

Statutory Report to Creditors

Pivotal Building Services Pty Ltd

(In Liquidation)

ACN 151 351 576

1 March 2019

**Ian Currie
Liquidator**

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The logo for BRI Ferrier, featuring the text "BRI Ferrier" in white on a dark grey background, with a green triangle pointing upwards and to the right.

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1 INTRODUCTION

I refer to my appointment as Liquidator of Pivotal Building Services Pty Ltd (“the Company”) on 3 December 2018 and to my Initial Report to Creditors dated 12 December 2018.

I now provide this report as required by r 70-40 of the *Insolvency Practice Rules (Corporations) 2016*. A copy of this report will be lodged with the Australian Securities and Investments Commission (“ASIC”).

2 DECLARATION OF INDEPENDENCE, RELEVANT RELATIONSHIPS & INDEMNITIES

Creditors were provided with my Declaration of Independence, Relevant Relationships and Indemnities with my Initial Report to Creditors dated 12 December 2018.

I have nothing further to disclose in connection with my independence, relevant relationships or indemnities. Accordingly, I have not included a copy with this report; however should you require a copy please do not hesitate to contact my office.

3 INVESTIGATIONS

3.1 BUSINESS AND HISTORY OF THE COMPANY

The Company operated a construction business from a leased premises located at Unit 4, 19 Miles Road, Berrimah NT 0828. Victoria Harris (“the Director”) and Stuart Crompton, the Director’s brother and the apparent general manager of the Company, both held beneficial interests in this premises. The Company held an unrestricted residential building contractor registration issued by the Northern Territory Building Practitioners Board. The Company ceased trading on 30 November 2018.

The following information has been extracted from ASIC records as at the date of my appointment:

Current and Former Officers:

Name	Position	Appointment Date	Cessation Date
Victoria Harris (formerly Victoria Hansen)	Director	25 September 2012	Current
Anthony Micalizzi	Director	9 November 2015	9 November 2015
Wayne Crompton	Director	7 June 2011	25 September 2012
Victoria Harris (formerly Victoria Hansen)	Secretary	25 September 2012	Current
Wayne Crompton	Secretary	7 June 2011	25 September 2012

Share Structure:

Shareholder	Class	Percentage	Fully Paid	Beneficially Held
Victoria Harris	Ordinary	100%	Yes	Yes

Stuart Crompton was the Company’s general manager. My investigations indicate that Stuart Crompton acted as a director of the Company (despite not being formally appointed) based on the following:

- ▲ The Director was not recorded as an employee of the Company in its accounting data file and lived in Queensland while the Company traded in the Northern Territory;
- ▲ The Director appeared to have a separate full-time job in Queensland;
- ▲ Stuart Crompton was the highest paid employee of the Company; and
- ▲ Based on my correspondence with former clients, suppliers and employees of the Company, Stuart Crompton was the main point of contact and the primary decision maker.

3.2 INVESTIGATIONS TO DATE

3.2.1 Historical Financial Position

The Company's balance sheets extracted from its accounting data file are summarised below.

	03/12/2018	30/06/2018	30/06/2017	30/06/2016
	\$	\$	\$	\$
Assets				
Current Assets				
Cash and Debit Cards	4,524	194,702	41,028	25,705
Accounts Receivable	6,252	90,608	326,020	87,247
Bond	5,400	5,400	4,000	8,480
Invoiced Work in Progress	-	165,507	168,000	135,056
Prepaid Insurance	20,000	20,000	-	-
Prepaid Tax	5,368	2,250	-	-
Total Current Assets	41,544	478,467	539,048	256,488
Non-Current Assets				
Motor Vehicles	94,401	103,151	103,151	55,029
Office Furniture and Equipment	7,751	7,751	-	10,162
Plant and Equipment	100,471	100,471	70,895	32,899
Plant and Equipment Under Lease	25,455	25,455	-	-
Borrowing Expenses	256	256	256	338
Total Non-Current Assets	228,334	237,084	174,302	98,428
Total Assets	269,878	715,551	713,350	354,916
Liabilities				
Current Liabilities				
Accounts Payables	428,703	368,026	449,895	129,338
ATO Integrated Account	72,385	-	18,775	4,419
Loan – J Crompton	(11,230)	(11,230)	-	26,799
Loan – B J Brooks / Brooks Building Solution	-	2,084	-	(5,540)
Loan – W Crompton	-	311	-	-
Loan – R Crompton	-	-	-	50,000
Loan – S & F Crompton	-	-	-	(22,016)
Loan – J Hansen	-	-	(766)	-
Loan – Tia Trust	-	-	(13,377)	(13,677)
Payroll Liabilities	68,945	24,049	19,999	5,868
Tax Payable	3,724	69,186	41,848	33,639
Wages Payable	(351)	-	-	-
Total Current Liabilities	562,176	452,426	516,374	208,830
Non-Current Liabilities				
Loan – Prospa	34,759	17,490	-	-
Loan – Capital Finance	110,786	127,374	106,982	73,621
Total Non-Current Liabilities	145,545	144,864	106,982	73,621
Total Liabilities	707,721	597,290	623,356	282,451
Net Assets / (Liabilities)	(437,843)	118,261	89,994	72,465

A breakdown of the Company's current ratio is as follows:

	03/12/2018	30/06/2018	30/06/2017	30/06/2016
Current Ratio	0.07:1	1.06:1	1.04:1	1.23:1

The above reflects a serious decline in the Company's working capital position after 30 June 2018. In particular, there was a significant decrease in cash, debtor and work-in-progress after 30 June 2018, which prevented the Company from paying its trade and other creditors.

3.2.2 Historical Financial Performance

The Company's profit and loss statements extracted from its accounting data file are summarised below.

	FY2019 \$	FY2018 \$	FY2017 \$
Income			
Sales	740,404	3,371,972	2,592,084
Total Income	740,404	3,371,972	2,592,084
Less Cost of Goods Sold	847,580	2,957,190	2,206,876
Gross Profit	(107,176)	414,782	385,208
Operating Expenses			
Accountancy Fees	37,518	4,057	3,955
Advertising	260	3,768	5,138
Bank Charges and Borrowing Expenses	165	366	900
Bookkeeping Fees	18,317	22,727	-
Computer Expenses	1,697	3,926	6,236
Consultancy Fees	660	5,280	10,491
Depreciation Expense	-	-	37,103
Donations and Sponsorship	-	197	1,000
Electricity Expense	1,615	7,442	6,260
Fees and Permits	4,441	4,422	3,711
Freight and Cartage	1,194	6,925	3,658
Insurance	(136)	440	8,408
Interest Expense	(58)	2,699	5,656
Lease Application Fee	-	318	-
Legal Costs	3,484	-	1,568
Licencing Fees	979	2,919	800
Motor Vehicle Expenses	46,989	82,869	50,111
Office Expenses	3,957	5,648	7,435
Payroll Expenses	267,298	139,774	141,566
Postage, Printing and Stationery	197	755	843
Registration Fees	-	821	190
Rent	27,355	51,338	22,327
Repairs & Maintenance	1,482	5,545	8,949
Staff Amenities	-	198	337
Subscriptions	-	-	7,910
Superannuation	23,340	13,288	13,000
Telephone and Internet Expense	7,303	15,609	12,241
Tender Expenses	-	-	2,632
Toll Fees	136	227	323
Travelling and Entertainment Expenses	736	4,273	1,001
Total Expenses	448,929	385,831	363,749
Net Operating Profit / (Loss)	(556,105)	28,951	21,459

Please note that the figures for FY2019 only extend to the date of liquidation.

The profit and loss statements reflect the solvency issues the Company experienced after 30 June 2018.

3.2.3 Books and Records

I have been provided with the Company's books and records including a copy of the Company's electronic accounting file.

I have also been provided with some financial records by MCA Chartered Accountants, the Company's accountant and received documentation from the Australian Taxation Office ("ATO") under a Firmer Action Request.

I am satisfied that the Company has materially complied with its obligation to keep financial records pursuant to s 286 of the *Corporations Act 2001* ("the Act").

3.2.4 Causes of the Company's Failure

The Director attributed the Company's failure to poor economic conditions.

My investigations indicate the following factors primarily contributed to the Company's failure:

- ▲ Undercapitalisation;
- ▲ Poor economic conditions in the Northern Territory construction industry; and
- ▲ A loss of Government building work.

Although my investigations indicate the Company paid certain personal expenses for members of the Crompton family (such as rent), it should be noted that the Stuart and Wayne Crompton did assist in funding the Company's operations from personal funds.

Further discussion of potentially voidable related party transactions is provided in section 4.2 below.

3.2.5 Report to ASIC

Section 533(1) of the Act requires me to submit a report to ASIC if I suspect that any offence or misconduct has occurred in relation to the Company or, if creditors are unlikely to receive more than 50 cents in the dollar.

This report was lodged with ASIC on 6 February 2019. I have not yet received a response from ASIC as to whether they wish me to lodge a supplementary report into the Company's affairs and conduct.

3.3 INVESTIGATIONS TO BE CONDUCTED

I have identified legal actions available to me for the benefit of creditors. Further discussion of the same is provided in section 4.2 of this report.

I request that any creditor who wishes me to conduct further investigations, or is in possession of information which may assist my investigations, contact my office as a matter of urgency.

4 FINANCIAL POSITION

4.1 SUMMARY OF ASSETS AND LIABILITIES

The Report on Company Activities and Property (“ROCAP”) completed by the Director and my estimated asset and liability values are summarised below:

Description	Notes	ROCAP Value \$	Liquidator’s Estimated Values \$
Assets			
Cash at Bank		4,151	11,651
Debit Card Billing Account		123	-
Trade Debtors	(a)	6,252	-
Related Party Loan Accounts	(b)	11,230	-
Prepaid Tax	(c)	5,368	-
Motor Vehicles	(d)	167,000	110,000
Plant, Equipment and Chattels	(e)	34,250	18,270
Total Assets		228,374	139,921
Creditors			
Secured Creditors		205,887	227,208
Priority (Employee) Creditors	(f)	89,904	39,274
Unsecured Creditors		654,028	704,904
Total Creditors	(g)	949,819	971,386
Estimated Surplus / (Deficiency)		(721,445)	(831,465)

Notes:

(a) Trade Debtors

The Company’s accounting file discloses two (2) outstanding debtors with unpaid invoices totalling \$6,251.67 dated June 2016. I have issued demands for payment to these debtors. However, recovery appears unlikely given the age of the debts.

(b) Related Party Loan Accounts

The Company’s accounting file discloses Jacqueline Crompton, the sister of the Director, as a debtor owing \$11,229.50 to the Company. Jacqueline Crompton’s solicitors have disputed that any debt is owing. This debt is made up by a general journal entry, rather than a cash payment made by the Company to Jacqueline Crompton or on her behalf. It does not appear the loan is recoverable subject to the receipt of further information.

(c) Prepaid Tax

The ATO has lodged a proof of debt for \$88,255.15 and advised the Company has not lodged its income tax return for the past financial year or activity statements for the December 2018 quarter. Accordingly, the Company will not receive any tax refunds for periods prior to my appointment.

(d) Motor Vehicles

The Company owned or leased several motor vehicles, including a caravan, all bar one of which were subject to finance. There is unlikely to be any equity in the financed vehicles (subject to the receipt of final payouts from Capital Finance Pty Ltd). Therefore, the Company is unlikely to receive any proceeds from the sale of these financed motor vehicles.

The only unencumbered vehicle was a 2008 Ford Falcon utility, which was sold by Grays Asset Services (“Grays”) at public auction for \$999.90 (before costs).

(e) Plant, Equipment and Chattels

Grays collected and auctioned the Company’s remaining plant, equipment and chattels after my appointment. The gross sale proceeds were \$18,269.90.

(f) Priority (Employee) Creditors

My estimated value accounts for the restriction on excluded employee priority claims under s 556(2) of the Act. Claims by the Director or her relatives for unpaid employee entitlements are capped at \$2,000.00 for unpaid wages and superannuation and \$1,500.00 for unpaid leave.

(g) Total Creditors

My Initial Report to Creditors originally included a total creditor value of approximately \$1.24 million. This was a typographical error. The true creditor value is around \$971,386.00 based on information currently available to me.

4.2 STATUTORY RECOVERIES

Part 5.7B of the Act allows me to void certain transactions and make other recoveries for the benefit of creditors. The result of my investigations in respect of these provisions is below.

4.2.1 Insolvent Trading

Section 588M of the Act allows me to pursue recovery from the Director, debts incurred while the Company was insolvent. To successfully prosecute an insolvent trading action, I must establish:

- ▲ The Company incurred debts which remain unpaid;
- ▲ The Company was insolvent when the debt was incurred (or became insolvent as a result of incurring the debt); and
- ▲ The Director suspected, or should have suspected, that the Company was insolvent at the time the debt was incurred.

Period of Insolvency

Based on my initial investigations, the Company appeared to become insolvent in or around July 2018 and remained insolvent thereafter. I have formed this view based on factors including, but not limited to:

- ▲ The Company’s current ratio fell below 1:1 after 30 June 2018;
- ▲ The Company appeared to fall behind in its superannuation obligations in around May 2018;
- ▲ The Company was unable to pay its statutory liabilities to the ATO after 30 June 2018;
- ▲ A significant portion of the proofs of debt lodged by trade creditors relate to debts incurred after July 2018;
- ▲ The Company appeared to receive an increasing number of overdue notices and legal demands from trade creditors after 30 June 2018;
- ▲ The Company’s aged payables reports show a significant proportion of overdue debts during and after July 2018; and
- ▲ The Company was not profitable during its partial trading year from July 2018 to November 2018.

Loss from Insolvent Trading

The estimated quantum of an insolvent trading claim is between \$400,000.00 and \$500,000.00, being the additional liabilities incurred by the Company during the period in which it appeared to be insolvent that remain unpaid. Please note this calculation is a preliminary estimate only and may be subject to change as additional information comes to light.

The Director declared her personal bankruptcy on 13 February 2019, with the Official Trustee acting as her Trustee in Bankruptcy. I have lodged a preliminary claim in the Director's bankrupt estate for losses incurred as a result of insolvent trading. I will undertake further investigations should a dividend to unsecured creditors (which would include my insolvent trading claim) become payable in the estate.

As noted above, Stuart Crompton may be considered a director despite not being formally appointed. If Stuart Crompton were in fact a director of the Company, he would be liable for losses sustained from insolvent trading. Stuart Crompton has provided me with a statutory declaration of his personal financial position which indicates any insolvent trading action against him would be uncommercial, due to the minimal value of personal assets he has disclosed.

Please note that Stuart Crompton's beneficial interest in the Company's premises at Unit 4, 19 Miles Road, Berrimah NT 0828 is held through a superannuation fund, meaning it unlikely to be available as an asset in bankruptcy.

Possible Defences

Barbara Crompton, the Company's bookkeeper and the Director's mother, advised the Company arranged for a loan from National Australia Bank ("NAB") to cover a cash flow shortage until the Company received new contracts from the Northern Territory Government. NAB confirmed that in August 2018, the Company applied for a \$50,000.00 commercial card facility which was rejected.

Barbara Crompton further advised that in September 2018, the Company was shortlisted for three (3) Northern Territory Government contracts, one of which was for over \$1 million. However, a subcontractor lodged a complaint against the Company with Contractors Accreditation Limited over an unpaid liability of approximately \$99,000.00, which purportedly prevented the Company from being awarded contracts until the complaint was resolved.

Finally, my investigations indicate members of the Crompton family had a history of providing short term loans and funding to the Company, to assist in the payment of wages and trade creditors.

The above may constitute a defence to any insolvent trading action in that the Company had reasonable grounds to expect it would remain solvent, had it obtained funding from NAB and be awarded tendered contracts by the Northern Territory Government.

Conclusion

I do not intend to commence insolvent trading proceedings at this time given the possible defence available and given neither the Director nor Stuart Crompton appear to have sufficient personal assets to justify the costs and risk of an insolvent trading action.

4.2.2 Unfair Preference Payments

A liquidator may seek repayment from creditors whose debts have been paid when the Company was insolvent, where that creditor has received more than they would have received if the payment was set aside and the creditor claimed in the liquidation of the Company.

The relevant period to consider is six (6) months prior to the date of my appointment in respect of unrelated party transactions or four (4) years prior to payments prior to the date of my appointment in respect of related party transactions.

On 28 and 29 November 2018, the Company paid \$62,000.00 to Wayne and Barbara Crompton, the Director's parents, which appear to be voidable as unfair preference payments. I have issued a demand for repayment of this money to Wayne and Barbara Crompton.

The Company paid \$31,154.00 to the ATO between 5 September 2018 and 8 October 2018 which appears to be voidable as an unfair preference. I have issued a demand for repayment of these monies to the ATO, which is reviewing the matter.

The Definitive Decorating Company Pty Ltd (In Liquidation) (“Definitive Decorating”) received \$61,421.37 from the Company which appear to be unfair preference payments. Nicholas Malanos of Worrells Solvency & Forensic Accountants was appointed Liquidator of Definitive Decorating on 23 January 2019. His office has advised no dividend is likely in the liquidation of Definitive Decorating and accordingly, there is no merit in me commencing unfair preference proceedings at this time.

4.2.3 Other Recovery Actions

My investigations into the Company’s affairs also included a review of other recovery actions available to me, including:

- ▲ Uncommercial transactions;
- ▲ Unfair loans;
- ▲ Unreasonable director-related transactions;
- ▲ Voidable security interests; and
- ▲ Claims arising from breaches of Directors’ duties.

The payments totalling \$62,000.00 to Wayne and Barbara Crompton discussed immediately above also appear to be voidable as unreasonable director-related transactions.

My investigations into further voidable transactions are ongoing. If creditors are aware of any transactions involving the Company which may be voidable, I request they immediately contact my office.

5 ESTIMATED RETURN TO CREDITORS

The following table sets out my estimated return to creditors in the liquidation. In summary, any dividend to priority (employee) creditors and ordinary unsecured creditors is contingent on the net statutory recoveries which are discussed in section 4.2 above.

	High \$	Low \$
Assets		
Cash at Bank	2,912	2,912
Trade Debtors	3,000	-
Voidable Transaction Recoveries	93,154	-
Total Assets	99,066	2,912
Less Liquidator’s Unpaid Remuneration	(20,000)	(25,000)
Less Liquidator’s Unpaid Disbursements (including legal fees)	(5,000)	(10,000)
Funds Available to Creditors	74,066	-
Priority (Employee) Creditors		
Wages and Superannuation Guarantee Charge	(32,229)	(40,000)
Leave of Absence	(7,045)	(8,000)
Balance Available for Ordinary Unsecured Creditors	34,792	-
Estimated Dividend Rate to Ordinary Unsecured Creditors (c/\$)	4.94	-

6 SUMMARY OF RECEIPTS AND PAYMENTS

A summary of the receipts and payments in the liquidation to date is below.

Receipts	\$
Cash at Bank	4,130.16
Indemnity provided by the Company	7,500.00
Sale of Plant, Equipment and Motor Vehicle	19,269.80
Total Receipts	30,899.96
Payments	\$
Airfares	(722.79)
Advertising	(64.00)
Auctioneers' Fees and Expenses - Grays	(5,143.48)
Liquidator's Remuneration	(21,423.05)
Search Fees	(461.96)
Travel Expenses	(172.56)
Total Payments	(27,987.83)
Cash at Bank as at 28 February 2019	2,912.13

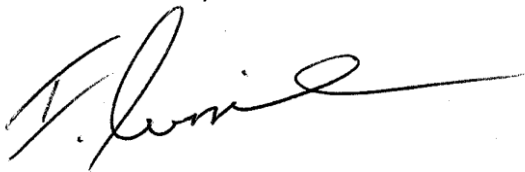
I will lodge an Annual Administration Return showing my receipts and payments and the position of liquidation for each 12 month period from the date of my appointment.

Further, I must lodge an End of Administration Return showing the overall receipts and payments in the liquidation within one (1) month of the end of the liquidation. ASIC will deregister the Company three (3) months after this return is lodged. Should any creditor wish to receive notice of the lodgement of this return, please advise my office of your requirements in writing.

7 FURTHER INFORMATION

Should you have any further queries in relation to this report or the liquidation in general, please contact William Clement of my office on (07) 3220 0994 or at wcclement@brifsg.com.au.

DATED this 1st day of March 2019



I A Currie
Liquidator