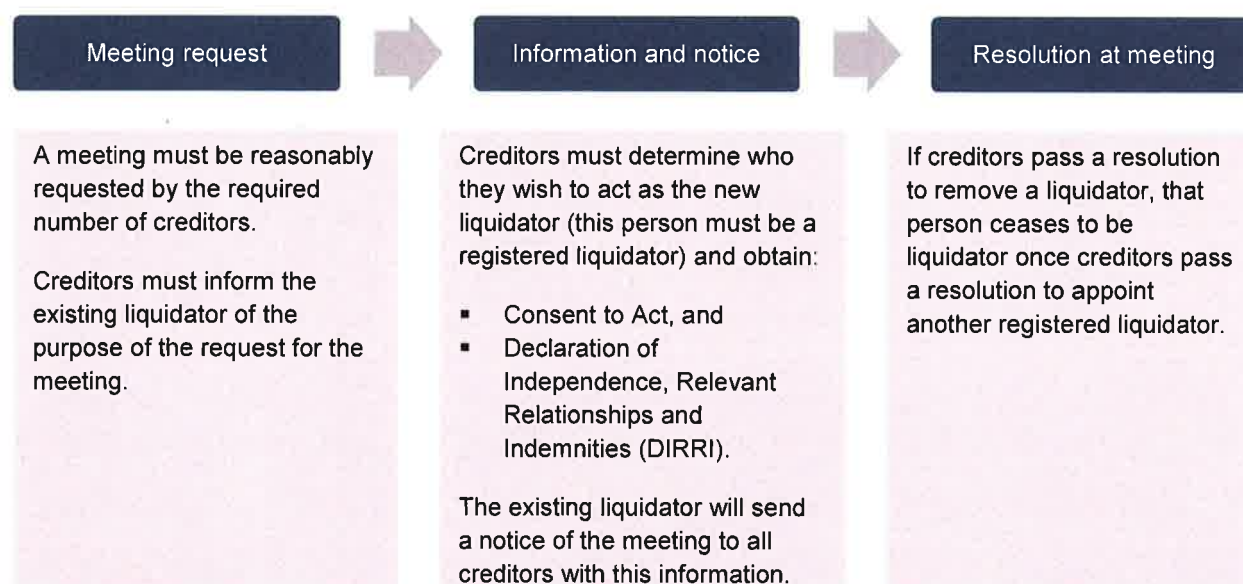
The cost of the reviewing liquidator is paid from the assets of the liquidation, in priority to creditor claims.

An individual creditor can appoint a reviewing liquidator with the liquidator's consent, however the cost of this reviewing liquidator must be met personally by the creditor making the appointment.

Right to replace liquidator

Creditors, by resolution, have the right to remove a liquidator and appoint another registered liquidator.

For this to happen, there are certain requirements that must be complied with:



**For more information, go to www.arita.com.au/creditors.
Specific queries about the liquidation should be directed to the liquidator's office.**

Appendix F – ASIC Information Sheet



ASIC

Australian Securities & Investments Commission

Insolvency information for directors, employees, creditors and shareholders

ASIC has 11 insolvency information sheets to assist you if you're affected by a company's insolvency and have little or no knowledge of what's involved.

These plain language information sheets give directors, employees, creditors and shareholders a basic understanding of the three most common company insolvency procedures—liquidation, voluntary administration and receivership. There is an information sheet on the independence of external administrators and one that explains the process for approving the fees of external administrators. A glossary of commonly used insolvency terms is also provided.

The Insolvency Practitioners Association (IPA), the leading professional organisation in Australia for insolvency practitioners, endorses these publications and encourages its members to make their availability known to affected people.

List of information sheets

- INFO 41 *Insolvency: a glossary of terms*
- INFO 74 *Voluntary administration: a guide for creditors*
- INFO 75 *Voluntary administration: a guide for employees*
- INFO 45 *Liquidation: a guide for creditors*
- INFO 46 *Liquidation: a guide for employees*
- INFO 54 *Receivership: a guide for creditors*
- INFO 55 *Receivership: a guide for employees*
- INFO 43 *Insolvency: a guide for shareholders*
- INFO 42 *Insolvency: a guide for directors*
- INFO 84 *Independence of external administrators: a guide for creditors*
- INFO 85 *Approving fees: a guide for creditors*

Getting copies of the information sheets

To get copies of the information sheets, visit ASIC's website at www.asic.gov.au/insolvencyinfosheets. The information sheets are also available from the IPA website at www.ipaa.com.au. The IPA website also contains the IPA's Code of Professional Practice for Insolvency Professionals, which applies to IPA members.

Important note: The information sheets contain a summary of basic information on the topic. It is not a substitute for legal advice. Some provisions of the law referred to may have important exceptions or qualifications. These documents may not contain all of the information about the law or the exceptions and qualifications that are relevant to your circumstances. You will need a qualified professional adviser to take into account your particular circumstances and to tell you how the law applies to you.

***Appendix G - ARITA
Information Sheet on a COI***

Information Sheet: Committees of Inspection

You have been elected to be, or are considering standing for the role of, a member of a Committee of Inspection (COI) in either a liquidation, voluntary administration or deed of company arrangement of a company (collectively referred to as an external administration).

This information sheet is to assist you with understanding your rights and responsibilities as a member of a COI.

What is a COI?

A COI is a small group of creditors elected to represent the interests of creditors in the external administration. The COI advises and assists the external administrator and also has the power to approve and request certain things – this is discussed in more detail below.

Membership of the COI is a voluntary, unpaid position.

Who can be elected to a COI?

To be eligible to be appointed as a member of a COI, a person must be:

- A creditor
- A person holding the power of attorney of a creditor
- A person authorised in writing by a creditor; or
- A representative of the Commonwealth where a claim for financial assistance has, or is likely to be, made in relation to unpaid employee entitlements.

If a member of the COI is a company, it can be represented by an individual authorised in writing to act on that creditor's behalf. It also allows the creditor to maintain its representation if a change in the individual is required

A COI usually has between 5 and 7 members, though it can have more, or less, depending on the size of the external administration.

A member of a COI can be appointed by:

- resolution at a meeting of creditors
- an employee or a group of employees owed at least 50% of the entitlements owed to employees of the company
- a large creditor or group of creditors that are owed at least 10% of the value of the creditors' claims,

If an employee or group of employees, or a large creditor or group of creditors, appoints a member to the COI, they cannot vote on the general resolution of creditors to appoint members to the COI. Each of these groups also have the power to remove their appointed member of the COI and appoint someone else.

If you are absent from 5 consecutive meetings of the COI without leave of the COI or you become an insolvent under administration, you are removed from the COI.

What are the roles and powers of a COI?

A COI has the following roles:

- to advise and assist the liquidator, voluntary administrator or deed administrator (collectively referred to as the external administrator)
- to give directions to the external administrator
- to monitor the conduct of the external administration.

In respect of directions, the external administrator is only required to have regard to those directions. If there is a conflict between the directions of the COI and the creditors, the directions of the creditors prevail. If the external administrator chooses not to comply with the directions of the COI, the external administrator must document why.

A COI also has the power to:

- approve remuneration of the external administrator after the external administrator has provided the COI with a Remuneration Approval Report (a detailed report setting out the remuneration for undertaking the external administration)
- approve the use of some of the external administrator's powers in a liquidation (compromise of debts over \$100,000 and entering into contracts over 3 months)
- require the external administrator to convene a meeting of the company's creditors
- request information from the external administrator
- approve the destruction of the books and records of the external administration on the conclusion of the external administration
- with the approval of the external administrator, obtain specialist advice or assistance in relation to the conduct of the external administration
- apply to the Court for the Court to enquire into the external administration.

An external administrator is not required to convene a meeting of creditors if the request by the COI is unreasonable, or provide requested information if the request is unreasonable, not relevant to the administration or would cause the external administrator to breach their duties.

A request to convene a meeting of creditors is unreasonable if:

- it would substantially prejudice the interests of a creditor or third party
- there are insufficient funds in the external administration to cover the cost of the request
- a meeting of creditors dealing with the same matters has already been held or will be held within 15 business days, or
- the request is vexatious.

If a request for a meeting is reasonable, the external administrator must hold a meeting of creditors as soon as reasonably practicable.

A request for information is unreasonable if:

- it would substantially prejudice the interests of a creditor or third party
- the information would be subject to legal professional privilege
- disclosure of the information would be a breach of confidence
- there are insufficient funds in the external administration to cover the cost of the request
- the information has already been provided or is required to be provided within 20 business days, or
- the request is vexatious.

If the request for information is not unreasonable, the external administrator must provide the requested information within 5 business days, but the law provides for further time in certain circumstances.

An external administrator must inform the COI if their meeting or information request is not reasonable and the reason why.

How does the COI exercise its powers?

A COI exercises its powers by passing resolutions at meetings of the COI. To pass a resolution, a meeting must be convened and a majority of the members of the COI must be in attendance.

A meeting is convened by the external administrator by giving notice of the meeting to the members of the COI. Meetings of the COI can be convened at short notice.

The external administrator must keep minutes of the meeting and lodge them with ASIC within one month of the end of the meeting.

ASIC is entitled to attend any meeting of a COI.

What restrictions are there on COI members?

A member of a COI must not directly or indirectly derive any profit or advantage from the external administration. This includes by purchasing assets of the company or by entering into a transaction with the company or a creditor of the company. This prohibition extends to related entities of the member of the COI and a large creditor(s) that appoints a member to the COI.

Creditors, by resolution at a meeting of creditors, can resolve to allow the transaction. The member of the COI or the large creditor(s) that appoints a member to the COI is not allowed to vote on the resolution.

Where can you get more information?

The Australian Restructuring Insolvency and Turnaround Association (ARITA) provides information to assist creditors with understanding external administrations and insolvency.

This information is available from ARITA's website at www.arita.com.au/creditors.

ASIC provides information sheets on a range of insolvency topics. These information sheets can be accessed on ASIC's website at www.asic.gov.au (search "insolvency information sheets").