

44 Cummins Street Pty Ltd  
(In Liquidation)  
ACN 605 229 463

## Statutory Report to Creditors

Insolvency Practice Rules 70-40

20 May 2019

Peter Paul Krejci, CA  
Liquidator

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**TABLE OF CONTENTS**

**1 DISCLAIMER ..... 3**

**2 INTRODUCTION ..... 4**

**3 BUSINESS OF THE COMPANY/TRADING OUTCOMES..... 8**

**4 FINANCIAL HISTORY..... 8**

**5 ENFORCEMENT ACTION ..... 12**

**6 ASSETS AND LIABILITIES /COMPARISON TO ROCAP ..... 13**

**7 SUMMARY OF INVESTIGATIONS ..... 18**

**8 ASIC REPORTS..... 24**

**9 REMUNERATION REPORT ..... 24**

**10 MEETING OF CREDITORS..... 25**

**11 PROGRESSION OF LIQUIDATION ..... 25**

**12 CONCLUSION ..... 26**

<b>Annexures</b>	
A	Summary of Receipts and Payments
B	Notice of Meeting
C	Formal Proof of Debt
D	Proxy
E	Remuneration Report
F	Advice to Creditors about Remuneration
G	ARITA Information Sheet - Creditor Rights in Liquidation
H	ASIC Insolvency Sheets
I	ARITA Information Sheet about Voidable Transactions

## 1 DISCLAIMER

The investigation into the affairs of the Company has been conducted, and this Report and the statements made herein have been prepared, based on available books and records, information provided by the Company's director(s) and officer(s), and from my own enquiries.

Whilst I have no reason to doubt the accuracy of the information provided or contained herein, I reserve the right to alter my opinion or conclusions should the underlying data prove to be inaccurate or materially change after the date of this Report.

In undertaking my investigations in relation to the affairs of the Company, and the preparation of this Report to Creditors, I have necessarily made forecasts of asset realisations and am required to estimate the ultimate quantum of creditor claims against the Company.

Neither I, as Liquidator, nor any member or employee of this firm undertakes responsibility in any way whatsoever to any person in respect of any errors in this Report arising from incorrect information provided to this office, or necessary estimates and assessments made for the purposes of this Report.

Any creditor that has material information in relation to the Company's affairs, which they consider may affect my investigation, should forward details to this office as soon as possible.

## 2 INTRODUCTION

### 2.1 APPOINTMENT

On 20 February 2019, Ms Robyn Karam was appointed Liquidator of 44 Cummins Street Pty Ltd (“the Company”) pursuant to an Order of the Federal Court of Australia.

Ms Karam retired as Liquidator of the Company on 2 April 2019 and on 3 April 2019 the Federal Court of Australia appointed me to fill the vacancy pursuant to section 473A(1) of the *Corporations Act 2001* (Cth) and rule 7.2(1)(a) of the *Federal Court (Corporations) Rules 2000*.

I refer to Ms Karam’s circular to creditors dated 20 March 2019 and my initial circular to creditors dated 3 May 2019, which advised you of the appointment of a liquidator and your rights as a creditor in the liquidation.

The purpose of this report is to:

- provide you with an update on the progress of the liquidation; and
- advise you of the likelihood of a dividend being paid in the liquidation.

### 2.2 STATEMENT OF INDEPENDENCE

A copy of Ms Karam’s Declaration of Independence, Relevant Relationships and Indemnities (“DIRRI”) was enclosed with the initial Report to Creditors dated 20 March 2019. There has been no changes to this DIRRI.

A copy of my DIRRI was enclosed with the initial circular to Creditors dated 3 May 2019. There has also been no changes to this DIRRI.

### 2.3 PETITIONING CREDITOR COSTS

Pursuant to Section 556(1)(b) of the Act, the petitioning creditor’s costs associated with obtaining the winding up application are afforded a statutory priority over all other unsecured claims and costs incurred in the liquidation, once expenses incurred in ‘preserving, realising or getting in’ property of the Company are discharged.

The costs associated with this application were \$3,035. Such costs have not yet been discharged as a priority expense of the Liquidation.

### 2.4 RECEIPTS AND PAYMENTS

I attach as **Annexure “A”** a Summary of the Company’s Receipts and Payments for the period 20 February 2019 to 20 May 2019.

To date, I have not lodged a statement of account with respect to this matter with the Australian Securities and Investments Commission. I will proceed to do so in accordance with the statutory timeframe. Creditors may inspect the lodged accounts at any time by contacting Ms Clair Daher of this office on (02) 8263 2300.

## 2.5 DIVIDEND PROSPECTS

Based on realisations to date, a return to creditors is contingent on pursuing and successfully recovering the debtor claims identified. The quantum and timing of any dividend will depend on these recoveries, which is currently unknown.

There are no known Priority Creditors and the only known Secured Creditor has not confirmed any debt owed by the Company, and accordingly, I have not ascribed any value or return to these classes of creditors.

By way of best estimate, there may be a return to Unsecured Creditors of between nil and 29 cents in the dollar, which if required to pursue via litigation, may take twelve (12) to eighteen (18) months. A number of factors will affect the likelihood of a dividend being paid to creditors, including:

- ▲ final quantum of realisations from assets and voidable transactions;
- ▲ costs incurred in respect of the Liquidator's remuneration and disbursements;
- ▲ statutory priority of certain claims and costs;
- ▲ value of various classes of claims including secured, priority and unsecured creditor claims; and
- ▲ volume of enquiries by creditors and other stakeholders.

If a dividend is going to be paid, you will be contacted before that happens and, if you have not already done so, you will be asked to lodge a Formal Proof of Debt Form. This formalises your claim in the liquidation and is used to determine all claims against the company.

## 2.6 COSTS OF LIQUIDATION

As advised in the initial circular to creditors, the estimated total remuneration for the external administration was approximately \$60,000 to \$100,000 (GST exclusive) in this matter.

My estimate remains subject to the variables outlined in the initial circular to creditors.

## 2.7 PREVIOUS REPORTS/MEETINGS

An initial circular to creditors was issued by Ms Karam on 20 March 2019 and an initial circular to creditors was issued on 3 May 2019 regarding my appointment.

Creditors who have not received a copy may contact Ms Clair Daher of this office on (02) 8263 2300 to request same. A Meeting of Creditors has not been held with respect to this matter.

## 2.8 COMPANY BACKGROUND

I understand the following in respect of the Company, based on discussions with the Director, and from statutory searches:

- 44 Cummins Street Pty Ltd was incorporated in New South Wales on 13 April 2015. It is a wholly owned subsidiary of AXL Financial Pty Limited ("AXL");
- AXL is part of a group of companies trading as AXL Group Holdings. The Group operates as a provider of finance to the property sector and its key product offerings are: Broking services to Property Developers, provides a platform for investors to lend to the Property Sector (under private mortgages); and direct lending to Property developers under private first registered mortgages.

- AXL is an authorized AFS Representative of Moshav Financial Wholesale Pty Limited (AFSL 439903).
- The Director of the Company as at the date of my appointment was Mr. Alexander Gordon Johann Harmstorf;
- Investigations to date suggest Mr Harmstorf spends a considerable amount of time based in China and control of the Company's day- to- day affairs were the responsibility Mr Oliver Roths, the Chief Risk Officer for the AXL Group.
- The Company was a special purpose vehicle that acquired property at 44 Cummins Street Unanderra in April 2015 for the purpose of construction, development and sale of ten townhouses;
- The Company realised approximately \$5.13M for the sale of dwellings constructed between 2015 and 2018;
- The Director advised that the Company had ceased trading in August 2018, due to the lender taking possession of the development.
- On 23 January 2019, the Deputy Commissioner of Taxation filed a winding application against the Company;
- On 20 February 2019, Ms Robyn Karam was appointed Liquidator of the Company pursuant to an Order of the Federal Court of Australia;
- On 3 April 2019 the Federal Court of Australia appointed me, Peter Krejci, as replacement Liquidator.

## 1.9 STATUTORY INFORMATION

A summary of the Company's details as identified from my investigations and recorded in the Australian Securities & Investments Commission ("ASIC") database on the date of my appointment is provided below:

<b>Company:</b>	44 Cummins Street Pty Ltd
<b>Australian Company Number:</b>	605 229 463
<b>Date of Incorporation:</b>	13 April 2015
<b>Registered Office:</b>	Ziman and Ziman Solicitors - Suite 302 Level 3 65 Walker Street North Sydney NSW 2060
<b>Principal Place of Business:</b>	'Milsons Landing' Suite 1003 Level 10 6 Glen Street Milsons Point NSW 2061
<b>Prior Company Names:</b>	None
<b>Registered Security Interest Holders:</b>	1 – Interchange Technologies Pty Ltd
<b>Current Land Title Interests:</b>	None
<b>Ultimate Holding Company:</b>	None

### Company Office Holders

Name	Role	Appointment Date	Cessation Date
Alexander Gordon Johann Harmstorf	Current Director/ Secretary	13 April 2015	Current
Izabela Kwoka	Previous Director	2 March 2016	20 January 2017

### Company Share Holders

Name	Share Details
AXL Financial Pty Limited	5000 Fully Paid Ordinary Shares 915 Fully Paid Redeemable Preference Shares

### Directorship Searches

An ASIC search reveals that Mr Alexander Gordon Johann Harmstorf held the following directorships as at 20 February 2019:

Company	Appointed	Ceased	Liquidation
18 Falcon Street Pty Limited	26-Oct-2015	18-Oct-2016	No
18 Falcon Street Pty Limited	20-Jan-2017	Current	No
301 Princes Highway Pty Ltd	22-Mar-2016	21-Jul-2016	No
301 Princes Highway Pty Ltd	20-Jan-2017	26-Apr-2018	No
33 Whimbrel Avenue Proprietary Limited	20-Jul-2015	16-Aug-2016	No
33 Whimbrel Avenue Proprietary Limited	20-Jan-2017	26-Apr-2018	No
A.C.N. 601 394 932 PTY. LTD.	22-Aug-2014	Current	No
A.C.N. 608 187 640 Pty. Ltd.	11-Sept-2015	01-Mar-2016	No
A.C.N. 609 463 087 Pty. Ltd.	24-Nov-2015	17-Dec-2015	No
Alexander Harmstorf Superannuation Pty Ltd	9-April-2012	Current	No
AUS Medistaff Recruitment Pty Ltd	15-May-2017	Current	No
AXL Capital Partners Pty. Ltd.	01-Nov-2016	13-Jul-2017	No
AXL Capital Partners Pty. Ltd.	19-Feb-2016	01-Mar-2016	No
AXL Criminal Pty. Ltd.	29-Oct-2013	05-Jan-2018	No
AXL Financial Pty Limited	20-Jan-2017	Current	No
Axl Financial Pty Limited	16-Dec-2014	24-Mar-2016	No
AXL Financial Pty Limited	12-May-2016	13-Jul-2016	No
AXL Global Trading Pty. Ltd.	07-Jan-2015	01-Feb-2018	No
AXL Legal Solutions Pty. Ltd.	31-May-2013	Current	No
BIR Financial Limited	31-May-2017	28-Feb-2018	No
Blarney Capital Partners Pty Ltd	19-July-2006	08-Aug-2016	No
Earth To Earth Australian Pty. Ltd.	25-Oct-2013	Current	No
Harmstorf & Baxter Pty Ltd	16-June-2013	8-Oct-2014	No
Hyperbuild Holdings Pty Ltd	29-Jun-2017	Current	No
International People Solutions Pty. Ltd	01-Jan-2017	04-Apr-2017	No
International People Solutions Pty. Ltd	11-Sept-2015	01-Mar-2016	No
Italent Solutions Pty Ltd	05-Feb-2017	20-Apr-2017	No
Premium Hosting Pty Ltd	02-Oct-2012	10-Jun-2014	No
Savasci Pty Ltd	28-June-2013	14-Aug-2015	No

Company	Appointed	Ceased	Liquidation
Traumhaus Shellharbour Projects Pty Ltd	20-Jan-2017	Current	No

#### **Director's Reasons for the Company's failure:**

The Director attributed the reasons for the Company's failure to a downturn in the property market, and delays in construction.

#### **Liquidator's findings as to the Reasons for the Company's failure:**

Based on my investigations and enquiries to date, I believe the Company's failure can be attributed to:

- ▲ Non-recovery of loans due to the Company;
- ▲ Loaning Company funds to other companies within the AXL Group and the non-repayment of same.
- ▲ Trading losses;
- ▲ High borrowing costs.

### **3 BUSINESS OF THE COMPANY/TRADING OUTCOMES**

The Company was established as a special purpose vehicle for the acquisition and development of the site 44 Cummins Street Unanderra NSW. The development was complete as at the date of winding up. The Company was not trading or holding any assets or operating any viable going concern as at the date of my appointment.

### **4 FINANCIAL HISTORY**

Pursuant to Section 286 of the *Corporations Act 2001* (Cth) ("the Act"), a company must maintain financial records that correctly record and explain its transactions and financial position and performance.

Section 292 of the Act does not require a company to prepare financial reports. However, at a minimum a company must keep financial records that correctly record and explain its transactions and financial position and performance; and enable true and fair financial statements to be prepared and audited.

Failure to maintain books and records in accordance with Section 286 of the Act provides a rebuttable presumption of insolvency, which may be relied upon by a Liquidator in an application for compensation for insolvent trading or for recoveries pursuant to Division 2 of Part 5.7B of the Act.

The Company engaged an external accountant to prepare management accounts which appear to have been reconciled to the appointment. I have not audited the management accounts provided and am therefore unable to express a view as to the accuracy or completeness of the statements.

A summary of the management accounts for the years ended 30 June 2016, 30 June 2017, 30 June 2018 and 31 March 2019 is set out below.



## Financial Performance

Profit and Loss Statement	Mar-2019	FY18	FY17	FY16
<b>Sales</b>				
Sale of Units	520,800	-	4,155,455	-
Rental Income	1,714	25,500	10,500	-
Recovery of Expenses	-	-	375,933	1,945
Interest Income	-	-	4,974	8,682
Other Income	-	32	2,326	7
<b>Total Income</b>	<b>522,514</b>	<b>25,532</b>	<b>4,549,188</b>	<b>10,634</b>
<b>Cost of Sales</b>				
COGS for Units Sold	444,872	-	3,832,742	-
Construction Costs	-	-	406,168	3,071,981
Late Fees Paid	4	-	-	-
<b>Total Cost of Sales</b>	<b>444,876</b>	<b>-</b>	<b>4,238,911</b>	<b>3,071,981</b>
<b>Gross Profit</b>	<b>77,638</b>	<b>25,532</b>	<b>310,277</b>	<b>-3,061,347</b>
<b>Expenses</b>				
Council Fees	-	50	2,017	37,462
Accounting Fees	-	-	6,000	-
Advertising & Marketing	11,385	-	26,795	36,648
Sales Commission	-	-	46,947	36,558
Bank Fees	590	1,620	1,411	1,477
Borrowing Expenses	283	27,209	2,387	132,931
Professional Fee	80,000	-	6,265	750
Consulting Fees	-	-	-	2,420
Construction Cost	-	-	4,038	-
Equipment Repairs and Maintenance	-	-	-	37,481
Computer Expenses	-	-	-	1,945
Legal Fees	3,594	3,932	13,336	16,156
Council Rates	448	1,242	- 1,068	-
Water Expenses	347	912	1,358	2,585
Strata Levy	- 284	2,396	- 1,131	-
Insurance Expenses	-	-	2,975	-
Interest Expense	31,461	101,344	122,431	171,941
ATO Penalties	-	3,000	-	-
Other Expenses (ASIC Fees, Corporate Services, Electricity, Gas, Cleaning)	430	- 1,204	3,050	59
<b>Total Expenses</b>	<b>128,254</b>	<b>140,500</b>	<b>236,813</b>	<b>478,413</b>
<b>Net Profit/Loss Before Income Tax</b>	<b>- 50,615</b>	<b>-114,969</b>	<b>73,464</b>	<b>-3,539,760</b>
Income Tax Expense	-	-	900	-
<b>Net Profit/Loss After Income Tax</b>	<b>- 50,615</b>	<b>-114,969</b>	<b>72,564</b>	<b>-3,539,760</b>
<b>Financial Statement Analysis</b>				
Gross Profit Ratio	0.15	1.00	0.07	-287.89
Net Profit Ratio	-0.10	-4.50	0.02	-332.88

Summary	Mar-19	FY18	FY17	FY16
Sales Revenue	522,514	25,532	4,549,188	10,634
Less: Cost of Goods Sold	444,876	-	4,238,911	3,071,981
<b>Gross Profit</b>	<b>77,638</b>	<b>25,532</b>	<b>310,277</b>	<b>- 3,061,347</b>
Less: Expenditure	128,254	140,500	236,813	478,413
<b>Net Operating Profit/Loss Before Income Tax</b>	<b>- 50,615</b>	<b>- 114,969</b>	<b>73,464</b>	<b>- 3,539,760</b>
<b>Net Operating Profit/Loss After Income Tax</b>	<b>- 50,615</b>	<b>- 114,969</b>	<b>72,564</b>	<b>- 3,539,760</b>

The Company's Profit and Loss Statements reported a net operating loss after income tax totalling \$3,539,760 in FY16, \$114,969 in FY18, and \$50,615 as at 31 March 2019. In regard to FY16, it would appear the Company incurred expenses during development of the properties that were funded by private mortgage facilities arranged by the AXL Group. The Company reported a net operating profit after income tax in FY17 for \$72,564.

During this period:

- The Company's total income substantially increased from \$10,634 in FY16 to \$4,549,188 in FY17, after the sale of the completed town houses.
- Total expenses ranged from \$128,254 as at 31 March 2019 to \$478,413 in FY16. The most substantial expense relates to interest payable under the private mortgages used to finance the development.

Statement of Financial Position	31/03/2019	FY 30/06/2018	FY 30/06/2017	FY 30/06/2016
<b>Current Assets</b>				
Cash at Bank	351	2,779	38,393	58,108
Shares on ASX	4,010	4,010	4,010	4,010
Deposit NSW Office of Water	45,480	45,480	45,480	45,480
Trade Debtors	-	-	-	2,140
Loan to AXL Legal Trust	-	-	-	2,741
GST	-	-	-	50,074
<b>Total Current Assets</b>	<b>49,841</b>	<b>52,269</b>	<b>87,883</b>	<b>162,554</b>
<b>Non-Current Assets</b>				
Real Property	-	444,872	444,872	909,865
Agility Finance Loan	-	-	9,543	209,362
Intercompany Loans	727,993	752,993	753,193	105,200
<b>Total Non-Current Assets</b>	<b>727,993</b>	<b>1,197,865</b>	<b>1,207,608</b>	<b>1,224,427</b>
<b>Total Assets</b>	<b>777,835</b>	<b>1,250,135</b>	<b>1,295,491</b>	<b>1,386,980</b>
<b>Current Liabilities</b>				
Credit Cards	-	-	-	44,529
GST Liabilities	441,483	484,334	426,340	-
Trade Creditors	88,000	818	20,826	562,731
Rental Bonds	-	-	2,000	-
<b>Total Current Liabilities</b>	<b>529,483</b>	<b>485,152</b>	<b>449,167</b>	<b>607,260</b>
<b>Non-Current Liabilities</b>				
Agility Finance Loans	-	467,198	439,637	3,436,041
Intercompany Loans	632,875	631,693	631,342	400,000
<b>Total Non-Current Liabilities</b>	<b>632,875</b>	<b>1,098,891</b>	<b>1,070,979</b>	<b>3,836,041</b>
<b>Total Liabilities</b>	<b>1,162,358</b>	<b>1,584,043</b>	<b>1,520,146</b>	<b>4,443,301</b>
<b>Net Assets</b>	<b>- 384,524</b>	<b>- 333,908</b>	<b>- 224,655</b>	<b>- 3,056,320</b>
Share Capital	5,915	5,915	200	610,200
Owner/Shareholder Drawings	-	-	-	2,700
Current Year Earnings	- 50,615	- 114,969	72,564	- 3,539,760
Retained Earnings	- 339,823	- 224,855	- 297,419	- 129,460
<b>Total Equity</b>	<b>- 384,524</b>	<b>- 333,908</b>	<b>- 224,655</b>	<b>- 3,056,320</b>
<b>Financial Statement Analysis</b>				
Liquidity Ratio	0.09	0.11	0.20	0.27

SUMMARY	31/03/2019	FY 30/06/2018	FY 30/06/2017	FY 30/06/2016
Current Assets	49,841	52,269	87,883	162,554
Non-Current Assets	727,993	1,197,865	1,207,608	1,224,427
<b>Total Assets</b>	<b>777,835</b>	<b>1,250,135</b>	<b>1,295,491</b>	<b>1,386,980</b>
Current Liabilities	529,483	485,152	449,167	607,260
Non-Current Liabilities	632,875	1,098,891	1,070,979	3,836,041
<b>Total Liabilities</b>	<b>1,162,358</b>	<b>1,584,043</b>	<b>1,520,146</b>	<b>4,443,301</b>
<b>Net Assets</b>	<b>- 384,524</b>	<b>- 333,908</b>	<b>- 224,655</b>	<b>- 3,056,320</b>
Working Capital Position	- 479,642	- 432,882	- 361,284	- 444,706
Liquidity (Current) Ratio	0.09	0.11	0.20	0.27

I note that the Company reported a net asset deficiency across the financial periods considered above.

### Liquidity

A common ratio used to assess a company's liquidity is the 'current ratio', which is calculated as current assets divided by current liabilities. A current ratio of one (1) or higher suggests that a company has sufficient current assets to discharge its short-term liabilities as and when they fall due. Creditors will note that the current ratio for the period ranged between 0.09 as at 31 March 2019, and 0.27 in FY2016.

The Company had insufficient assets to discharge its short-term obligations as they fell due and the position continued to deteriorate over time.

### Working Capital

Working capital is a measure of the funds available to finance the ordinary day-to-day operations of the entity once its short-term obligations have been discharged.

A working capital deficiency is evident for all years considered above, ranging from -\$479,642 as at 31 March 2019, to -\$361,284 for the year ended 30 June 2017.

## 5 ENFORCEMENT ACTION

I am not aware of any enforcement action having been commenced against the Company and have not identified evidence of any landlord or creditor taking possession or control of the property of the Company, or commencing legal action against the Company, or of any property which is being held or detained by another person or entity under a lien, except as identified below:

- On 8 August 2017, the Australian Taxation Office issued a garnishee notice on the Company's bank in respect of an outstanding liability of \$445,822.
- On 18 January 2019, the Australian Taxation Office filed an application for a winding up order against the Company.

## 6 ASSETS AND LIABILITIES /COMPARISON TO ROCAP

Directors are required to provide a Liquidator with a Report on Company Activities and Property ("ROCAP") of the company, completed in the prescribed form.

The ROCAP represents a snap shot of the Company's financial position as at the date of the Liquidator's appointment. It provides details of the Company's assets and liabilities and their estimated realisable values. It also provides further information in relation to the Company's business, property, affairs and financial circumstances. A summary follows:

Summary of Report on Company Activities and Property	Director's Valuation (\$)	IP's Valuation (\$)
<b>ASSETS</b>		
Cash at Bank / Cash on Hand	-	371
Sundry Debtors/Loan Account	274,000	727,048
Stock	-	-
Work In Progress	-	-
Plant & Equipment	-	-
Motor Vehicles	-	-
Interests in Land	-	-
Other Assets	-	45,480
<b>Total Assets</b>	<b>274,000</b>	<b>772,899</b>
<b>LIABILITIES</b>		
<b>Secured Creditors</b>		
Estimated shortfall to security holder	-	-
<b>Priority Creditors</b>		
Winding Up Costs	-	3,035
Wages and Superannuation	-	-
Annual Leave and Long Service Leave	-	-
Pay in Lieu of Notice and Redundancy	-	-
	-	<b>3,035</b>
<b>Unsecured Creditors</b>		
Tax Instalments/ Statutory Claims	-	524,158
Unsecured Creditors	-	-
Unsecured Related Party Claims	1,252,875	1,164,875
Contingent Liabilities	-	-
Other Creditors	-	-
	<b>1,252,875</b>	<b>1,689,033</b>
<b>Total Liabilities</b>	<b>1,252,875</b>	<b>1,692,068</b>
<b>Estimated Surplus or (Deficiency)</b>	<b>(978,875)</b>	<b>(919,169)</b>

## 6.1 ASSETS

### Cash at Bank

The National Australian Bank (NAB) has confirmed that the Company conducted two accounts as at the date of my appointment, one with a closing balance of \$371, while the other was closed as at 19 November 2018.

I have further identified eight Agility finance statements in the name of the Company, each with a nil closing balance as at the date of my appointment.

I have not identified any other bank accounts conducted with any other major banks or financial institutions as at the date of my appointment.

On 25 March 2019, the Company's Bank account received a deposit of \$289,414.80. Shortly after, I received correspondence from Bransgroves Solicitor's acting for Moshav Financial Wholesale Pty Limited ("Moshav") claiming the funds had been paid in error to the Company and demanded that the funds be immediately returned or else Moshav would commence proceedings against the Company and the Liquidator. Through my solicitors, I requested Moshav to provide documentation that supported the position that another party was the intended recipient of the transfer and not the Company. After such documentation was provided including a Statutory Declaration sworn by Mr Oliver Roths explaining who the rightful recipient should have been and how the error came about, I received legal advice that the Company was unable to sustain a claim to the funds. Accordingly, I arranged for the return of the funds to Moshav on 2 May 2019.

### Sundry Debtors/Loans

The Director's ROCAP indicated an outstanding debt owing to the Company of \$274,000 by Hyperbuild Pty Limited, a related company. Appropriate legal demands have been issued to this company for the repayment of this loan and should this prove unsuccessful I will instruct my lawyers to issue a Statutory Demand to this debtor.

Based on my investigations to date, I am aware of further 2 loans made by the Company totalling \$453,048 to related parties. The first is in relation to a sum of \$125,000 owed by 18 Falcon Street Pty Limited as per a Company balance sheet dated 27 March 2019. I have issued a demand to 18 Falcon Street Pty Limited for repayment of the loan but as at the date of this Report there has been no response. Accordingly, I have instructed my Lawyers to issue a Statutory Demand to 18 Falcon Street Pty Limited for the repayment of this loan.

The other loan due to the Company is in relation to a property development at 6 Addison Street, Shellharbour. The Company's books and records reveal that Company funds totalling \$328,047 were used to acquire the site at this address. Based on legal advice I have received, the Company has a caveatable interest in the property as a result. In order to secure the Company interests, I instructed my lawyers to register caveats over 6 Lots that relate to the development at 6 Addison Street, Shell Harbour NSW. Furthermore, appropriate legal demands have been issued for the repayment of these loans. To date, no response to the demand has been received.

Creditors will be informed of the progress of the recovery of these loans in due course.

## Stock

The Director's ROCAP indicated the Company did not hold any stock as at the date of my appointment. My review of the Company's management accounts as at 31 March 2019 verified this position.

## Plant & Equipment

The Director's ROCAP indicated the Company did not hold any plant and equipment as at the date of my appointment. My review of the Company's management accounts as at 31 March 2019 verified this position.

My investigations identified that the Company held the following real property assets that were all sold as at the date of my appointment. Particulars of the sale of these assets are indicated below.

Address	Date of Sale	Sale Value
1/44 Cummins Street Unanderra, NSW, 2526	22-Sep-16	505,000
2/44 Cummins Street Unanderra, NSW, 2526	31-Jul-15	480,000
3/44 Cummins Street Unanderra, NSW 2526	19-Sep-16	486,000
4/44 Cummins Street Unanderra, NSW, 2526	31-Aug-15	490,000
5/44 Cummins Street Unanderra, NSW, 2526	4-Aug-15	480,000
6/44 Cummins Street Unanderra, NSW, 2526	15-Aug-16	555,000
7/44 Cummins Street Unanderra, NSW, 2526	6-Aug-15	475,000
8/44 Cummins Street Unanderra, NSW, 2526	5-Aug-15	510,000
9/44 Cummins Street Unanderra, NSW, 2526	13-Sep-18	560,000
10/44 Cummins Street Unanderra, NSW, 2526	6-Aug-16	590,000
<b>Total</b>		<b>\$ 5,131,000</b>

## Motor Vehicles

The Director's ROCAP indicated the Company did not hold any motor vehicles as at the date of my appointment. My review of the Company's management accounts as at 31 March 2019 verified this position.

A search conducted by the Roads and Maritime Services of NSW (RMS) confirmed that there were no motor vehicles registered in the name of the Company.

## Other Assets

The Director's ROCAP indicated the Company did not hold any other assets as at the date of my appointment.

I note that NSW Office of Water presently holds a bond of \$45,480 paid by the Company in respect of a completed development at 44 Cummins Street Unanderra NSW. My review of the Company's management account as at 31 March 2019 confirmed this position. I understand that these funds are recoverable and will likely be released at the end of May 2019.

## 6.2 LIABILITIES

### Secured Creditors

A review of the Company's comprehensive PPSR records, maintained by the Australian Financial Services Authority, disclosed one registered security interest as at the date of my appointment to Interchange Technologies Pty Ltd, summarized as follows:

Secured Party Group	PPSR Number	Collateral Class	Registration Start Time	Advised Debt
Interchange Technologies Pty Ltd	201506240008761	All PAP	24/06/2015	Unknown

There has been no response to date, and their debt (if any) is unknown.

### Winding Up Costs

The petitioning creditor's costs incurred in respect of the winding up application, pursuant to Section 556(1)(b) of the Corporations Act 2001 in the amount of \$3,035 have not been discharged.

### Priority Unsecured Creditors

Creditors are advised that employees are afforded a priority over the ordinary unsecured creditors of the Company for unpaid wages, superannuation contributions, annual leave and any other entitlements pursuant to Section 556 of the Act.

Furthermore, Section 556 of the Act states that related parties (including directors and their relatives) are only entitled to claim, as a priority, a maximum amount of \$2,000 in respect of unpaid wages and superannuation, and \$1,500 in respect of leave entitlements. In addition, redundancy entitlements of related parties are not entitled to rank as a priority. Any amounts owed to related parties in excess of these statutory limits will rank equally with all other unsecured claims.

The Director advised that the Company did not have any employees as at the date of appointment. I have not received any priority unsecured creditor claims as at the circulation date of this report.

Nevertheless, I advise the following:

#### ***Fair Entitlements Guarantee***

In circumstances where a Company is wound up and a Liquidator is appointed, employees are eligible to apply to the Federal Government, which has established a safety net scheme known as the Fair Entitlement Guarantee ("FEG") for payment of their outstanding entitlements in circumstances where their employment is terminated.

The Department of Jobs and Small Business administer the scheme for eligible employees who have been terminated from their employment as a result of their employer's insolvency and are owed entitlements.

In order for an employee to be eligible to claim outstanding entitlements under FEG, one of the following conditions must be met:



- ▲ The employee is terminated upon the appointment of an insolvency practitioner; or
- ▲ The employee is terminated by the Company within six (6) months of the appointment of an insolvency practitioner;
- ▲ The termination is due to the insolvency of the employer.

Claims may be submitted in respect of the following entitlements up to the maximum thresholds set out below, provided they are so entitled under their respective industrial instrument/contract of employment to claim:

- ▲ Up to three months unpaid wages;
- ▲ Unpaid annual leave and long service leave;
- ▲ Up to a maximum of five weeks unpaid payment in lieu of notice;
- ▲ Up to a maximum of four weeks redundancy entitlement for each completed year of service.

FEG will not cover:

- ▲ Outstanding superannuation entitlements.
- ▲ Entitlements such as rostered days off unless the relevant legislation, award, statutory agreement or written contract of employment provides they are payable upon termination of employment.
- ▲ Employee entitlements of directors and related party creditors.

Claims must be lodged no more than 12 months after the later of the end of employment or the date of the insolvency event. Directors who are also employees of the company, or relatives of a director of the employer company, at any time in the 12 months before the insolvency event are not eligible.

Further information in relation to the Scheme may be obtained using the following hyperlink: <https://docs.jobs.gov.au/documents/feg-claim-form>

Any person claiming to be a creditor of the Company in respect of outstanding employee entitlements should notify Ms Clair Daher of my office immediately.

### ***Superannuation***

The Australian Taxation Office lodged a formal proof of debt claim as at 22 February 2019, however no amount is outstanding in respect of a Superannuation Guarantee Charge.

In accordance with Section 52 of the *Superannuation Guarantee (Administration) Act 1992* any claim received from the Australian Taxation Office in relation to the outstanding superannuation has a priority equal to the debts referred to in section 556(1)(e) of the Act in the event that a distribution is made.

### **Statutory Claims**

The Australian Taxation Office lodged a formal proof of debt claim as at 22 February 2019, for the amount totalling \$524,158.08. Particulars of the debt are as follows:

- ▲ Income Tax: \$84,299.87
- ▲ Running Balance Account: \$439,858.21

Furthermore, I am advised that the following statutory lodgements were outstanding as at the date of my appointment

- ▲ Business Activity Statement: February 2019
- ▲ Income Tax Returns: Years ended 30 June 2018 and 30 June 2019

## Unsecured Creditors

The Director's ROCAP did not disclose any unrelated unsecured creditors as at the date of my appointment.

I have not received any formal proof of debt claims from this creditor type as at the circulation date of this report.

## Related Party Creditors

The Director's ROCAP disclosed six (6) unsecured related party creditors as at the date of Liquidation. Particulars of the outstanding debts are as follows:

Unsecured Creditor	Debt
AXL Financial Pty Ltd	\$523,875
33 Whimbrel Avenue Pty Ltd	\$197,000
Tian Wang	\$133,000
Theo Pasialis	\$133,000
Alexander Gordon Johann Harmstorf	\$133,000
Oliver Roths	\$133,000
<b>Total</b>	<b>\$1,252,875</b>

I received a formal proof of debt claim from AXL Financial Pty Ltd as at 31 March 2019, for \$435,875.26 in respect of a loan account. I have not received any further related party creditor claims.

## Contingent Creditors

The Director's ROCAP did not disclose any contingent creditors as at the date of Liquidation. I have not received any formal proofs of debt claimed by contingent creditors as at the circulation date of this report.

## Estimated Deficiency

The total estimated deficiency does not take into account the Liquidator's fees and disbursements, which rank as a priority under Section 556 of the Act.

# 7 SUMMARY OF INVESTIGATIONS

## 7.1 BOOKS AND RECORDS

The Director has provided me with the books and records of the Company and its management accounts, however has failed to provide me with the financial statements maintained in respect of the Company.

Pursuant to Section 292 of the Act, the Company is not required to prepare financial reports. However, at a minimum a company must keep financial records that correctly record and explain its transactions and financial position and performance, and enable true and fair financial statements to be prepared and audited.

Financial records must be kept for seven years and include:

- financial statements (not required for small proprietary companies but recommended) – for example, profit and loss accounts, balance sheets, depreciation schedules and taxation returns

- general ledger and general journal
- asset register
- computer back-up discs – suggested frequency is at least monthly
- cash records – for example, cash receipts journal, bank deposit books, cash payments journal, cheque butts and petty cash books
- bank account statements, bank reconciliations and bank loan documents
- sales/debtor records – for example, sales journal, debtors ledger, list of debtors, invoices and statements issued, and delivery dockets
- work-in-progress records
- job/customer files
- stock listings
- creditors records – for example, invoices and statements received and paid, creditors ledger and unpaid invoices
- all correspondence, annual returns and ASIC forms
- wages and superannuation records
- registers of members (where applicable), options, debenture holders, prescribed interests, charges and unclaimed property
- minutes of meetings of directors and/or members, and
- deeds (where applicable) – for example, for trusts, debentures, contracts and agreements, such as hire purchase and leases, and inter-company transactions, including guarantees.

## 7.2 INVESTIGATIONS

I have conducted investigations to ascertain whether there are transactions that appear to be voidable in respect of which money, property or other benefits may be recoverable pursuant to Part 5.7B of the Act.

## 7.3 UNFAIR PREFERENCES (SECTION 588FA)

A liquidator can seek repayment from creditors whose debts have been paid at a time when the company was insolvent where that creditor has received more than they would have if the Company had been wound up and the creditor proved in the liquidation.

The creditor may defend such a claim by proving that it received the subject payment in good faith, for valuable consideration, and without suspecting, or having grounds to suspect that the company was insolvent.

Only payments made within six months before the winding application is made (that is, after 18 July 2018) are normally recoverable. However, payments to related parties made within the past 4 years (that is, after 18 January 2015) may be recoverable, if the Company was insolvent during that period. In either case, allowance must be made for the “ultimate effect” of the payment, so that, where the payment has secured further supply, the value of that supply is deducted from the payment to determine the net preferential effect.

I note that recipients of any payments considered preferential may have defences available to them pursuant to the Act. Creditors are further advised that preference recoveries are sometimes vigorously defended and are difficult to pursue, particularly in circumstances where they may involve incurring significant costs and delays, without necessarily resulting in any substantial return to creditors. Any amounts recovered would be provable in the Liquidation.

The Australian Taxation Office received \$39,200 from the settlement of unit 9, as well as a further payment of \$25,000, which may be deemed preference payments. Further investigation of the nature of these payments is required.

#### 7.4 UNFAIR LOANS (SECTION 588FD)

A loan to a company may be deemed unfair if the interest on a loan, or the charges on a loan, were initially extortionate, or, subsequently became extortionate because of a variation to the loan.

In considering whether interest and charges are extortionate, regard must be had to conditions available in the market generally and:

- ▲ the risk to which the lender was exposed,
- ▲ the value of any security undertaken in respect of the loan,
- ▲ the term of the loan,
- ▲ the repayment schedule, and
- ▲ the reasonableness of any subsequent variations to the loan.

There is no time limit on unfair loans – they only must be entered into before the winding up began.

My preliminary investigations identified eight loans conducted with Agility finance in the name of the Company. I note that the interest rate on these loans were set between nine (9) and ten (10) percent. The interest is not extortionate and therefore these loans do not appear to be unfair, after having regard to all of the above mentioned factors.

#### 7.5 UNCOMMERCIAL TRANSACTIONS (SECTION 588FB)

A transaction of the Company is an uncommercial transaction where a reasonable person in the Company's circumstances would not have entered into the transaction having regard to the benefits flowing to the company, or the detriment suffered by the company, and the respective benefits flowing to other parties to the transaction from entering into the transaction.

To void an uncommercial transaction, a liquidator must prove the following elements:

- ▲ a transaction was entered into;
- ▲ there was no benefit to, or there was a detriment to, the company by entering into the transaction;
- ▲ it occurred at a time when the company was insolvent; and
- ▲ the party suspected or should have suspected that the company was insolvent at the time of the transaction.

To be voidable, an uncommercial transaction must have occurred during the two years before the before the winding application is filed. However, if a related entity is a party to the transaction, the period is four years and if the intention of the transaction is to defeat creditors, the period is ten years.

The company must have been insolvent at the time of the transaction, or become insolvent because of the transaction.

My investigation identified the following two payments made from the settlement monies of Units 1 & 5:

- An amount of \$309,344.81 was disbursed from the proceeds of sale of unit 1 with the narration "contract for sale OTP at 44 Cummins Street Unanderra."

- An amount of \$348,335.00 was disbursed from the proceeds of sale of unit 5 with the narration “Tian Wang – Request by client”.

Further investigations into the nature of these payments is required.

## 7.6 UNREASONABLE DIRECTOR-RELATED TRANSACTIONS (SECTION 588FDA)

A transaction is an **unreasonable director-related transaction** if it involves:

- ▲ a payment made by the company; or
- ▲ a conveyance, transfer or other disposition by the company of property of the company; or
- ▲ the issue of securities by the company; or
- ▲ the incurring by the company of an obligation to make such a payment, disposition or issue [including contingent obligations];

to a director, a shadow director or an associate of a director (or to *a person on behalf of, or for the benefit of either*), where a reasonable person would not have entered into the transaction having regard to the benefits of the Company entering into the transaction and/or the detriment to the Company arising from the transaction.

The transaction must have been unreasonable, and have been entered into during the 4 years before the before the winding application is filed, regardless of solvency at the time the transaction occurred.

My preliminary investigations of the Company’s bank statements did not identify any payments made to the director of the Company, Mr Alexander Gordon Johann Harmstorf.

## 7.7 INSOLVENT TRADING (SECTION 588G)

A liquidator or creditor may pursue a claim against a director for the loss suffered by creditors resulting from the director allowing the company to incur a debt, which is not later repaid, at a time when the Company was insolvent.

A director can defend an insolvent trading claim by showing that they had reasonable grounds to expect the debt would be paid, or that they relied on others who informed them that debts would be paid.

In deciding whether to commence an insolvent trading action against a director, a Liquidator needs to:

- ▲ gather evidence that supports the claim;
- ▲ have sufficient funds available to commence and prosecute an action to its conclusion; and
- ▲ be confident that in circumstances where judgment is obtained, the director has the wherewithal to satisfy such judgment.

Creditors should note that it is the Court’s role to ultimately determine the actual date of insolvency. Any insolvent action needs to be considered on a commercial basis and a Liquidator would need to be indemnified for their costs and any adverse costs should they be awarded. Costs associated with this type of litigation can be prohibitive and Liquidators need to be satisfied that they can prove insolvency, and that any judgement obtained can be satisfied, before commencing proceedings.

In the case of *ASIC v Plymin* (46 ACSR 126 at 214-5) the Court identified the following widely cited indicators that may lead to a conclusion that a Company’s insolvency may not be far off:

- a) a history of continuing losses
- b) liquidity ratios falling below one (1)
- c) overdue taxes

- d) a poor relationship with its present bank, including inability to borrow further funds
- e) inability to raise further funds from existing or new shareholders
- f) no access to alternative finance and an inability to raise further equity capital
- g) suppliers placing the Company on COD, or demanding special payments before resuming supply
- h) creditors remaining unpaid outside trading terms
- i) post-dated cheques being issued
- j) cheques being dishonoured
- k) special arrangements with selected creditors
- l) solicitors' letters, summonses, judgments or warrants being issued against the Company
- m) payments to creditors of rounded sums not reconcilable to specific invoices
- n) an inability to produce timely and accurate financial information to demonstrate its trading performance and financial position, and to make reliable forecasts.

I have taken into consideration each of the above factors. My preliminary investigations identified the following indicators of insolvency discussed throughout this report:

- The current ratio for the period ranged between 0.09 as at 31 March 2019, and 0.27 in FY2016. The Company had insufficient assets to discharge its short-term obligations as they fell due and the position continued to deteriorate over time.
- The Company is indebted to the ATO in the total amount of \$524,158.08. The following statutory lodgments were outstanding as at the date of my appointment:
  - Business Activity Statements – February 2019
  - Income Tax Returns – Years ended 30 June 2018, 30 June 2019
- The Company may have entered into payment plan arrangements with the Australian Taxation Office from as early as August 2015 based on my review of the bank statements.
- On 8 August 2017, the Australian Taxation Office issued a garnishee notice to National Australia Bank Limited to forward any money due to the Company, as a result of a liability for \$445,821.72 remaining outstanding.
- On 18 January 2019, the Australian Taxation Office filed an application for a winding up order against the Company.

### ***Date of Insolvency***

My preliminary investigations indicate that that the Company may have been insolvent from as early as 30 June 2016.

### ***Potential Quantum of Claim***

Determining the value of an insolvent trading claim will generally involve a forensic review of the debts incurred after the date on which it can be maintained that the Company was insolvent. My investigations indicate that an insolvent trading claim may be valued at around \$524K, based on the ATO debt incurred up to the date of my appointment.

I also note that pursuant to Section 588V of the Act, an insolvent trading claim can also be pursued against the holding company, AXL.

## Creditor Funded Litigation

Creditors will note that the liquidation is presently unfunded. Pursuant to Section 545(1) of the Act, a liquidator is not liable to incur any expense in relation to the winding up of a company unless there is sufficient available property.

Any creditor or contributory interested in indemnifying me in respect of any possible action should contact me on (02) 8263 2300 before 30 June 2019 for an estimate of costs and disbursements to be incurred, and the estimated quantum of security for costs necessary, in order to progress the matter.

Creditors who consider indemnifying me, should have regard to the following:

- Should the matter proceed to public examination one of the following outcomes may arise:
  1. If proceedings are unsuccessful, adverse costs orders may be made against the liquidator and the funding party must be willing to indemnify the Liquidator accordingly; and
  2. Legal recovery may be deemed uncommercial or no longer beneficial to pursue. In this regard, there may be no return to creditors and the funding received for the examination process will not be repaid.
- The possibility that there may be no return at all given the uncertainties and vagaries of litigation.
- The Liquidators' time, legal fees and disbursements which will continue to accrue throughout the litigation.

In circumstances where property has been recovered under an indemnity for costs of litigation given by certain creditors, or expenses have been recovered; the Court may make such orders, as it deems just with respect to the distribution of property and the amount of those expenses so recovered with a view to giving those creditors an advantage over others in consideration of the risk assumed by them. It is likely that this will be limited to the value of the financial outlay plus 100 percent of a proved debt in circumstances where such action is successful.

## 7.8 BREACH OF DIRECTOR DUTIES

In addition to any contractual, common law or equitable duties imposed on a Director, they owe statutory duties pursuant to the *Corporations Act 2001* to:

- exercise their powers and discharge their duties with the degree of care and diligence (s180);
- exercise their powers and discharge their duties in good faith in the best interests of the corporation, and for a proper purpose (s181);
- not improperly use their position to gain an advantage for themselves or someone else; or cause detriment to the corporation (s182);
- not improperly use any information obtained because of their position to gain an advantage for themselves or someone else; or to cause detriment to the corporation (s183); and
- to prevent insolvent trading (s588G).

My investigations in this regard are ongoing, however based on investigations to date there may be a breach of duty type claim against the director (or any shadow director(s)) pursuant to Sections 180, 181 and 182 of the Corporations Act should the related party debts discussed in Section 5.1 above not prove recoverable. Further investigations are required before a position is determined in regard to claims of

this nature and any identified breaches will be reported to the Australian Securities and Investments Commission.

## 7.9 ASIC'S POWER OF DISQUALIFICATION

Pursuant to Section 206F of the Act ASIC may disqualify a person from managing corporations for up to 5 years if amongst other things, within 7 years immediately before ASIC gives a notice:

- (i) the person has been an officer of 2 or more corporations; and
- (ii) while the person was an officer, or within 12 months after the person ceased to be an officer of those corporations, each of the corporations was wound up and a liquidator lodged a report under subsection 533(1) about the corporation's inability to pay its debts.

The Director does not meet this disqualification criteria.

Furthermore, pursuant to Section 206C of the Act the Court may, on application by ASIC, disqualify a person from managing corporations for a period that the Court considers appropriate if a declaration is made under section 1317E (civil penalty provision) that the person has contravened a corporation/scheme civil penalty provision, including a breach of the director duties set out in Sections 180-183 of the Act.

## 8 ASIC REPORTS

In circumstances where a company is unlikely to pay a dividend of more than fifty (50) cents in the dollar to its ordinary unsecured creditors, a liquidator is obliged to report the matter to the ASIC pursuant to Section 533 of the Act.

Once I have concluded my investigations, I will lodge a report with ASIC with respect to this appointment. In accordance with Section 1274(2) of the Act, the contents of this report must remain confidential as between ASIC and the Liquidator.

## 9 REMUNERATION REPORT

In compliance with the Code of Professional Practice and the requirements of the Act, I am required to provide detailed information in respect of my remuneration.

I attach my Remuneration Approval Report as **Annexure "E"** which details the major tasks that have been and will be conducted in this administration. My remuneration is calculated by reference to the time spent by staff and the hourly rates applied by BRI Ferrier, as detailed in the Remuneration Matrix. A schedule of hourly rates is also attached as **Annexure "F"**.

To date, my remuneration has been calculated on a "Time-Cost" basis, and I propose that it continue to be calculated on this basis. The Time-Cost method for calculating remuneration reflects the cost to the firm of the work undertaken, rather than a measure of the assets realised. In my view, the Time-Cost method is the preferable basis for calculating remuneration in an engagement such as this.

For creditors' information, ASIC and ARITA information sheets that relate to specific circumstances once an insolvency practitioner is appointed to a Company and approval of remuneration can be found at the following websites:

▲ <http://www.asic.gov.au/insolvencyinfosheets>



- ▶ [https://www.arita.com.au/ARITA/Insolvency\\_help/Insolvency\\_explained/Insolvency-Fact-Sheets.aspx](https://www.arita.com.au/ARITA/Insolvency_help/Insolvency_explained/Insolvency-Fact-Sheets.aspx)

## 10 MEETING OF CREDITORS

A Meeting of Creditors will be held on Tuesday, 4 June 2019 at 11:00AM. The formal Notice of Meeting is attached as **Annexure “B”** for your reference.

To participate as a Creditor and/or eligible employee Creditor, you should:

- ▶ Provide us with a Proof of Debt detailing your claim to be a Creditor and/or eligible employee Creditor. Proofs of Debt are enclosed as **Annexure “C”**. If you have previously provided a proof of debt and wish to supplement it, you may do so. Otherwise, Creditors whose proofs were accepted for voting at the previous meeting are not required to be re-lodged for the Meeting of Creditors.
- ▶ Creditors may attend and vote in person, by proxy or by attorney. The appointment of a proxy, copies of which is attached as **Annexure “D”**, must be in accordance with Form 532. It is necessary for all Creditors to submit new proxies for this Meeting of Creditors. Persons attending on behalf of a corporate entity are required to have a proxy signed on behalf of that entity.
- ▶ A specific proxy can be lodged showing approval or rejection of each proposal.

Proxy forms or facsimiles thereof must be lodged at my office by 4:00 PM one (1) business day prior to the meeting. Where a facsimile copy of a proxy is sent, the original must be lodged with my office within seventy-two hours after receipt of the facsimile. An attorney of a Creditor must show the instrument by which he or she is appointed to the Chairperson prior to commencement of the meeting.

## 11 PROGRESSION OF LIQUIDATION

I will proceed with the liquidation, including the following substantial milestones:

- ▶ pursue recovery of the related party loan any commercial and beneficial causes of action available;
- ▶ conclude my investigations into the Company’s affairs and report to the corporate insolvency regulator, the Australian Securities and Investments Commission;
- ▶ adjudication on claims lodged;
- ▶ reporting to creditors (if necessary), and convening meetings of creditors (if necessary) and pay a dividend distribution (if applicable).

I expect that I will write to creditors again in the event of any further developments with information on the progress of the liquidation.



If the debtor recoveries are recovered successfully without litigation, I anticipate that I may be able to finalise the Liquidation within nine (9) to twelve (12) months. However, if litigation is required, the timing for finalisation could be at least eighteen (18) months to twenty-four (24) months.

## 12 CONCLUSION

You can access general information, which may assist you on the following websites:

- ▲ ARITA at [www.arita.com.au/creditors](http://www.arita.com.au/creditors)
- ▲ ASIC at [www.asic.gov.au](http://www.asic.gov.au) (search for “insolvency information sheets”).

Should you have any further queries in relation to this report or this liquidation generally, please do not hesitate to contact Ms Clair Daher as follows:

	Post:	GPO Box 7079 Sydney NSW 2001
	Email:	<a href="mailto:cdaher@brifnsw.com.au">cdaher@brifnsw.com.au</a>
	Telephone:	(02) 8263 2300
	Facsimile:	(02) 8263 2399

Yours faithfully,

**44 CUMMINS STREET PTY LTD (IN LIQUIDATION)**



**PETER PAUL KREJCI**  
Liquidator

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The logo for BRI Ferrier, featuring the text "BRI Ferrier" in white on a dark grey rectangular background. A green triangle is positioned at the bottom right corner of the grey rectangle.

**BRI Ferrier**

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**44 Cummins Street Pty Ltd  
(In Liquidation)**

**ACN 605 229 463**

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**Annexure "A"  
Liquidator's Receipts & Payments**

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## Summarised Receipts & Payments

44 Cummins Street Pty Ltd

(In Liquidation)

Transactions From 20 February 2019 To 20 May 2019

A/C	Account	Net	GST	Gross
74	Cash at Bank	371.29	0.00	371.29
240	Suspense Account	289,063.51	0.00	289,063.51
<b>Total Receipts (inc GST)</b>		<b>\$289,434.80</b>	<b>\$0.00</b>	<b>\$289,434.80</b>
132	Bank Charges	10.00	0.00	10.00
240	Suspense Account	289,424.80	0.00	289,424.80
<b>Total Payments (inc GST)</b>		<b>\$289,434.80</b>	<b>\$0.00</b>	<b>\$289,434.80</b>
<b>Balance in Hand - By Bank Account</b>				
213	Pre-appointment Account			<b>0.00</b>
				<b>\$0.00</b>

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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 on the right side.

**BRI Ferrier**

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**44 Cummins Street Pty Ltd  
(In Liquidation)**

**ACN 605 229 463**

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**Annexure "B"  
Notice of Meeting**

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FORM 529

CORPORATIONS ACT 2001

Insolvency Practice Rules (Corporations)  
75-10, 75-15 & 75-20

NOTICE OF MEETING OF CREDITORS  
44 CUMMINS STREET PTY LTD (IN LIQUIDATION)  
ACN 605 229 463

NOTICE is given that a meeting of the creditors of the Company will be held at the offices of BRI Ferrier Level 30 Australia Square 264 George Street Sydney NSW 2000 on 4 June 2019 at 11:00 a.m.

A G E N D A

1. To receive the Report of the Liquidator;
2. To consider and, if thought fit, approve the remuneration of the Liquidator;
3. To consider and, if thought fit, approve the future remuneration of the Liquidator;
4. To consider and, if thought fit, approve the internal disbursements of the Liquidator; and
5. Any other business that may be lawfully brought forward.

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.

Proxies to be used at the meeting should be given to me as Liquidator to the person named a convening the meeting. A creditor can only be represented by proxy or by an attorney pursuant to Insolvency Practice Rules (Corporations) (IPR) 75-150 & 75-155 and if a body corporate by a representative appointed pursuant to Section 250D.

Creditors will not be entitled to vote at this meeting unless they have previously lodged particulars of their claim against the company in accordance with IPR 75-85 and that claim has been admitted for voting purposes wholly or in part by the Liquidator.

Telephone conference facilities will be available at the meeting. Please note under Insolvency Practice Rules (Corporations) (IPR) 75-35 if you wish to participate in the meeting using such facilities you must give to the convener not later than 3 June 2019 a written statement setting out:

- (a) the name of the person and of the proxy or attorney (if any); and
- (b) an address to which notices to the person, proxy or attorney may be sent; and
- (c) a method by which the person, proxy or attorney may be contacted for the purposes of the meeting.

DATED this 20<sup>th</sup> day of May 2019.



PETER KREJCI  
LIQUIDATOR

BRI FERRIER (NSW) PTY LTD  
Level 30  
Australia Square  
264 George Street  
Sydney NSW 2000

Telephone: (02) 8263 2300

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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 on the right side.

**BRI Ferrier**

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**44 Cummins Street Pty Ltd  
(In Liquidation)**

**ACN 605 229 463**

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**Annexure "C"  
Formal Proof of Debt**

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**FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)**  
44 CUMMINS STREET PTY LTD (IN LIQUIDATION)  
ACN 605 229 463

To the Liquidator of 44 CUMMINS STREET PTY LTD (IN LIQUIDATION):

1. This is to state that the Company was, on 20 February 2019 <sup>(1)</sup> and still is, justly and truly indebted to<sup>(2)</sup> (full name):

.....  
(‘Creditor’)

.....  
of (full address)

for \$ .....dollars and .....cents.

Particulars of the debt are:

Date	Consideration <sup>(3)</sup> state how the debt arose	Amount \$	GST included \$	Remarks <sup>(4)</sup> 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 manner of satisfaction or security for the sum or any part of it except for the following: .....

Insert particulars of all securities held. Where the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, specify them in a schedule in the following form:

Date	Drawer	Acceptor	Amount \$ c	Due Date

I am **not** a related creditor of the Company <sup>(5)</sup>

I am a related creditor of the Company <sup>(5)</sup>  
relationship: \_\_\_\_\_

3A.<sup>(6)\*</sup> 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, still remains unpaid and unsatisfied.

3B.<sup>(6)\*</sup> I am the creditor's agent authorised to make this statement in writing. I know that the debt was incurred and for the consideration stated and that the debt, to the best of my knowledge and belief, still remains unpaid and unsatisfied.

DATED this                      day of                      2019.

Signature of Signatory .....

NAME IN BLOCK LETTERS .....

Occupation .....

Address.....

**See Directions overleaf for the completion of this form**

**OFFICE USE ONLY**

POD No:		ADMIT (Voting / Dividend) - Ordinary	\$
Date Received:	/ /	ADMIT (Voting / Dividend) – Preferential	\$
Entered into CORE IPS:		Reject (Voting / Dividend)	\$
Amount per CRA/RATA	\$	Object or H/Over for Consideration	\$
<b>Reason for Admitting / Rejection</b>			
PREP BY/AUTHORISED		<b>TOTAL PROOF</b>	\$
DATE AUTHORISED	/ /		

### Proof of Debt Form Directions

- \* Strike out whichever is inapplicable.
- (1) Insert date of Court Order in winding up by the Court, or date of resolution to wind up, if a voluntary winding up.
- (2) Insert full name and address (including ABN) of the creditor and, if applicable, the creditor's partners. If prepared by an employee or agent of the creditor, also insert a description of the occupation of the creditor.
- (3) Under "Consideration" state how the debt arose, for example "goods sold and delivered to the company between the dates of .....", "moneys advanced in respect of the Bill of Exchange".
- (4) Under "Remarks" include details of vouchers substantiating payment.
- (5) Related Party / Entity: Director, relative of Director, related company, beneficiary of a related trust.
- (6) 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.

### Annexures

- A. If space provided for a particular purpose in a form is insufficient to contain all the required information in relation to a particular item, the information must be set out in an annexure.
- B. An annexure to a form must:
  - (a) have an identifying mark;
  - (b) and be endorsed with the words:
    - i) "This is the annexure of *(insert number of pages)* pages marked *(insert an identifying mark)* referred to in the *(insert description of form)* signed by me/us and dated *(insert date of signing)*; and
  - (c) be signed by each person signing the form to which the document is annexed.
- C. The pages in an annexure must be numbered consecutively.
- D. If a form has a document annexed the following particulars of the annexure must be written on the form:
  - (a) the identifying mark; and
  - (b) the number of pages.
- E. A reference to an annexure includes a document that is with a form.

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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 on the right side.

**BRI Ferrier**

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**44 Cummins Street Pty Ltd  
(In Liquidation)**

**ACN 605 229 463**

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**Annexure "D"  
Proxy Form**

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APPOINTMENT OF PROXY  
 CREDITORS MEETING

**44 CUMMINS STREET PTY LTD (IN LIQUIDATION)**  
**ACN 605 229 463 (“the Company”)**

*I/*We <sup>(1)</sup>	
Of	
being a creditor of the Company, appoint <sup>(2)</sup> or in his or her absence	
to vote for me/us on my/our behalf at the meeting of creditors to be held on 4 June 2019 at 11:00am, or at any adjournment of that meeting.	

Proxy Type:       General       Special

Please mark boxes with an “X”	For	Against	Abstain
<p><b>Resolution 1:</b>  <i>“That the remuneration of the Liquidator, his partners and staff for the period 20 February 2019 to 17 May 2019, be fixed in accordance with the hourly rates of charge applicable to that period, as annexed to the Liquidator’s Report to Creditors dated 20 May 2019, and approved to an amount of \$56,743.50 (plus GST) and paid from time to time as determined by the Liquidator.”</i></p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>Resolution 2:</b>  <i>“That the estimated future remuneration of the Liquidator, his partners and staff for the period 18 May 2019 to the conclusion of the Liquidation, be fixed in accordance with the hourly rates of charge applicable to that period, as annexed to the Liquidator’s Report to Creditors dated 20 May 2019, and approved to an amount of \$43,000.00 (plus GST), and paid from time to time as determined by the Liquidator.”</i></p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>Resolution 3:</b>  <i>“That the Liquidator be allowed internal disbursements at the rates of charge annexed to the Liquidator’s Remuneration Approval Report dated 20 May 2019, up to an amount of \$1,500.00 (plus GST) and that the Liquidator be authorised to draw that amount as accrued.”</i></p>			

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2019.

\_\_\_\_\_  
Signature

CERTIFICATE OF WITNESS

This certificate is to be completed only if the person giving the proxy is blind or incapable of writing. The signature of the creditor, contributory, debenture holder or member must not be witnessed 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 or her before he or she signed or marked the instrument.

Dated:

Signature of Witness:

Description:

Place of Residence:  
\_\_\_\_\_

\* Strike out if inapplicable

- (1) If a firm, strike out "I" and set out the full name of the firm.
- (2) Insert the name, address and description of the person appointed.
- (3) If a special proxy add the words "to vote for" or the words "to vote against" and specify the particular resolution.

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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 on the right side.

**BRI Ferrier**

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**44 Cummins Street Pty Ltd  
(In Liquidation)**

**ACN 605 229 463**

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**Annexure "E"  
Remuneration Approval Report**

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# Remuneration Approval Report

**44 Cummins Street Pty Ltd  
(In Liquidation)  
ACN 605 229 463**

20 May 2019

PETER KREJCI  
Liquidator

BRI Ferrier (NSW) Pty Ltd ABN 97 128 947 848  
Level 30, Australia Square, 264 George Street, Sydney NSW 2000  
GPO Box 7079, Sydney NSW 2001  
Phone (02) 8263 2300  
Facsimile (02) 8263 2399  
Email: [info@brifnsw.com.au](mailto:info@brifnsw.com.au)  
Website: [www.briferrier.com.au](http://www.briferrier.com.au)

**BRI Ferrier**

The logo for BRI Ferrier, featuring the company name in a bold, sans-serif font. The text is white and set against a dark grey rectangular background. A small green and yellow triangular graphic element is positioned at the bottom right corner of the dark grey rectangle.

## TABLE OF CONTENTS

<b>1</b>	<b>DECLARATION.....</b>	<b>3</b>
<b>2</b>	<b>EXECUTIVE SUMMARY .....</b>	<b>3</b>
<b>3</b>	<b>DESCRIPTION OF WORK COMPLETED .....</b>	<b>3</b>
	3.1 Remuneration for the period 20 February 2019 to 17 May 2019.....	4
<b>4</b>	<b>CALCULATION OF REMUNERATION .....</b>	<b>6</b>
<b>5</b>	<b>DESCRIPTION OF WORK TO BE COMPLETED.....</b>	<b>7</b>
	5.1 Remuneration for the period 18 May 2019 to Conclusion .....	7
<b>6</b>	<b>STATEMENT OF REMUNERATION CLAIM .....</b>	<b>10</b>
<b>7</b>	<b>LIKELY IMPACT ON DIVIDENDS.....</b>	<b>11</b>
<b>8</b>	<b>REMUNERATION RECOVERABLE FROM EXTERNAL SOURCES .....</b>	<b>11</b>
<b>9</b>	<b>DISBURSEMENTS .....</b>	<b>11</b>
<b>10</b>	<b>SUMMARY OF RECEIPTS AND PAYMENTS.....</b>	<b>12</b>
<b>11</b>	<b>QUERIES &amp; INFORMATION SHEET.....</b>	<b>12</b>



## 1 DECLARATION

I, Peter Krejci, of BRI Ferrier (NSW) Pty Ltd have undertaken a proper assessment of this remuneration claim for my appointment as Liquidator of 44 Cummins Street Pty Ltd (In Liquidation) 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 Liquidation.

## 2 EXECUTIVE SUMMARY

To date, no remuneration has been approved and paid in this Liquidation. This remuneration report details approval sought for the following fees:

Current remuneration approval sought:	Amount (\$, ex GST)
<i>Resolution [1]: 20 February 2019 to 17 May 2019</i>	\$56,743.50
<i>Resolution [2]: 18 May 2019 to the conclusion of the Liquidation</i>	\$43,000.00
<b>Total</b>	<b>\$99,743.50</b>

Please refer to report section references detailed above for full details of the calculation and composition of the remuneration approval sought.

This estimate is consistent with the estimate of costs provided in the initial Report to Creditors dated 3 May 2019, which provisioned a cost to the completion of the Liquidation of \$100,000.00 (plus GST).

## 3 DESCRIPTION OF WORK COMPLETED

<b>Company</b>	44 Cummins Street Pty Ltd (In Liquidation)	<b>Period From</b>	20/02/2019	<b>To</b>	17/05/2019
<b>Practitioner</b>	Peter Krejci	<b>Firm</b>	BRI FERRIER (NSW) PTY LTD		
<b>Administration Type</b>	Court Appointed Liquidation				

### 3.1 REMUNERATION FOR THE PERIOD 20 FEBRUARY 2019 TO 17 MAY 2019

Task Area	General Description	Includes
<b>Assets</b> <b>2.9 Hours</b> <b>\$1,116.50</b> <b>(excl. GST)</b>	Cash at Bank	Identifying bank accounts held by Company. Closing pre-appointment bank accounts and arranging for the balance (if any) to be forwarded to the Company's Liquidation account.
	Other Assets	Statutory searches to identify any further assets held by the Company.
<b>Creditors</b> <b>12.4 Hours</b> <b>\$3,696.50</b> <b>(excl. GST)</b>	Creditor Enquiries	Receive and follow up creditor enquiries by telephone Maintaining creditor enquiry register Review and prepare correspondence to creditors and their representatives by email and post
	Creditor reports	Preparing Initial Report to Creditors and relevant annexures
	Dealing with proofs of debt	Corresponding with ATO regarding claim against the Company. Reviewing claim made against the Company. Recording Proofs of Debts.
<b>Investigation</b> <b>78.1 Hours</b> <b>\$38,106.50</b> <b>(excl. GST)</b>	Conducting investigation	Reviewing available statutory records. Review and preparation of company history. Investigating reasons for company's failure. Conducting and summarising statutory searches. Investigating the company's statutory lodgements and extracting information for investigation purposes. Preliminary Investigations in relation to uncommercial transactions, insolvent transactions and director related transactions. Review creditor submissions in respect of matter.
	Statutory Reporting	Preparing Statutory Report to Creditors and relevant annexures

Task Area	General Description	Includes
<b>Administration</b> <b>40.8 Hours</b> <b>\$13,824.00</b> <b>(excl. GST)</b>	Correspondence	General correspondence Preparing and issuing notifications to banks, utilities, statutory government authorities and service and utility providers Issue correspondence to Director and instructed representative Correspondence with Company accountant
	Document maintenance/file review/checklist	Updating job checklists Preparing physical folders Filing of documents
	Bank account administration	Preparing correspondence to open account Preparing receipt and payment vouchers Bank account reconciliations
	ASIC Forms	Preparing and lodging ASIC forms including 505, 507 etc. Lodgement of forms with Court Preparation of Prosecution Statement
	ATO & other statutory reporting	Notification of appointment. Lodging various documents. Registration for tax related obligations. Statutory advertising.
	Planning / Review	Discussions regarding status of administration, procedural requirements, priority milestones and future direction.
<b>Total Hours: 134.2</b> <b>Total: \$56,743.50 (excl. GST)</b>		

## 4 CALCULATION OF REMUNERATION

**44 Cummins Pty Ltd (In Liquidation)**  
**A.C.N. 605 229 463**  
**For the Period 20 February 2019 to 17 May 2019**

Staff Classification	Name	Rate	Administration		Assets		Creditors		Investigation		Total	
			Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$
Appointee	Peter Krejci	680.00	2.1	1,428.00	-	-	-	-	29.5	20,060.00	31.6	21,488.00
Appointee	Robyn Karam	650.00	0	-	-	-	0.5	325.00	-	-	0.5	325.00
Director	John Keenan	570.00	0.5	285.00	-	-	0.7	399.00	0.3	171.00	1.5	855.00
Senior Manager	Joseph Karam	525.00	10.4	5,460.00	1.5	787.5	1.2	630.00	22.5	11,812.50	35.6	18,690.00
Supervisor	Katherine La	420.00	0.4	168.00	-	-	-	-	-	-	0.4	168.00
Intermediate 1	Zen Taureka	260.00	5.8	1,508.00	-	-	-	-	-	-	5.8	1,508.00
Intermediate 2	Jordan Gueli-Quaresma	235.00	0.8	188.00	1.4	329	0.6	141.00	-	-	2.8	658.00
Intermediate 2	Karen Enriquez	235.00	0.6	141.00	-	-	-	-	-	-	0.6	141.00
Intermediate 2	Xiaoyan Lin	235.00	0.3	70.50	-	-	-	-	-	-	0.3	70.50
Intermediate 2	Clair Daher	235.00	16.9	3,971.50	-	-	8.9	2,091.50	25.8	6,063.00	51.6	12,126.00
Senior Administration	Jessica Mula	220.00	0.1	22.00	-	-	0.5	110.00	-	-	0.6	132.00
Senior Administration	Sonia Stelmach	220.00	2.1	462.00	-	-	-	-	-	-	2.1	462.00
Junior Administration	Joanna Miralis	150.00	0.8	120.00	-	-	-	-	-	-	0.8	120.00
			<b>40.8</b>	<b>13,824.00</b>	<b>2.9</b>	<b>1,116.50</b>	<b>12.4</b>	<b>3,696.50</b>	<b>78.1</b>	<b>38,106.50</b>	<b>134.2</b>	<b>56,743.50</b>
											<i>Less: previously approved</i>	0.00
											<b>Additional amount sought</b>	56,743.50
											<b>GST</b>	5,674.35
											<b>Total (incl. GST)</b>	<b>62,417.85</b>
<b>Average rate per hour</b>			<u><b>338.82</b></u>	<u><b>385.00</b></u>	<u><b>298.10</b></u>	<u><b>487.92</b></u>	<u><b>422.83</b></u>					

## 5 DESCRIPTION OF WORK TO BE COMPLETED

I will also be seeking creditor approval to be paid remuneration for services to be rendered from 18 May 2019 to the conclusion of this Liquidation. A summary of the major tasks and costs relating to the provision of professional services for the period is set out below.

<b>Company</b>	44 Cummins Street Pty Ltd (In Liquidation)	<b>Period From</b>	18/05/2019	<b>To</b>	Conclusion
<b>Practitioner</b>	Peter Krejci	<b>Firm</b>	BRI FERRIER (NSW) PTY LTD		
<b>Administration Type</b>	Court Appointed Liquidation				

### 5.1 REMUNERATION FOR THE PERIOD 18 MAY 2019 TO CONCLUSION

Task Area	General Description	Includes
<b>Assets</b> <b>\$10,000.00</b> <b>(excl. GST)</b>	Debtors	<ul style="list-style-type: none"> <li>Correspondence with debtors</li> <li>Reviewing and assessing debtors ledgers</li> <li>Liaising with Director for documentation to support debtor claim</li> <li>Internal discussions regarding the prospects of recoverability</li> <li>Liaising with debt collectors and solicitors</li> </ul>
<b>Creditors</b> <b>\$11,000.00</b> <b>(excl. GST)</b>	Creditor Enquiries	<ul style="list-style-type: none"> <li>Receive and follow up creditor enquiries by telephone</li> <li>Review and prepare correspondence to creditors and their representatives by facsimile, email and post</li> </ul>
	Creditor reports	<ul style="list-style-type: none"> <li>Finalising and issuing Statutory Report to Creditors detailing investigations and convening Meeting</li> <li>Finalising annexures in support of Statutory Report</li> <li>Preparation of any future reports or circulars to creditors</li> </ul>

Task Area	General Description	Includes
	Meeting of Creditors	<p>Sending Notice of Meeting to all known creditors</p> <p>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</p> <p>Liaising with creditors regarding their claims and request for supporting documentation</p> <p>Entering and filing Proofs of Debt forms and Proxies received from a variety of creditors</p> <p>Responding to stakeholder queries and questions immediately following meeting</p>
	Dealing with proofs of debt	Receipting and filing Proofs of Debt
<b>Investigation</b> <b>\$12,000.00</b> <b>(excl. GST)</b>	Conducting investigation	<p>Further review of company's books and records</p> <p>Further correspondence with external accountant</p> <p>Further consideration of statutory searches</p> <p>Finalising comparative financial statements</p> <p>Finalising deficiency statement</p> <p>Review of specific transactions and liaising with directors regarding certain transactions</p> <p>Liaising with directors regarding certain transactions</p> <p>Conclude investigations in relation to voidable transactions.</p> <p>Finalise investigation file</p>
	Litigation / Recoveries	<p>Consider any claims to be made in respect of insolvent trading</p> <p>Issuing demand to Directors regarding potential insolvent trading and/or breach of duty claims</p> <p>Further discussions with Directors regarding potential settlement of the claims</p> <p>Engage solicitor to commence recovery action</p>
	ASIC reporting	<p>Preparing statutory investigation reports</p> <p>Liaising with ASIC</p> <p>Lodgement of statutory report and accounts with ASIC</p>

Task Area	General Description	Includes
<b>Dividend</b> <b>\$6,500.00</b> <b>(excl. GST)</b>	Processing proofs of debt	Preparation of correspondence to potential creditors inviting lodgement of Proofs Receipt of Proofs Maintain Proofs of Debt register Adjudicating Proofs of Debt Request further information from claimants regarding Proofs Preparation of correspondence to claimant advising outcome of adjudication Calculating employee entitlements Reviewing employee files and company's books and records Reconciling superannuation accounts Reviewing awards Liaising with solicitors regarding entitlements
	Dividend procedures	Preparation of correspondence to creditors advising of intention to declare dividend Advertisement of intention to declare dividend Obtain clearance from ATO to allow distribution of company's assets Preparation of dividend calculation Preparation of correspondence to creditors announcing declaration of dividend Advertise announcement of dividend Preparation of distribution Preparation of dividend file Preparation of payment vouchers to pay dividend Preparation of correspondence to creditors enclosing payment of dividend
<b>Administration</b> <b>\$3,500.00</b> <b>(excl. GST)</b>	Document maintenance/file review/checklist	Periodic administration reviews Filing of documents Updating job checklists File reviews
	ASIC Forms	Preparing and lodging ASIC forms including 505, 5603, 5011 etc. Correspondence with ASIC regarding statutory forms

Task Area	General Description	Includes
	Bank account administration	Preparing correspondence closing accounts Preparing receipt and payment vouchers Bank account reconciliations
	Finalisation	Notifying ATO of finalisation Cancelling ABN / GST / PAYG registration Completing checklists Finalising WIP
	Books and records / storage	Dealing with records in storage Sending job files to storage
	Planning / Review	Discussions regarding status of liquidation
<b>Total: \$43,000.00 (excl. GST)</b>		

## 6 STATEMENT OF REMUNERATION CLAIM

By Resolution, I will be seeking approval from the creditors for the following resolutions:

Resolution 1: Liquidator's Remuneration for the period 20 February 2019 to 17 May 2019:

*"That the remuneration of the Liquidator, his partners and staff for the period 20 February 2019 to 17 May 2019, be fixed in accordance with the hourly rates of charge applicable to that period, as annexed to the Liquidator's Report to Creditors dated 20 May 2019, and approved to an amount of \$56,743.50 (plus GST) and paid from time to time as determined by the Liquidator."*

Resolution 2: Liquidator's Remuneration for the period 18 May 2019 to the conclusion of the Liquidation:

*"That the estimated future remuneration of the Liquidator, his partners and staff for the period 18 May 2019 to the conclusion of the Liquidation, be fixed in accordance with the hourly rates of charge applicable to that period, as annexed to the Liquidator's Report to Creditors dated 20 May 2019, and approved to an amount of \$43,000.00 (plus GST), and paid from time to time as determined by the Liquidator."*

At this time, I do not anticipate seeking approval for any further remuneration other than as set out in this report. Should further issues arise as a result of my investigations and I wish to seek further remuneration then I will be required to convene a meeting of the creditors and present a report detailing the remuneration sought and explaining the additional work that was necessarily performed.



## 7 LIKELY IMPACT ON DIVIDENDS

The Liquidator is entitled to be fairly remunerated for undertaking statutory and other duties, including reporting obligations in acting as a Liquidator. The remuneration and disbursements of the Liquidator have a priority ranking ahead of creditors.

I am unable to pay my remuneration without the approval of the Committee of Inspection (if one has been appointed), Creditors, or the Court. Approval by Creditors is efficient and timely, and is less costly than an application to the Court.

However, any dividend will ultimately be impacted by the realisations achieved by the Liquidator and the value of creditor claims admitted to participate in the dividend. The likely impact of approval of remuneration and disbursements on dividends to creditors is that it will reduce such dividends.

## 8 REMUNERATION RECOVERABLE FROM EXTERNAL SOURCES

I advise that to date, I have not recovered any remuneration from external sources.

## 9 DISBURSEMENTS

Disbursements are divided into three types:

- Externally provided professional services - these are recovered at cost. An example of an externally provided service disbursement is legal fees.
- Externally provided non-professional costs such as travel, accommodation and search fees. These are recovered at cost.
- Internal disbursements such as photocopying, printing and postage. These disbursements, if charged to the Administration, would generally charge 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 advise that to date, I have not been paid any disbursements incurred during this Liquidation by my Firm.

I am not obliged to seek creditor approval for disbursements, but must account to creditors, this includes providing details of the basis of charging for these types of disbursements to creditors as part of the Remuneration Report.

I am required to seek creditor approval for internal disbursements where there could be a profit or advantage. Accordingly, I will be seeking approval from creditors for the following resolution:

**Resolution 3: Liquidator's Internal Disbursements for the period 20 February 2019 to Conclusion:**

*"That the Liquidator be allowed internal disbursements at the rates of charge annexed to the Liquidator's Remuneration Approval Report dated 20 May 2019, up to an amount of \$1,500.00 (plus GST) and that the Liquidator be authorised to draw that amount as accrued."*

Future disbursements provided by my Firm will be charged to the administration on the following basis:

Disbursement Type	Rate (excl GST)
Externally provided professional services	At cost
Externally provided non-professional costs	At cost
Internal disbursements	
Faxes and Photocopying	\$0.25 per page
Postage	At cost
Staff vehicle use	In accordance with ATO mileage allowances

## 10 SUMMARY OF RECEIPTS AND PAYMENTS

Attached to the report is a summary of the receipts and payments in the liquidation to date.

## 11 QUERIES & INFORMATION SHEET

The above information is provided to assist creditors with the appropriateness of the remuneration claims that are being made.

Creditors should contact the Liquidator's office to seek further information concerning the remuneration claimed if they so require.

The Australian Restructuring, Insolvency and Turnaround Association ("ARITA") has produced a document entitled "Creditors Information Sheet: Approving Remuneration in External Administrations" which can be downloaded from the ARITA website, [www.arita.com.au](http://www.arita.com.au), or can be obtained from this office.

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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 on the right side.

**BRI Ferrier**

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**44 Cummins Street Pty Ltd  
(In Liquidation)**

**ACN 605 229 463**

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**Annexure "F"  
Advice to Creditors About  
Remuneration**

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## ADVICE TO CREDITORS ABOUT REMUNERATION

### BRI FERRIER NSW

#### REMUNERATION METHOD

There are four methods for calculation of remuneration that can be used to calculate the remuneration of an Insolvency Practitioner. They are:

- ▲ Time based / hourly rates or “Time Cost”

This is the most common method. It provides for remuneration to be charged at an hourly rate for each person working on the matter. The hourly rate charged will reflect the level of experience each person has.

- ▲ Fixed Fee

The total remuneration for the administration is quoted at commencement of the appointment and is the total charge for the administration. Sometimes a practitioner will finalise an administration for a fixed fee.

- ▲ Percentage

The remuneration for the appointment is based on a percentage of a particular variable, such as the gross proceeds of asset realisations.

- ▲ Contingency

The total remuneration for the matter is structured to be contingent on a particular outcome being achieved.

#### METHOD CHOSEN

BRI Ferrier normally charges to use a Time Cost basis, because:

- ▲ It is often difficult to estimate accurately the likely cost of undertaking an appointment, as appointments differ in unforeseeable ways as to their factual or legal complexity;
- ▲ The Time Cost method reflects the opportunity cost to BRI Ferrier of the use of staff on a particular engagement
- ▲ The Time Cost method reflects the extent of work undertaken, reflecting in turn the nature of the appointment
- ▲ The Time Cost method can be applied equally to all aspects of an appointment, while percentage or contingent remuneration normally only reflect parts of an appointment, such as the recovery of assets. Our duties include activities, such as reporting to creditors and ASIC, that do not directly yield asset recovery, while contributing to the overall return to creditors.

Given the nature of this administration, I propose that my remuneration be calculated on the time based / hourly rates method. In my opinion, this is the fairest method for the following reasons:

- ▶ I will only be paid for work done, subject to sufficient realisations of the Company assets.
- ▶ It ensures creditors are only charged for work that is performed. Our time is recorded and charged in six minute increments and staff are allocated to duties according to their relevant experience and qualifications.
- ▶ I am required to perform a number of tasks which do not relate to the realisation of assets, including responding to creditor enquiries, reporting to the ASIC, distributing funds in accordance with the provisions of the Corporations Act 2001.

I am unable to advise with certainty the total amount of fees necessary to complete all tasks required in this administration. BRI Ferrier reviews its hourly rates every twelve months. The hourly rates quoted above remain current until 30 June 2018. At this time BRI Ferrier may increase the hourly rates charged for work performed past that date. If hourly rates are increased, I will seek approval from creditors.

### **EXPLANATION OF HOURLY RATES**

The rates applicable are set out in the table on the following page together with a general guide to the qualifications and experience of staff engaged in administration and the role they undertake in the administration. The hourly rates charged encompass the total cost of providing professional services and are not comparable to an hourly wage rate.

HOURLY RATES		
Title	Description	Rate (excl GST)
Appointee	An Official Liquidator and/or Registered Trustee. A senior accountant with over 10 years' experience who brings specialist skills and experience to the appointment. Leads the team carrying out the appointment.	\$650
Principal	A Registered or Official Liquidator. A senior accountant with over 10 years' experience. Leads the team carrying out and controls all aspects of an appointment.	\$620
Director	An accountant with more than 10 years' experience. May be an Official or Registered Liquidator. Fully qualified and able to control all aspects of an appointment. May have specialist industry knowledge or skills. Assists with all facets of appointment.	\$540
Senior Manager	An accountant with more than 7 years' experience. Qualified and answerable to the Team Leader. Self-sufficient in completing and planning all aspects of large appointments.	\$500
Manager	An accountant with at least 6 years' experience. Typically qualified with well-developed technical and commercial skills, and studying or has completed specialised study in Insolvency and Reconstruction. Controls and plans all aspects of medium to larger appointments, reporting to the Team Leader.	\$480
Supervisor	An accountant with more than 4 years' experience. Typically qualified with sound knowledge of insolvency principles and developing commercial skill. Assists to plan and control specific tasks on medium to larger appointments. Often undertaking post qualification study specialising in Insolvency and Reconstruction.	\$400
Senior 1	An accountant with more than 2 years' experience. Typically a graduate undertaking study leading to professional qualification as a Chartered Accountant or CPA. Able to complete work on appointments with limited supervision.	\$340
Senior 2	An accountant with less than 2 years' experience. Typically a graduate who has commenced study leading to professional qualifications. Able to complete many tasks on medium to large appointments under supervision.	\$275
Intermediate 1	An accountant with less than 2 years' experience. Typically a graduate and commencing study for qualifications. Able to complete multiple tasks on smaller to medium appointments under supervision.	\$250
Intermediate 2	An accountant with less than 1 year's experience. A trainee undertaking degree with an accountancy major. Assists in the appointment under supervision.	\$225
Senior Administration	Appropriately skilled and undertakes support activities including but not limited to treasury, word processing and other administrative, clerical and secretarial tasks.	\$210
Junior Administration	Appropriately skilled and undertakes support activities including but not limited to treasury, word processing and other administrative, clerical and secretarial tasks.	\$150

## DISBURSEMENTS

Disbursements are divided into three types:

- Externally provided professional services - these are recovered at cost. An example of an externally provided service disbursement is legal fees.
- Externally provided non-professional costs such as travel, accommodation and search fees. These are recovered at cost.

- 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. However, I must be satisfied that these disbursements are appropriate, justified and reasonable.

I am required to obtain creditor's consent for the payment of internal disbursements. 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.

<b>Internal Disbursements</b>	<b>Rate (excl GST) (\$)</b>
Photocopying / Printing	\$0.25 per page
Facsimiles	\$0.25 per page
Postage	At cost
Staff vehicle use	In accordance with ATO mileage allowances

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**BRI Ferrier**

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**44 Cummins Street Pty Ltd  
(In Liquidation)**

**ACN 605 229 463**

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**Annexure "G"  
ARITA Information Sheet – Creditor  
Rights in Liquidation**

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# Creditor Information Sheet

## Offences, Recoverable Transactions and Insolvent Trading



### Offences

A summary of offences under the Corporations Act that may be identified by the administrator:

180	Failure by company officers to exercise a reasonable degree of care and diligence in the exercise of their powers and the discharge of their duties.
181	Failure to act in good faith.
182	Making improper use of their position as an officer or employee, to gain, directly or indirectly, an advantage.
183	Making improper use of information acquired by virtue of the officer's position.
184	Reckless or intentional dishonesty in failing to exercise duties in good faith for a proper purpose. Use of position or information dishonestly to gain advantage or cause detriment. This can be a criminal offence.
198G	Performing or exercising a function or power as an officer while a company is under administration.
206A	Contravening a court order against taking part in the management of a corporation.
206A, B	Taking part in the management of corporation while being an insolvent, for example, while bankrupt.
206A, B	Acting as a director or promoter or taking part in the management of a company within five years after conviction or imprisonment for various offences.
209(3)	Dishonest failure to observe requirements on making loans to directors or related companies.
254T	Paying dividends except out of profits.
286	Failure to keep proper accounting records.
312	Obstruction of an auditor.
314-7	Failure to comply with requirements for the preparation of financial statements.
437D(5)	Unauthorised dealing with company's property during administration.
438B(4)	Failure by directors to assist administrator, deliver records and provide information.
438C(5)	Failure to deliver up books and records to the administrator.
590	Failure to disclose property, concealed or removed property, concealed a debt due to the company, altered books of the company, fraudulently obtained credit on behalf of the company, material omission from Report as to Affairs or false representation to creditors.

### Recoverable Transactions

#### *Preferences*

A preference is a transaction, such as a payment by the company to a creditor, in which the creditor receiving the payment is preferred over the general body of creditors. The relevant period for the payment commences six months before the commencement of the liquidation. The company must have been insolvent at the time of the transaction, or become insolvent because of the transaction.

Where a creditor receives a preference, the payment is voidable as against a liquidator and is liable to be paid back to the liquidator subject to the creditor being able to successfully maintain any of the defences available to the creditor under the Corporations Act.

#### *Uncommercial Transaction*

An uncommercial transaction is one that it may be expected that a reasonable person in the company's circumstances would not have entered into, having regard to:

- the benefit or detriment to the company;
- the respective benefits to other parties; and,
- any other relevant matter.

To be voidable, an uncommercial transaction must have occurred during the two years before the liquidation. However, if a related entity is a party to the transaction, the period is four years and if the intention of the transaction is to defeat creditors, the period is ten years.

The company must have been insolvent at the time of the transaction, or become insolvent because of the transaction.

### **Unfair Loan**

A loan is unfair if and only if the interest was extortionate when the loan was made or has since become extortionate. There is no time limit on unfair loans – they only must be entered into before the winding up began.

### **Arrangements to avoid employee entitlements**

If an employee suffers loss because a person (including a director) enters into an arrangement or transaction to avoid the payment of employee entitlements, the liquidator or the employee may seek to recover compensation from that person. It will only be necessary to satisfy the court that there was a breach on the balance of probabilities. There is no time limit on when the transaction occurred.

### **Unreasonable payments to directors**

Liquidators have the power to reclaim '*unreasonable payments*' made to directors by companies prior to liquidation. The provision relates to payments made to or on behalf of a director or close associate of a director. The transaction must have been unreasonable, and have been entered into during the 4 years leading up to a company's liquidation, regardless of its solvency at the time the transaction occurred.

### **Voidable charges**

Certain charges over company property are voidable by a liquidator:

- circulating security interest created within six months of the liquidation, unless it secures a subsequent advance;
- unregistered security interests;
- security interests in favour of related parties who attempt to enforce the security within six months of its creation.

## **Insolvent trading**

In the following circumstances, directors may be personally liable for insolvent trading by the company:

- a person is a director at the time a company incurs a debt;
- the company is insolvent at the time of incurring the debt or becomes insolvent because of incurring the debt;
- at the time the debt was incurred, there were reasonable grounds to suspect that the company was insolvent;
- the director was aware such grounds for suspicion existed; and
- a reasonable person in a like position would have been so aware.

The law provides that the liquidator, and in certain circumstances the creditor who suffered the loss, may recover from the director, an amount equal to the loss or damage suffered. Similar provisions exist to pursue holding companies for debts incurred by their subsidiaries.

A defence is available under the law where the director can establish:

- there were reasonable grounds to expect that the company was solvent and they did so expect;
- they did not take part in management for illness or some other good reason; or
- they took all reasonable steps to prevent the company incurring the debt.

The proceeds of any recovery for insolvent trading by a liquidator are available for distribution to the unsecured creditors before the secured creditors.

**Important note:** This information sheet contains 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. This document may not contain all of the information about the law or the exceptions and qualifications that are relevant to your circumstances.

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**BRI Ferrier**

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**44 Cummins Street Pty Ltd  
(In Liquidation)**

**ACN 605 229 463**

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**Annexure "H"  
ASIC Information Sheet**

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**ASIC**

Australian Securities & Investments Commission

## Insolvency information for directors, employees, creditors and shareholders

This information sheet (INFO 39) lists ASIC's information sheets for directors, employees, creditors and shareholders affected by a company's insolvency.

We have produced these with endorsement from the Australian Restructuring Insolvency & Turnaround Association (ARITA).

The information sheets give a basic understanding of the three most common company insolvency procedures – liquidation, voluntary administration and receivership – as well as the independence requirements for external administrators and approving external administrator remuneration. There is also a glossary of commonly used insolvency terms.

### List of information sheets

- [INFO 41](#) Insolvency: A glossary of terms
- [INFO 42](#) Insolvency: A guide for directors
- [INFO 43](#) Insolvency: A guide for shareholders
- [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 74](#) Voluntary administration: A guide for creditors
- [INFO 75](#) Voluntary administration: A guide for employees
- [INFO 84](#) Independence of external administrators: A guide for creditors
- [INFO 85](#) Approving fees: A guide for creditors

### Where can I get more information?

Further information is available from the [ARITA website](#). The ARITA website also contains the [ARITA Code of Professional Practice for Insolvency Practitioners](#).

This is **Information Sheet 39 (INFO 39)** updated on 1 September 2017. Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

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**BRI Ferrier**

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**44 Cummins Street Pty Ltd  
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**Annexure "I"  
ARITA Information Sheet –  
Voidable Transactions**

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# Creditor Information Sheet

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