



STATUTORY REPORT TO CREDITORS

FREEMAN FREIGHTERS PTY LTD (IN LIQUIDATION)
ACN: 006 512 518 ("THE COMPANY")

14 November 2023

JONATHON KEENAN & PETER KREJCI
JOINT AND SEVERAL LIQUIDATORS



Phone: 02 8263 2300
Email: khu@brifnsw.com.au
Website: www.briferrier.com.au
Postal: GPO Box 7079, Sydney NSW 2001
Address: Level 26, 25 Bligh Street
Sydney NSW 2000

INTRODUCTION

We refer to our initial report to creditors dated 28 August 2023 in which our appointment as Liquidators of the Company was advised along with your rights as a creditor in the liquidation.

The purpose of this report is to provide creditors with information regarding the following:

- ▲ The estimated amount of asset and liabilities of the Company;
- ▲ An update on the progress of the Liquidation and further actions that may need to be undertaken;
- ▲ What happened to the business;
- ▲ The likelihood of creditors receiving a dividend before the affairs of the Company are fully wound up; and
- ▲ Possible recovery actions.

This report should be read in conjunction with our initial report. If you have any questions relating to the liquidation in general, or specific questions relating to your position, please do not hesitate to contact this office.

COMPANY DETAILS

Name	Freeman Freighters Pty Ltd
Incorporated	13 January 1986
ACN	006 512 518
Registered Office	Jingmei Weng 97 Oakhill Drive, Castle Hill NSW 2154
Trading Address	Unit 6, 30 Glendenning Road, Glendenning NSW 2761

LIQUIDATORS

Names	Jonathon Keenan Peter Krejci
Date Appointed	14 August 2023

ADMINISTRATION CONTACT

Name	Kristine Hu
Email	khu@brifnsw.com.au
Phone	02 8263 2300

GLOSSARY OF COMMON ACRONYMS & ABBREVIATIONS

ABN	Australian Business Number
ACN	Australian Company Number
Act	Corporations Act 2001 (Cth)
ARITA	Australian Restructuring Insolvency and Turnaround Association
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
Company	Freeman Freighters Pty Ltd (In Liquidation)
Director / Current Director	Kevin Yau
DIRRI	Declaration of Independence, Relevant Relationships & Indemnities
Firm	BRI Ferrier NSW
Former Director	Darren Freeman
Freeman Freightlines	Freeman Freightlines Pty Ltd
GST	Goods and Services Tax
IPR	Insolvency Practice Rules (Corporations) 2016
IPS	Insolvency Practice Schedule (Corporations)
Liquidators	Jonathon Keenan and Peter Krejci
Pickles	Pickles Auctions
POD	Proof of Debt
PPE	Plant and Equipment
PPSR	Personal Properties Securities Register
Westpac Banking Corporation	Westpac
Yau Holdings No. 2 Pty Ltd	Yau Holdings No. 2
Yau Freightlines Pty Ltd (In Liquidation)	Yau Freightlines

EXECUTIVE SUMMARY

Peter Krejci and I were appointed Joint and Several Liquidators of the Company by a resolution of its sole member passed at a duly convened members meeting held on 14 August 2023 pursuant to Section 491 of the Act.

This Report has been prepared pursuant to section 70-40 of IPR and Section 497 of the Act. You have received this report because we are aware that you may have a creditor claim and/or the books and records of the Company identified you as a creditor.

We provide below a summary of our preliminary investigation into the Company's affairs and the potential outcomes for creditors and stakeholders.

The Company provided freight transport logistics across the east-coast of Australia, with metropolitan delivery specialising in plants. The Company traded from premises located at Glendenning NSW and interstate depots located in Craigieburn VIC, Riverstone NSW and Ormeau QLD. These trading premises were owned by an entity controlled by the Former Director, Darren Freeman. It appears that in 2022, the Former Director explored opportunities to sell the business and ultimately, the Current Director, Kevin Yau, was the successful bidder.

On 8 December 2022, the Current Director and his entity, Yau Holdings No. 2, purchased the business via an acquisition of shares of the Company. The Fleet Assets used by the Company was purchased by Yau Freightlines, an entity also controlled by the Current Director. The Current Director deposited \$800K as initial working capital to trade the business. The Former Director was engaged as a consultant to assist with handover and ongoing management after the sale of the business. We understand there were major disagreements between the Former Director and the Current Director which appears to have adversely impacted the performance of the business.

In July 2023, the Current Director formed the view that the business was no longer viable and took steps to wind down the business, including negotiating a sale of the Fleet Assets held by Yau Freightlines. All staff were terminated on 6 August 2023, with final deliveries occurring over the following days. The Former Director, as landlord, allegedly restricted access to the Company's trading premises and we were appointed as Joint and Several Liquidators the following day, 14 August 2023.

Upon our appointment, the Company's assets primarily consisted of trade debtors totalling \$1.2M cash at bank for circa \$224K, PPE and the related party loan reportedly owed by the Former Director. We have recovered the cash at bank and debtor recoveries are ongoing. Following our appointment, we issued demands and have recovered approximately \$1.07M from trade debtors. The majority of the disputed debtor balance relates to the Company's largest customer, Toll Express, in which we have undertaken substantial work to accurately reconcile the ledger and recover the remaining balance of \$93K. We are currently seeking further information from the available records and former employees, and hope to resolve the debtor claims on a commercial basis. We will provide updates in future reports.

The Former Director has raised disputes in respect of the PPE and loan account. The Former Director has alleged that certain PPE was sold to Freeman Freightlines (an entity that he controls) for \$18K prior to the sale of the business. However, the Current Director disputes this transaction occurred and

it does not appear to be reflected in the Company's management accounts. The advice received to date indicates that the Company's claim over the Disputed Assets is reasonable, and in the alternative, there is likely a claim against the Former Director and Freeman Freightlines for entering into an undervalue transaction. Further, the Former Director disputes that any loan remains owing to the Company, as he believes that dividends were declared extinguishing the loans in full. Our enquiries into recoverability of these assets are continuing.

The liabilities of the Company may be in the order of \$4.4M, represented by employee claims of \$616K, related party creditors of \$1.8M, statutory creditors of \$287K and other trade creditors of \$1.7M. The employee claims are our preliminary estimate and may change subject to FEG's assessment and final determination. The other trade creditors appear to be various debts incurred in the ordinary course of business, including fuel suppliers, vehicle repairs and associated costs. We note that the Company did not have any debts with NAB, and their security was released upon discharge of their debts outside of this Liquidation. There was a further \$1.4M of creditor claims, which we have determined have invalid security interests.

We have conducted our preliminary investigations into the affairs of the Company and the conduct of its current and former officers. The sale of the shares in the business resulted in dividends being declared and loans being extinguished, totalling approximately \$4.1M, which effectively stripped the Company of all its reserves at the time. Declaring dividends in a short period of time prior to a company being placed into liquidation is unusual, and in many circumstances, voidable. It is possible that these "dividend transactions" contributed to the insolvency of the Company, as the Company could not absorb the losses that were incurred shortly thereafter. If these transactions are unwound, the recipients of the forgiveness and/or the Former and Current Directors could be pursued for the loss suffered. We note however, that the claim may be challenging as the Company's balance sheets indicate that there were sufficient equity reserves at that time, and prior to the sale the business appears to have been trading on a profitable (or break-even) basis. Further investigations and legal advice are required on these potential actions.

In addition, based on the information provided by the Current Director and preliminary legal advice, we are advised that there could be potential claims against the Former Director (and his controlled entities) in respect of the sale of business itself, and representations made during that process and subsequent conduct. Those potential actions could include misleading or deceptive conduct, breach of fiduciary duties, tortious interference and others. We do not currently have sufficient information to form a view as to the merits of these potential claims or attribute a value for this report. Further evidence and legal advice is necessary. We will update creditors in due course.

Our preliminary view is that the Company became insolvent on a cashflow basis around 31 March 2023 and did not return to solvency thereafter. Accordingly, there is a potential insolvent trading claim against the Director, which we have estimated could be valued at approximately \$935K. However, we note that the Director appears to have sought legal advice in respect of potential claims and ultimately took steps to wind down the business. Further, we understand that the Director may seek to defray the potential insolvent trading claim exposure, by asserting the Former Director's conduct contributed to the loss suffered by the Company. Lastly, it appears that the Director and his controlled entities

(including Yau Freightlines and Yau Holdings No. 2) have incurred total losses on this venture of \$4.8M or more.

Our investigations are continuing and we are seeking advice on the potential claims. Our preliminary view is that there have been a number of irregular transactions and potential claims (discussed above) that ought to be explored. This may include holding public examinations as an initial step to gather the necessary evidence, if those disputes continue.

In the near term, we intend to report our findings to ASIC pursuant to Section 533(1) of the Act. The Section 533(1) report is confidential and is not available to creditors.

Based on recoveries to date, we anticipate there could be sufficient funds to discharge the priority creditor claims. However, any return to unsecured creditors is contingent on pursuing and recovering the various claims discussed above, which will likely require litigation. Creditors should be aware that litigation is costly and carries risks, and if unsuccessful, could erode the available funds and projected returns (including those to the priority creditors). We also note that there are various potential actions which can be run in parallel, and the quantum of the claims may vary to accord with the creditor claims. Our estimates contained herein are illustrative only, as the timing and outcome are unknown at this time.

In summary, we estimate the potential range of returns to creditors may be as follows:

Estimated Return to Creditors	High Cents/\$	Low Cents/\$
Secured Creditor	N/A	N/A
Priority Creditors	100.00	100.00
Unsecured Creditors	100.00	3.24

**Please note these figures are estimates only and the actual results may vary materially.*

Should any creditor have any relevant information which may assist our investigations or potential asset recoveries, they should contact our office without delay. If the potential claims are not pursued, the Liquidation could complete within six (6) months. Otherwise, if we determine there is merit to the claims via litigation, the Liquidation could continue for one (1) to two (2) years.

TABLE OF CONTENTS

1	Basis of Report	9
2	Disclaimer	9
3	Declaration of Independence, Relevant Relationships and Indemnities	9
4	Corporate Information	10
5	Legal Proceedings	11
6	Company Background and Events Leading to our Appointment	11
7	Reasons for Failure	12
8	Historical Financial Information	13
9	Current Financial Position	15
10	Investigations and Recovery Actions	24
11	Findings and Recovery Actions	25
12	Voidable Transactions	30
13	Summary of Potential Offences	35
14	Receipts and Payments	35
15	Remuneration of Liquidators	36
16	Estimated Return to Creditors	36
17	Tasks Required in the Liquidation	37
18	Conclusion	38

TABLE OF ANNEXURES

- A** Form 535 Formal Proof of Debt or Claim (General Form)
- B** Summary of Receipts and Payments
- C** Comparative Balance Sheets
- D** Comparative Profit and Loss statements
- E** Deficiency Statement
- F** Estimated Outcome Statement
- G** ARITA Information Sheet – Offences, Recoverable Transactions and Insolvent Trading
- H** ASIC Information Sheet – Insolvency Information for Directors, Employees, Creditors and Shareholders

1 BASIS OF REPORT

This report has been prepared primarily from information received from the Company's Director, the Former Director and advisors.

In order to complete this report and in conducting our investigations, we have also utilised information from:

- ▲ ASIC;
- ▲ The books and records of the Company;
- ▲ Discussions with the Current and Former Directors and advisors;
- ▲ The ROCAP completed by the Director; and
- ▲ Extracts from public information databases.

2 DISCLAIMER

A preliminary investigation of the Company's affairs has been conducted and this report and the statements made herein have been prepared based upon available books and records, information provided by the Current/Formal Director and their advisors, and from our own enquiries. This report contains information about potential actions/claims which are still being investigated, and may be determined to be unviable or not pursued in due course.

Whilst we have no reason to doubt the accuracy of the information provided or contained herein, we reserve the right to alter our opinions or conclusions should the underlying data prove to be inaccurate or materially change after the date of this report.

Neither we, nor any member or employee of BRI Ferrier accepts responsibility in any way whatsoever to any person in respect of any errors in this report arising from incorrect information provided to us, or necessary estimates and assessments made for the purposes of the report.

This report is not for general circulation, publication, reproduction or any use other than to assist creditors in evaluating their position as creditors of the Company and must not be disclosed without the prior approval of the Liquidators.

Creditors should consider seeking their own independent legal advice as to their rights and options available to them.

Should any creditor have material information in relation to the Company's affairs which they consider may impact on our investigations or report, please forward details in writing as soon as possible.

3 DECLARATION OF INDEPENDENCE, RELEVANT RELATIONSHIPS AND INDEMNITIES

We confirm that our DIRRI as previously circularised does not require any update.

4 CORPORATE INFORMATION

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

Date of Incorporation	13 January 1986
Type of Company	Australian Proprietary Company
Class	Limited by Shares
Registered Office	Jingmei Weng 97 Oakhill Drive, Castle Hill NSW 2154
Principal Place of Business	Unit 6, 30 Glendenning Road, Glendenning NSW 2761

OFFICER	START DATE	CEASE DATE	POSITION(S)
Kevin Chor Ban Yau	08/12/2022	Current	Director
	08/12/2022	Current	Secretary
Darren John Freeman	04/09/1996	08/12/2022	Director
	04/09/1996	08/12/2022	Secretary

**Note: there are additional former company officers, however their roles ceased more than 10 years ago and as such, we have not reported these details.*

SHAREHOLDERS	CLASS	NO. OF SHARES	BENEFICIALLY OWNED	SHARE	STATUS
Yau Holdings No. 2 Pty Ltd	Ordinary	100	Yes	100%	Current
Darren John Freeman	Ordinary	100	No	100%	Former
Aart Gerard Van Roest	Ordinary	60	Yes	60%	Former
Amy Van Roest	Ordinary	40	Yes	40%	Former

5 LEGAL PROCEEDINGS

Pursuant to Section 500(2) of the Act, our appointment as Liquidators automatically stays any current legal proceedings against the Company.

Creditors cannot commence or continue proceedings against the Company without our written consent or without leave of the Court. We are not aware of any legal proceedings involving the Company that are currently on foot.

6 COMPANY BACKGROUND AND EVENTS LEADING TO OUR APPOINTMENT

The following information was obtained from our enquiries with the Current Director, advisors and Company records provided to the Liquidators.

- ▶ The Company was incorporated on 13 January 1986 and provided freight transport logistics across the east-coast of Australia. The Company operated as an interstate freight business, with metropolitan delivery specialising in plants.
- ▶ The Company traded from premises located at Unit 6, 30 Glendenning Road, Glendenning NSW, with interstate depots located in Craigieburn VIC, Riverstone NSW and Ormeau QLD. These trading premises were owned by Coastcape Properties Pty Ltd, the director of which is the Former Director, Mr Darren Freeman.
- ▶ The Former Director appears to have been the principal operator of the business. In recent years the business appears to have been operating profitably, albeit, with certain government assistance via the Covid-19 pandemic relief measures. We also note that the business appears to have had minimal external finance or debt.
- ▶ We understand that during 2022, for various personal reasons, the Former Director explored opportunities to sell the business and its assets. We are advised that two parties made viable offers, and Mr Kevin Yau (Current Director) was ultimately the successful bidder.
- ▶ On 8 December 2022, the Current Director of the Company, Mr Kevin Yau, and his entity, Yau Holdings No. 2, purchased the business. The transaction was structured as an acquisition of shares by Yau Holdings No. 2, and the Former Director ceased to own and control the Company from that time.
- ▶ The vehicles (trucks and trailers) the Company's used for the business were held in other entities, and purchased by the Director's related entity, Yau Freightlines. There was a licence agreement with Yau Freightlines, via which the Company has use of the vehicles and trading premises. We note that Yau Freightlines held the leases, rather than the Company.
- ▶ After purchase of the business, the Current Director deposited \$800,000 into the Company's Westpac account in December 2022. The funds were used as initial working capital to trade the business. The Former Director advised us that he believed the Current Director ought to have injected additional working capital to meet the cashflow requirements. With the benefit of hindsight, the \$800K capital injection was insufficient, not due to the debtor payment

terms, but due to the trading losses the Company incurred during the eight (8) months following the sale of business.

- ▶ The Former Director had been engaged as a consultant after the sale of business in December 2022 to assist with handover and ongoing management. We understand that there were major disagreements between the Former Director and the Current Director with respect to the management of the business. The Former Director does not appear to have been involved in the operation of the Company's business after February 2023. The dispute between the Current Director and Former Director adversely impacted the performance of the business, where we note that the Former Director commenced trading in competition to the Company. In all, the disputes likely contributed to the Company's deteriorating financial position.
- ▶ It appears that by July 2023, the Current Director had formed the view that the business was no longer viable and took steps to wind down the business. That includes negotiating with parties to sell the Fleet Assets held by Yau Freightlines. The Director advised that all staff were terminated on 6 August 2023, however some staff continued to work their notice period in order to assist with finalising deliveries up to 11 August 2023.
- ▶ The Director advised that on 13 August 2023, the Former Director, as landlord, restricted access to the trading premises, and we were appointed the following day, 14 August 2023.

7 REASONS FOR FAILURE

The Current Director, Mr Yau, attributes the disputes with the Former Director and resulting commercial actions, as contributing factors to the Company being placed into Liquidation. This includes allegations of competitive conduct affecting the Company's customers and cashflows.

Whilst we agree with the above in part, we also note the following additional causes of failure based on our preliminary investigations to date:

- ▶ The sale of business transaction on 8 December 2022 resulted in a dividend being declared to the Former Director of \$2.3M (per the externally prepared accounts) and a \$1.8M loan being assigned to Yau Holdings No. 2, and later extinguished as an adjustment against equity (effectively a dividend). This significant transaction removed all reserves from the balance sheet.
- ▶ Insufficient working capital placed significant pressure on the Company's cashflow. We note that the Current Director injected \$800K in December 2022 as working capital (via debt). However, in addition to the debtor payment cycle, that cash contribution from the Current Director was insufficient to absorb the trading losses the business incurred commencing from early 2023.
- ▶ The business operating costs appear to have adversely changed post sale of business, with increased fleet maintenance, licence fees and rent costs. Prior to the sale, the business appears to have enjoyed improved operating margins, and does not appear to have had significant debt service obligations.

- ▶ The Disputed Assets are alleged to have been disposed by the Former Director at undervalue, further weakening the balance sheet, and shifting that value to related entity Freeman Freightlines.

8 HISTORICAL FINANCIAL INFORMATION

We have reviewed the Company's externally prepared financial reports for the financial years ended 30 June 2021 and 30 June 2022, and management accounts maintained on MYOB for the financial years ended 30 June 2023 and for the period 1 July 2023 to 14 August 2023.

8.1 BALANCE SHEETS

Attached as "**Annexure C**" is a comparative analysis of the Balance Sheets for the abovementioned periods.

We provide the following commentary with respect to the attached comparative Balance Sheets:

- ▶ The Company's assets largely consisted of trade debtors, cash at bank, related party loans and (historically) vehicles. The Company reported a healthy net asset surplus during FY2021/22, and a deteriorating deficiency in net assets from FY2023. The significant movement was the result of the Former and Current Directors declaring dividends extinguishing the reserves as a result of the sale of business transaction in December 2022, and increasing trading losses incurred by the business thereafter.
- ▶ The accounts indicate that the Former Director had significant loan accounts with the Company, reflecting his drawings from the business. Those related party loans amounted to around \$3.5M as at June 2021, increasing to \$4.4M as at 7 December 2022 (immediately prior to the sale of business). As part of the sale of shares in the Company, those related party loans were extinguished by way of a dividend declared and loans being assigned (and later extinguished). These are significant transactions around 9 months prior to the Liquidation, and there appears to be some irregularity in the accounting.
- ▶ In summary, the externally prepared financial accounts as at 8 December 2022 report that the \$2.5M loan owed by the Former Director was largely extinguished by way of a dividend declaration of \$2.3M, leaving a remaining loan balance of \$233K owed to the Company. However, the Company's MYOB management accounts record a \$1.6M adjustment against the retained earnings (presumably a dividend declaration), leaving a loan balance of \$906K owed to the Company. As such, the accounts record a loan owed by the Former Director of between \$233K to \$906K. We have met with the Former Director, and he disputes any amount is owed. We are making further enquiries.
- ▶ Further, as part of the sale of business transaction, it appears that the loan of \$1.8M owed by NDF Developments (an entity controlled by the Former Director) was assigned to Yau Holdings No. 2 Pty Ltd (an entity controlled by the Current Director). Subsequently, the management accounts report that the loan was extinguished via an unexplained adjustment against retained earnings, effectively declaring a dividend or writing off the loan. There has been no

explanation provided regarding this adjustment, however we note that there was sufficient equity reported on the balance sheet available at the time.

- ▶ The Current Director advanced \$800K to the Company as working capital for the business after the sale in December 2022. Unfortunately, the accounts also indicate that the business performance deteriorated significantly, with \$2.5M in trading losses being incurred between December 2022 and August 2023. As such, the working capital injected by the Current Director was not sufficient to absorb those losses, which is now reflected in the increased creditor claims. In this regard, the liabilities increased from \$2.9M on the sale of business (8 December 2022) to \$4.7M by August 2023, of which \$2.2M is owed to the Current Director and Yau Freightlines.
- ▶ The accounts report that the Company still owns plant and equipment with a written down value of \$97K. Those assets appear to be various forklifts, fuel tanks and plant racks. The Current Director attempted to sell some of those assets prior to our appointment, however a dispute arose with the Former Director preventing that sale from completing. In this regard, the Former Director disputes that Company owns any such assets, where his view is that all physical assets were disposed of prior to the sale of business. We have engaged lawyers to pursue recovery of the assets, and this matter is ongoing currently. This is further discussed in Section 9.1.4 of this report.

8.2 PROFIT AND LOSS STATEMENTS

Attached as “**Annexure D**” is a comparative analysis of the Profit and Loss Statements for the abovementioned periods.

We make the following commentary with respect to the attached comparative Profit and Loss Statements:

- ▶ Income levels in FY2021 of \$16.7M, grew to \$19.1M by FY2022 and then retracted to \$18M during FY2023. The business may have been impacted by Covid-19 pandemic, where we have also observed that the Company received government financial support totalling \$690K in FY2021, which largely represented the profit for that year. The Current Director advised that the reduction in income during FY2023 (and onwards) was a direct result of the Former Director starting a competing logistics business in early 2023, impacting income from local metropolitan deliveries.
- ▶ The major costs of this logistics business was vehicle operating costs, including fuel, repairs and payroll. Those costs have grown year-on-year from \$15.7M FY2021, \$17.3M FY2022 to \$19.3M FY2023. The increase in operating costs eroded the trading margins, and combined with the reduction in income from FY2023 (post sale of the business) resulted in net trading losses of \$2.5M from December 2022 to August 2023. We note that Current Director attributed rising fuel prices and increased repairs costs given the poor condition of the fleet, to the increased operating costs. This appears to have combined with reduction in income during FY2023, to the change in performance and increased losses.

- Overall, the business appears to have traded profitably prior to its sale in December 2022. Thereafter, substantial trading losses were incurred, largely contributing to the insolvency of the Company.

9 CURRENT FINANCIAL POSITION

Below is our analysis of the current financial position of the Company, with regard to the Current Director's ROCAP, available financial records and our enquiries to date.

Freeman Freighters Pty Ltd (In Liquidation) A.C.N. 006 512 518					
	Report Ref	Book Value as at 14/08/2023 (\$)	Director's ERV (per ROCAP) (\$)	Liquidators' ERV (High) (\$)	Liquidators' ERV (Low) (\$)
Assets					
Cash and Cash Equivalents	9.1.1	224,143		224,143	224,143
Trade Debtors	9.1.2	1,234,437	1,365,739	1,227,452	1,073,407
Sundry Debtors	9.1.3	7,227		-	-
Plant & Equipment	9.1.4	22,784	100,915	400,000	-
Leasehold Improvements	9.1.5	71,383		-	-
Loan - Darren Freeman	9.1.6	906,021		906,021	-
Total Assets		2,465,995	1,466,654	2,757,617	1,297,551
Liabilities					
Secured Creditors	9.2.1	-	-	-	-
Priority Creditors	9.2.2	815,606	139,924	616,126	616,126
Unsecured Creditors					
Statutory Creditors	9.2.3	346,769	255,510	286,995	286,995
Related Party Creditors	9.2.4	2,176,062	2,176,062	1,798,895	1,798,895
Other Unsecured Creditors	9.2.5	1,377,204	1,422,154	1,718,024	1,718,024
Total Liabilities		4,715,641	3,993,650	4,420,040	4,420,040
Estimated Net Asset / (Deficiency)		(2,249,645)	(2,526,995)	(1,662,423)	(3,122,489)

9.1 ASSETS

9.1.1 Cash and Cash Equivalents

On appointment, we made enquiries with all major banks in Australia seeking details of any accounts maintained by the Company. These enquiries along with the Company's management accounts revealed that the Company maintained one (1) bank account with Westpac with a total credit balance of \$224K as at the date of our appointment. We confirm this balance was recovered from Westpac.

This account has remained open during the Liquidation to date in order to receive payments from debtors. Following our appointment, some of the Company's customers deposited sundry funds into the Westpac account in error. After determining there were no outstanding debts owed by these customers, we arranged for these funds to be returned.

Based on enquiries to date, we are not aware of any other bank accounts held by the Company as at the date of our appointment.

9.1.2 Trade Debtors

The Company's management accounts reported trade debtors owed to the Company in the amount of \$1.2M at the date of our appointment. Our preliminary view was that the debtors report was reasonable, although likely to contain some errors and disputes.

We engaged the Company's external bookkeeper to assist with the updating of the accounts and general reconciliation. We also engaged certain former staff to assist gathering key debtor and trip documentation to support the claims. Unfortunately, the records were disorganised, given the Company's hasty exit from the leased premises and was largely in paper format. This process took substantial time.

Regardless, we assembled the available information, and issued multiple demands to the debtors during our appointment. To date, we have recovered \$1,073,407.47 and below is a summary:

Trade Debtors	Number of Debtors	Amount \$
Balance Sheet as at 14 August 2023		1,234,436.79
Out of Balance Amount		7,302.64
Receivables Balance as at 14/08/2023	62	1,241,739.43
Recovered to Date		
Fully recovered from debtors	43	267,247.70
Partly recovered from debtors	8	806,159.77
Total Recovered to Date		1,073,407.47
Remaining Balance	19	168,331.96

In respect of the outstanding balances, we have continued to engage with the respective debtors. We note that there may not be any further recoveries. Below is a summary:

Report Reference	Trade Debtors	Number of Debtors	Amount \$	Estimated Future Recovery (High) \$	Estimated Future Recovery (Low) \$
9.1.2.1	Account Adjustments	2	14,287.16	-	-
9.1.2.2	Disputed by Debtors	4	126,603.09	126,603.09	-
9.1.2.3	To be Recovered	13	27,441.71	27,441.71	-
	Total	19	168,331.96	154,044.80	-

9.1.2.1 Account Adjustments

After issuing the demands, two (2) Trade Debtors responded to the demands disputing the amounts owing and requesting credit notes be issued. We then reviewed the Company's records, the evidence

provided by the debtors and made enquiries with the Company's former employees in relation to the disputes.

We determined that the disputes from these debtors were reasonable, and the invoices had been raised in error to the extent of \$14K.

9.1.2.2 Disputed by Debtors

The disputed debts of \$126,603.09 is owed by four (4) Trade Debtors, of which \$93K was owed by the Company's largest customer, Toll Express ("Toll"), and the balance of \$34K was owed by three (3) other customers.

Toll Express

Toll was the Company's largest customer, whereby it operated as a subcontractor to Toll providing interstate linehaul transport. We note that the Company's management accounts indicated that Toll owed \$862K as at the date of our appointment. We have recovered \$769K to date, and Toll disputes any further amounts are owed.

From our review of the Company's management accounts, it appears that the Toll account was by far the largest debtor account by value, and unfortunately the account had not been accurately reconciled. This may have been a result of the change in management or staff, as the business encountered challenges in recent months.

Regardless, we have attempted to manually reconcile the trading activity with Toll, back to source documents and remittance advices, in an attempt to recover the remaining \$93K. The reconciliation process included:

- Reconciling trip records provided by Toll with the Company's management accounts for the period from 1 January 2023 to 14 August 2023;
- Applying payments recorded in the remittance advice provided by Toll to the trip records;
- Identifying discrepancies for charges on a number of trips between Toll's records and the Company's management accounts;
- Requesting further information from Toll in respect of the identified discrepancies;
- Liaising with the Company's former employees in relation to the disputed trips and charges; and
- Collating evidence to support the Company's position.

That reconciliation process is ongoing, where we have summited to Toll a demand and received a partial response in recent days on the disputed trips. We are currently seeking further information from the records and former employees, and hope to resolve the dispute on a commercial basis, without the need for litigation. We will provide further information on the outcome in future reports.

Balance of the Disputed Debtors

The balance of \$33,665.50 was owed by three (3) Trade Debtors.

These debtors have claimed that the goods delivered were damaged, resulting in a counterclaim for damages that exceeds the outstanding debt and refused to make payment accordingly.

We are currently conducting further investigations into the damages claims and will consider our position and the commerciality of pursuing the claims further.

9.1.2.3 To Be Recovered

With respect to the balance of \$27,441.71 owed by thirteen (13) Trade Debtors, we are not aware of any disputes of outstanding amounts owed according to the Company's management accounts. The collection of these debts is ongoing. Given the value involved we will attempt to resolve the collections without legal costs, if possible.

9.1.3 Sundry Debtors

The Company's management accounts reported the Sundry Debtors in the amount of \$7K.

We have reviewed the transactions recorded in the general ledger account and also made enquiries with the Company's external bookkeeper. These appear to be manual journal entries, which are not recoverable assets.

9.1.4 Plant & Equipment

The Company's management accounts reported PPE with a written down value of \$23K. The Current Director has disclosed an estimated realisable value of \$100K in the ROCAP which appears to be based on a depreciation schedule for the financial year ended 30 June 2022, which includes various forklifts, fuel tanks and motor vehicles.

A further review of the Company's records identified a substantial number of plant racks purchased by the Company, which were written-off as expenses rather than being capitalised as assets on the balance sheet. We do not express a view on the accounting treatment, however note that the plant racks exist and appear to have material value based on the representations of both the Current and Former Director.

We have pursued recovery of this PPE, however have encountered disputes with the Former Director, who asserts that they are owned by Freeman Freightlines (referred hereafter as the "Disputed Assets"). For the purposes of this report, we have attributed a value of \$400K to the Disputed Assets, however the actual value will be subject to what is recovered from the assets, or the corresponding undervalue disposal claim (discussed later).

Via our lawyers, Bartier Perry, we issued a demand to the Former Director and Freeman Freightlines for the Disputed Assets to be delivered up, or otherwise engage with us to acquire the Disputed Assets. In response, the Former Director has provided various documentation relating to the sale of business transaction, whereby he effectively asserts that the Company was devoid of physical assets when the

shares were sold on 8 December 2022. The externally prepared accounts and management accounts do not reflect this position, whereby the PPE remains on the balance sheet.

The Former Director has alleged that the Disputed Assets had been sold to Freeman Freightlines (an entity controlled by the Former Director) prior to the sale of business on 5 December 2022 for \$18,425 (including GST). We note that the Company's management accounts does not record this purported sale transaction for the Disputed Assets. The Current Director also disputes that the Disputed Asset sale occurred, however we note that the alleged transaction date was prior to him taking control.

Our enquiries indicate that the Company spent over \$500K acquiring the Disputed Assets over a number of years, and correspondence in February 2023 from the Former Director to the Company attributed a similar substantial value. Therefore, if the disposal did occur, it appears that the Former Director has caused the Company to sell the Disputed Assets to Freeman Freightlines (an entity he controls) undervalue.

Our investigations are continuing, and we are awaiting further advice from our lawyers on the claim. For the purposes of this report, we have attributed a value of \$400K to this potential voidable transaction claim, however the actual recoverable value (if any) will not be known for some time. This claim is discussed later in the report.

Further, we have conducted a vehicle search in multiple states. Recent response from QLD registry indicates that there are additional assets (including a vehicle, trailers, a caravan and a jet ski) that are currently owned by the Company and are missing. The Current Director has advised that he did not recognise these assets and as such, was unable to provide information regarding the location of these assets and the party in control of same. In recent discussions, the Former Director appeared to have knowledge of some of the assets, in particular the jet ski. We have requested that he provide particulars of their current location and deliver up the assets without delay. Alternatively, if they have been disposed of, we will make similar enquiries as to the value of the disposal.

We will provide further information to creditors in future reports.

9.1.5 Leasehold Improvements

The Company's management accounts reported leasehold improvements for the sum of \$71K. We have reviewed the transactions recorded in the general ledger account and also made enquiries with the Company's external bookkeeper. The information is incomplete, however it appears that they may relate to leasehold improvements which may not be realisable in the circumstances. Our enquiries are ongoing, along with the Disputed Assets claims.

9.1.6 Loan – Darren Freeman

The Company's management accounts reported loans owed by the Former Director for the sum of \$906K as at the date of our appointment. The accounts indicate that the Former Director used this account to reflect his drawings from the business, which were partially extinguished by way of a dividend declaration from the sale of the business.

As discussed previously, there appears to have been some irregularity in the accounting of the sale of the business, where the external accountant produced accounts which record \$233K still owing (as

compared to \$906K in the management accounts). The Former Director disputes that any loan amounts remain owing to the Company, as he believes that dividends were declared extinguishing the loans in full. We have requested further information from the Former Director in relation to this loan and the dividend alleged to have been declared.

It is possible that the Former Director is correct, and no recovery will be available from the loan. However, the consequence may be that further adjustments to the accounts will follow, in particular to the historical earnings, which may have corresponding adjustments to the reserves and dividends historically declared.

Our investigation regarding recoverability of the loan and accounting issues are ongoing.

9.2 LIABILITIES

9.2.1 Secured Creditors

Searches of PPSR indicate there were eleven (11) security interests registered by ten (10) parties over the Company prior to our appointment and four (4) security interests registered by two (2) parties after our appointment. The table below provides a summary of these registered security interests.

PPSR Creditors	Date of Registration	No. of Registered Interest	Est for Unsecured Claims \$	Comment
Loscam Australia Pty Ltd	30/01/2012	1	-	Creditor advised discharge of security
A.P. Eagers Limited	14/02/2012	1	-	Creditor advised discharge of security
Bridgestone Australia Ltd	11/03/2014	1	TBA	No response from creditor
Volvo Group Australia Pty Ltd	16/01/2020	1	-	Creditor advised discharge of security
Tyres4U Pty Ltd	31/03/2020	1	-	Creditor advised discharge of security
Freedom Forklifts Pty Ltd ("Freedom Forklifts")	20/04/2021	2	458.05	Creditor has provided an outstanding invoice for replacement of battery for a forklift
Velocity Vehicle Group Australia Pty Ltd ("VVGA")	30/04/2021	1	23,488.65	Creditor has submitted a POD in relation to outstanding invoices for vehicle repair and maintenance services provided to the Company.
National Australia Bank Limited ("NAB")	12/12/2022	1	-	Security withdrawn
Advantage Trailer Rental Pty Ltd	5/06/2023	1	-	Creditor advised discharge of security
Yau, Kevin Chor Ban	23/07/2023	1	-	Security withdrawn
Fuel Direct Pty Ltd ("Fuel Direct")	15/08/2023	1	537,649.02	Security appears to be late registered and is invalid. Creditor requested to withdraw security.
N&G Investments (Aust) Pty Ltd ("N&G")	29/08/2023	3	38,389.74	Security withdrawn
Total		15	599,985.46	

We provide our commentary on the above as follows:

▲ NAB

NAB held first ranking security over the Company and its assets. However, the Company did not have any debt owed to NAB, rather the Company was a guarantor to the debts owed by Yau Freightlines. Yau Freightlines discharged the NAB debts in full recently, primarily from the sale of the Fleet Assets. Accordingly, NAB has withdrawn its security and does not have a claim against the Company.

▲ Kevin Yau

We note that the Current Director (Kevin Yau) registered a security interest against the Company shortly prior to our appointment, which we understand was in respect of the loans advanced totalling \$800K for working capital. This security interest was not registered within the required timeframe and there was no fresh consideration at the time of registration. Accordingly, we concluded that the security interest was invalid. The Current Director has withdrawn the security against the Company, and his claim is an unsecured claim in the Liquidation.

▲ Freedom Forklifts and VVGA

We note that we are not in control of the assets which are subject to the registered security interests. Therefore, the claims are considered to be unsecured claims in the Liquidation.

▲ Fuel Direct

Fuel Direct registered their security interests after the date of our appointment. We have reviewed various documents provided by Fuel Direct in response to our query on their security interests, which indicate the registration was not made within the required timeframe.

Therefore, we have determined that Fuel Direct's security interest is invalid and their claim is considered to be an unsecured claim in the Liquidation.

▲ N&G

N&G registered their security interests after the date of our appointment. We understand their claim related to mechanical works conducted on certain vehicles owned by Yau Freightlines, prior to our appointment.

Having reviewed the documentation, we determined that N&G security was not valid. N&G has subsequently removed the security interests and their claim is considered to an unsecured claim in the Liquidation.

9.2.2 Priority Creditors

As mentioned in our previous report to creditors, all employees were terminated prior to our appointment. We have since retained a former employee to assist with the orderly winding down and realisation of the Company's assets, in particular the Trade Debtors and PPE.

We have reviewed the Company's records and conducted verification for the outstanding employee entitlements as at the date of our appointment. We also instructed the Company's external bookkeeper to assist with reconciliation of the outstanding superannuation entitlements. A summary of our verification is provided in the table below:

Employee Entitlements	Amount \$
Unpaid Wages	48,000.00
Superannuation	30,181.91
Annual Leave	164,872.51
Long Service Leave	26,076.38
Payment in Lieu of Notice	114,148.49
Redundancy	232,846.78
Total	616,126.07

Former employees of the Company have a statutory priority of payment in respect of outstanding entitlements such as wages, superannuation, annual leave, long service leave, payment in lieu of notice and redundancy. In the event that there are insufficient funds to pay a dividend to priority (employee) creditors in a winding up, employees (excluding the Directors and related parties) may lodge a claim under the FEG scheme with the Department of Employment and Workplace Relations in respect of certain entitlements that they are owed, subject to them meeting the eligibility requirements of the FEG scheme. FEG does not pay outstanding superannuation.

We have submitted the outcome of our verification with respect to outstanding Annual Leave, Long Service Leave, Payment in Lieu of Notice and Redundancy to FEG. Creditors should note that the amounts to be distributed by FEG are subject to FEG's assessment and final determination.

We understand that FEG is currently reviewing claims submitted by employees and once this process is finalised, FEG will be in a position to make payments to eligible employees in respect of their entitlements.

Should you wish to obtain further information or make a claim for outstanding employee entitlements, the Department may be contacted on 1300 135 040. Alternatively, you may visit their website at: <https://www.dewr.gov.au/fair-entitlements-guarantee>

Subject to pursuing voidable and other claims, we anticipate that there will be sufficient funds in due course to pay a substantial dividend to priority creditors. This is discussed later in this report.

9.2.3 Statutory Creditors

We have received PODs from the ATO and Revenue NSW. A summary of their claims is provided in the table below.

Statutory Creditors	Amount \$
ATO	243,358.63
Revenue NSW	43,636.06
Total	286,994.69

We provide our commentary on the above as follows:

- ▶ The ATO have lodged a claim in the Liquidation for \$243K in respect of GST and PAYGW debts. However, there are outstanding tax lodgements, which could increase the ATO's debt if these lodgements were completed.
- ▶ The Revenue NSW have lodged a claim in the Liquidation for \$43K in respect of payroll tax liabilities for the period from 1 July 2022 to 13 August 2023.

9.2.4 Related Party Creditors

We have reviewed the Company's records and the Director's ROCAP and provide our estimate of related party creditor claims as follows:

Related Party Creditors	Amount \$
Kevin Yau	800,000.00
Yau Freightlines	998,895.00
Total	1,798,895.00

We provide our commentary on the above as follows:

- ▶ The Current Director has submitted a POD for the sum of \$800,000 in relation to loans he provided to the Company which remained outstanding as at the date of our appointment.

We have reviewed bank statements which confirm that the Director deposited \$800,000 into the Company's Westpac account in December 2022. The Director has advised that the funds were used as initial working capital after the business was purchased on 8 December 2022. Our investigations also indicate the loan has not been repaid prior to our appointment.

- ▶ Yau Freightlines claim relates to outstanding truck rental charges and rental arrears for the trading premises. We note that, having reviewed the management accounts of both the Company and Yau Freightlines, it appears that the debt is approximately \$999K as at the date of our appointment. We have reviewed the licence agreement between the entities, and it appears to reflect commercial arrangement at the time and consideration was provided by way of access to the Fleet assets and premises.

We note that there were some historical discrepancies in the allocations between the entities. However, Yau Freightlines remains the largest unsecured creditor of the Company.

9.2.5 Other Unsecured Creditors

A review of the Company's records, the Director's ROCAP and claims submitted by creditors in the Liquidation, we estimate the number of other unsecured creditors is over eighty (80), totalling circa \$1.7M. These creditors appear to be various suppliers and debts incurred in the ordinary course of running a trucking and logistics business. In this regard, we note the majority of trade suppliers relate to fuel suppliers, vehicle repairs and associated costs. We note this amount also includes the liabilities totalling approximately \$600K owed to creditors with alleged registered security interests, which we have determined are unsecured claims in the Liquidation, as discussed previously in this report.

Should creditors, who have not already done so, wish to lodge their claim with this office, please complete the Formal Proof of Debt form, attached as **Annexure "A"**, and return same together with documentary evidence to support your claim.

10 EXPLANATION OF DEFICIENCY

Attached as **"Annexure E"** is the estimated deficiency statement for the Company. The deficiency statement indicates that the Company had a net deficiency of assets to liabilities in the order of \$3,122,589, before the costs of the Liquidation, attributable to the following:

Summary of Deficiency	Amount \$
Accumulated Losses	(2,249,745)
Loss on Realisation of Assets	(1,168,444)
Overstated Liabilities	295,601
Estimated Net Deficiency	(3,122,589)

The deficiency is largely represented by the accumulated losses and loss on realisation of assets.

With respect to the accumulated losses, we note that the business was historically profitable prior to the sale in December 2022. However, over the following eight (8) months, significant losses were incurred. The loss on realisation of assets is largely represented by the loans reportedly owed by the Former Director of circa \$900K (per the management accounts), which is disputed by the Former Director and may be unrecoverable.

10 INVESTIGATIONS AND RECOVERY ACTIONS

As Liquidators, we are required to review certain transactions to determine whether or not claims for statutory recoveries may be made for the benefit of creditors. Attached as **"Annexure G"** is the ARITA creditor information sheet on Offences, Recoverable Transactions and Insolvent Trading.

Whilst a potential claim may be identified having regard to the Company's records, any net recovery ultimately depends upon:

- ▲ The costs involved in pursuing a claim; and
- ▲ The capacity of the defendant to meet such a claim.

10.1 INVESTIGATIONS UNDERTAKEN

During the course of these investigations, we have:

- Reviewed management accounts maintained electronically on MYOB;
- Written to the relevant authorities requesting information required for investigations;
- Carried out ASIC and other searches available to us in relation to the Company;
- Ascertained by inquiring with the Directors and their advisers regarding the history of the Company and nature of its business and circumstances leading to its failure;
- Performed a review of the available bank statements to identify potential preferences, uncommercial transactions, and unfair loans (sections 588FA, 588FB, 588FD and 588FE of the Act).

10.2 BOOKS AND RECORDS

Section 286 of the Act requires a company is to keep written financial records that:

- correctly record and explain its transactions, financial position and performance; and
- would enable true and fair financial statements to be prepared and audited.

The failure to maintain books and records in accordance with Section 286 of the Act may allow a Liquidator to presume the Company was insolvent throughout the period the books and records were not maintained (Section 588E of the Act).

Whilst there appear to be accounting irregularities regarding the sale of business transactions as discussed previously, following a review of the Company's books and records available to us, we are of the view that the Company has kept books and records in compliance with Section 286 of the Act.

11 FINDINGS AND RECOVERY ACTIONS

11.1 INSOLVENT TRADING

Pursuant to Section 588G of the Act, a director may be personally liable for insolvent trading by a company where:

- 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 Act 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.

Our assessment has been based on the information available to us from the Company's records, information provided by the Director, their advisers and on the basis of separate investigations of the Company's affairs.

Based on our investigations conducted to date, it is our view that the Company became insolvent on a cash flow basis from at least March 2023. Our comments detailing the reasons for our assessment are set out below.

11.2 INSOLVENCY ANALYSIS

11.2.1 Working Capital Analysis

A working capital analysis is generally based on a review of the Company's financial records and management accounts to determine whether there were sufficient current assets to meet current liabilities, including any adjustments to the reported current assets and current liabilities.

The current ratio compares current assets to current liabilities. A current ratio over 1 indicates that there are sufficient current assets to meet current liabilities.

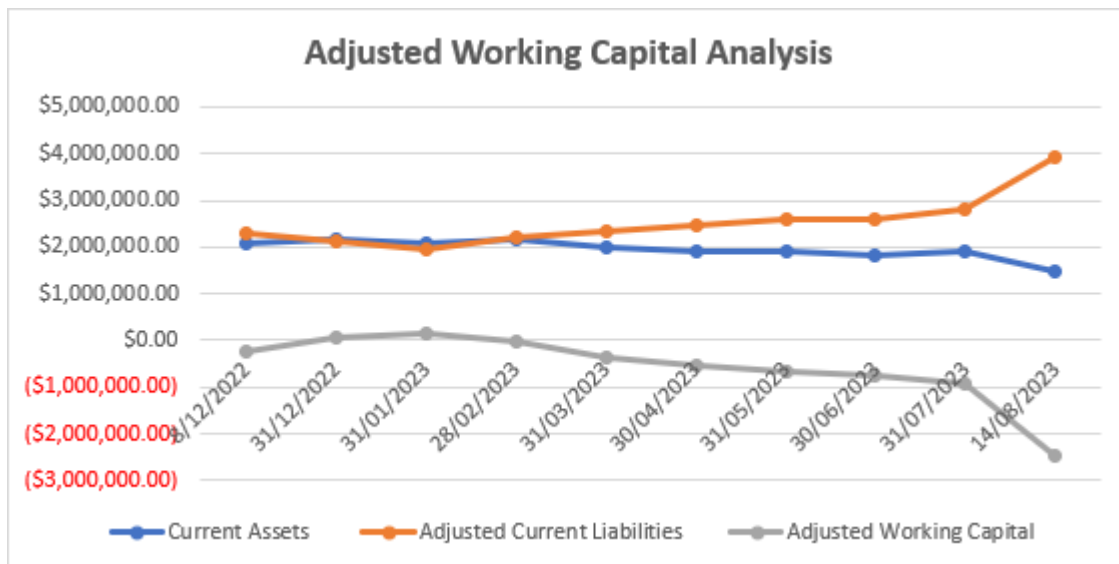
The working capital analysis has been prepared based on our review of the Company's management accounts. However, there is a key adjustment necessary based on the factual circumstances:

- Historically, the Company paid circa half the licence/rental fees charged by Yau Freightlines, therefore it would be considered reasonable to remove 50% of the Yau Freightlines payables balance between December 2022 and July 2023 under an assumed forbearance between the related entities during that period.

The below table shows the adjusted working capital analysis as at 31 December 2022, shortly following the sale of business, and each month-end up to appointment.

Adjusted Working Capital Analysis	31/12/2022 (\$)	31/01/2023 (\$)	28/02/2023 (\$)	31/03/2023 (\$)	30/04/2023 (\$)	31/05/2023 (\$)	30/06/2023 (\$)	31/07/2023 (\$)	14/08/2023 (\$)
Current Assets	2,167,832	2,089,819	2,170,006	1,983,852	1,902,219	1,891,479	1,813,997	1,897,477	1,465,807
Current Liabilities	2,182,083	2,106,699	2,440,674	2,705,321	2,933,915	3,048,598	3,131,822	3,434,955	3,915,641
Assumed forbearance from Yau Freightlines	(75,625.00)	(175,450.00)	(230,609.96)	(355,530.80)	(482,580.80)	(468,994.44)	(557,180.80)	(610,980.80)	0
Adjusted Current Liabilities	2,106,458	1,931,249	2,210,064	2,349,791	2,451,334	2,579,603	2,574,641	2,823,974	3,915,641
Net Working Capital	61,374	158,571	(40,057.37)	(365,938.21)	(549,114.80)	(688,123.81)	(760,644.70)	(926,497.66)	(2,449,833.38)
Current Asset Ratio	1.0291	1.0821	0.9819	0.8443	0.7760	0.7332	0.7046	0.6719	0.3743

The graph below demonstrates the change of the adjusted working capital as analysed above:



Based on the above, it appears the Company reported a working capital deficiency (indicated by a Current Asset ratio below 1) from March 2023 and the deficiency deteriorated each month thereafter until our appointment in August 2023.

We refer to Section 8.2 for our discussion in relation to the Company's historical financial performance. That section indicates that the Company's average monthly sales were approximately \$1.4M to \$1.5M from FY2022 to FY2023. The Former Director has advised that the Company's major customer, Toll Express, was on 21 day credit terms and majority of other customers were on 30 day terms. The Former Director advised that he believed the Current Director ought to have injected additional working capital to meet the cashflow requirements of at least one month of expenses in advance.

We note that the Current Director injected \$800K in December 2022 as working capital (via debt). However, in addition to the debtor payment cycle, that cash contribution from the Current Director was insufficient to absorb the trading losses the business commenced incurring from early 2023.

Accordingly, it is our preliminary view that the Company became insolvent on a cashflow basis from around March 2023 and its financial position deteriorated thereafter.

11.2.2 Indicators of Insolvency

We have also observed the following indicators of insolvency:

- ▲ The Company's management accounts indicate the Company historically was profitable prior to the sale of business. However, after the sale of the business on 8 December 2022, the management accounts report that the Company's financial performance deteriorated significantly, whereby it made trading losses of circa \$2.5M between 9 December 2022 and our appointment in August 2023. We note that some of the expenses in late July/August 2023 may have been overstated, having regard to redundancy expenses and others. Regardless, substantial losses were incurred after December 2022, in circumstances where the Company had been denuded of its reserves via the dividends that were declared around the sale of business.

- ▶ A review of the ATO records indicates the Company had been discharging tax liabilities as it fell due before April 2023. The last payment made to the ATO was on 29 March 2023. Tax debts started to accumulate from April 2023 and totalled circa \$243K as at the date of appointment of the Liquidators.
- ▶ The Company management accounts report that the trade creditors payment times were expanded. We note that the portion of creditors in the 60 day (plus) ageing increased from 13.9% at February 2023 to 48.6% by August 2023. We note that a large portion of the older debts by August 2023, is represented by the unpaid licence and rent owed to Yau Freightlines, indicative of the support and (assumed) forbearance discussed earlier.
- ▶ The sale of business transaction on 8 December 2022 resulted in:
 - a dividend being declared to Darren Freeman of \$2.3M per the externally prepared accounts (or \$1.6M per the MYOB accounts) and
 - a \$1.8M loan being assigned to Yau Holdings No. 2, and later extinguished as an adjustment against equity (effectively a dividend)

It is highly unusual for dividends to be declared within a short period of time prior to a Company collapsing into Liquidation. However, the externally prepared accounts and management accounts indicate that there was sufficient reported equity available for these dividends to be declared at that time. Regardless, the result is that the Company was then left devoid of reserves, and with trading losses being incurred thereafter, the removal of circa \$4.1M of equity significantly contributed to the Company's insolvency position.

- ▶ The Former Director was engaged as a consultant to the Company after the sale of business, to assist with handover and ongoing management. We understand that there were major disagreements between the Former Director and Current Director with respect to the management of the business, and the consulting arrangement appears to have ended in around February 2023. The dispute between the Current Director and Former Director adversely impacted the performance of the business, where we are advised that the Former Director commenced trading a competitor business "Freeman Freightlines Pty Ltd" shortly after the consulting arrangement ended. We are advised, and have observed through the management accounts, a decrease in the Company's income commencing around the time that "Freeman Freightlines" allegedly began offering services to the Company's customers. In all, the disputes between the Current and Former Director contributed to the Company's deteriorating financial position and its ultimate failure.

These factors support our preliminary view that the Company has been insolvent on a cash flow basis since March 2023 and did not return to solvency thereafter.

11.2.3 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 and remains outstanding. For the purposes of this Report, we have prepared a preliminary assessment of the claim,

assuming the Company was insolvent since approximately March 2023. The insolvent trading claim is calculated at around \$935K.

Insolvent Trading Claim Estimate	Estimate (\$)
Debts incurred after 31 March 2023	
Trade creditors incurred as per the Company's management accounts	2,661,997
ATO debt incurred	243,359
Less: approximate net asset realisations	(700,000)
Less: debt owed to Yau Freightlines	(1,270,500)
Insolvent Trading Claim	934,856

We note that the debt owed to Yau Freightlines has been excluded from the above calculation on the basis that the Current Director represents the bulk of the creditor claims in that entity.

11.2.4 Defences available

A defence is available under the Act where a director can establish:

- ▲ There were reasonable grounds to expect that the company was solvent, and they actually 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.

We note that the Current Director appears to have sought advice in respect of potential legal claims, to mitigate the losses suffered by the business. Ultimately, the Current Director took steps to wind down the business, primarily by the sale of the Fleet assets which were owned by Yau Freightlines.

The Current Director may seek to argue that he had reasonable grounds to expect that surplus funds could be generated from the sale of the Fleet assets, to mitigate the loss suffered by the Company's creditors. The ultimate value of the Fleet assets, and loss by Yau Freightlines, was not realised until August 2023, when Yau Freightlines entered into a sale contract with Pickles. We note that Yau Freightlines did not have an obligation to fund the loss suffered by the Company's creditors, however, the common director and owner relationship suggests that such financial support may have been an option. This would need to be investigated further should an insolvent trading claim be pursued.

We also understand that the Current Director may seek to defray the potential insolvent trading exposure, by asserting the Former Director's conduct in running a competing business (in contravention to representations allegedly made during the sale process) contributed to the loss suffered by the Company. We have not been provided with sufficient evidence to form a view on that potential defence and/or counterclaim at this time. Our investigations are ongoing and we are seeking advice. It may be necessary to hold a public examination to determine the true position in due course.

Finally we note, as previously discussed in the Report, the Director is a creditor of the Company for the sum of \$800,000 in relation to funds advanced to the Company for working capital injection. While we are not aware that he could claim an offset of \$800,000 against an insolvent trading claim, it may still need to be taken into consideration in bringing such a claim against him. Furthermore, in respect of Yau Freightlines, it appears that the Current Director (and his controlled entities) have lost a further

\$4M when the Fleet assets were sold. The Current Director's total losses on this venture could amount to \$4.8M or more.

Ultimately, it is a matter for the Director to raise a defence or seek to apply a set-off. Our investigations are continuing at this time, and we are seeking advice on the potential claims/defences.

11.2.5 Recovery of Claim

In respect of considering whether an insolvent trading claim could be pursued, a Liquidator would need to have regard to the financial position of the potential defendant, being the Current Director.

NSW Land Title searches have been conducted on the Current Director which indicate that the Current Director does not appear to be the current registered proprietor of any properties in NSW. We note that in our appointment as Liquidators of Yau Freightlines, the Current Director has reportedly experienced a further loss of \$4M, in respect of loan funds advanced to Yau Freightlines. Our enquiries into the Current Director's financial capacity is ongoing, and any creditors with relevant information are invited to contact our office urgently.

We have sought legal advice in relation to the abovementioned potential insolvent trading claim, and other claims discussed elsewhere in this report. We are awaiting that advice currently, however preliminary views are that there are a number of irregular transactions and potential claims that ought to be explored. As such, it may be necessary to hold public examinations to gather necessary evidence and test the claims, prior to any litigation being considered.

12 VOIDABLE TRANSACTIONS

Voidable transactions include transactions such as unfair preferences, uncommercial transactions, unfair loans, unreasonable director related transactions and circulating security interests created within six months before the relation-back day, which is the date of the appointment of the Liquidators.

These transactions usually relate to the period six (6) months prior to the date of our appointment; however, in certain circumstances, this period can be extended to four (4) years in relation to transactions with related entities and up to ten (10) years if the transactions were entered into with related parties with the intention of fraud.

12.1 UNFAIR PREFERENCES

An unfair preference results when the Company and a Creditor are parties to a transaction(s) and the Creditor receives more than it would receive if the transaction(s) are set aside, and the Creditor proved for the debt in the winding up. If it is ultimately determined that certain payments are potentially recoverable as unfair preferences, it would be necessary to establish:

- ▲ that the Company was insolvent at the time the payments were made; and
- ▲ that the recipient had reasonable grounds to suspect that the Company was insolvent at that time or would become insolvent as a result of the payment.

The clawback provisions available to the Liquidators relate only to payments to unrelated parties made within six (6) months from the date of our appointment, if the Company is insolvent at that time,

known as the RBP. As discussed previously, our preliminary view is that the Company may have been insolvent from around 31 March 2023 and accordingly, the RBP is 1 April 2023 to 14 August 2023.

We have conducted a preliminary review of the creditor transactions during the RBP. We have observed minimal payment arrangements with creditors outside terms, such that good faith defences may be available. We note that a key supplier commenced legal proceedings against the Company and attempted to garnish the Company's bank account (although this was unwound).

We have identified payments made to a trade supplier totalling \$110K during the RBP, which appear to be part of a payment arrangement. However, that the management accounts indicate that the creditor continued to provide services to the business during the RBP, such that it may be entitled to apply a running account defence and set-off in respect of preference claim.

We note that Yau Freightlines was paid approximately \$600K during the RBP. However, as discussed previously, Yau Freightlines provided the use of the Fleet Assets and leased premises, which were essential to the trading of the business, and less than half of those charges were ultimately paid by the Company. The accounts suggest that Yau Freightlines financially supported the Company, by not withdrawing access to the Fleet assets and premises despite the failure to pay the majority of the charges. Yau Freightlines is both the largest creditor of the Company and is also in Liquidation, and therefore any potential claim is likely unrecoverable in the circumstances.

We are continuing to conduct our investigations, however we have not identified any unfair preference payments to pursue.

12.2 UNCOMMERCIAL TRANSACTIONS

A transaction is considered uncommercial if it is made at a time when the Company is insolvent, and it may be expected that a reasonable person in the Company's circumstances would not have entered into the transaction having regard to:

- ▲ The benefits or detriment to the Company of entering into the transaction; and
- ▲ The prospective benefits to other parties to the transaction.

As previously discussed, the sale of the shares in the business resulted in dividends being declared and loans being extinguished of approximately \$4.1M, which effectively stripped the Company of all its reserves at the time. Declaring dividends in a short period of time prior to a company being placed into liquidation is unusual and in many circumstances voidable. We have reviewed these transactions and are seeking advice on same.

We note that whilst the balance sheets indicate that there were sufficient equity reserves, combined with the changed business performance and losses immediately thereafter, it is possible that these "dividend transactions" contributed to the insolvency of the Company. That assumes that the related party debtors had the capacity to repay the loans, which were effectively extinguished on the dividends. Our preliminary investigations and advice received is that these potential claims require further exploration. To this end, we discuss below the scope which is relevant for creditors.

If the dividend transactions are ultimately unwound, there may be a claim against the Former Director in declaring a dividend of circa \$2.3M and a claim against the Former and/or Current Director in extinguishing the \$1.8M loan owed by NDF Developments (which was assigned to Yau Holdings No. 2). It is relevant to note that if recovered in full, it could be sufficient to discharge all creditor claims

(subject to litigation costs incurred), and therefore the quantum of the claim may vary, noting that the defendants control the former and current shareholder entities who would be entitled to any surplus after creditors are satisfied.

In the alternative and subject to further legal advice, these claims might potentially be pursued as unreasonable director-related transactions or breach of duty claims. The legal advice that we have sought from our lawyers in respect of these claims, will ultimately assist with determining whether to pursue these claims. Irrespective of that legal advice, further consideration will need to be undertaken in relation to the prospects of recovery in circumstances where the financial capacity of the Former and Current Directors is currently unknown. A public examination may be required as an initial step to gather the necessary evidence and determine the validity of the claims.

Creditors should also note that there is a duplication with the insolvent trading claim, in respect of the loss suffered, such that whilst the claims could be pursued in parallel, they may only be recovered once.

Our preliminary investigations have not identified any other uncommercial transactions to date.

12.3 UNREASONABLE DIRECTOR RELATED TRANSACTIONS (\$588FDA)

A transaction is an unreasonable Director-related transaction of the Company if:

- ▲ The transaction is a payment, a conveyance, transfer or disposition of property, the issue of securities, or incurring of an obligation to make a payment, disposition or issue by the Company.
- ▲ The transaction is to a Director or close associate of the Director or for their benefit.
- ▲ A reasonable person in the Company's circumstances would not have entered into the transaction having regard to the benefit or detriment to the Company or other parties involved in the transaction.

As mentioned above, there are potential claims against the Former and Current Directors in relation to the dividend transactions in December 2022, which effectively removed \$4.1M in equity from the Company. It is possible, subject to further investigation and legal advice, that those claims may be pursued as unreasonable director-related transactions.

Our investigations have identified a potential claim against the Former Director and Freeman Freightlines in respect of the alleged sale of the Disputed Assets. As discussed earlier, the Former Director disputes the Company's claim against Disputed Assets and both parties have engaged lawyers. Recently the Former Director has provided a recipient created tax invoice dated 5 December 2022 which purportedly sells the Disputed Assets from Freeman Freighters to Freeman Freightlines for \$18,425 (including GST). We note that the Company's management accounts does not record this purported sale transaction for the Disputed Assets.

Our enquiries indicate that Freeman Freighters spent over \$500K acquiring the Disputed Assets, and correspondence in February 2023 from the Former Director to the Company attributed a similar substantial value. Therefore, if the disposal did occur, it appears that the Former Director has caused the Company to sell the Disputed Assets to Freeman Freightlines (an entity he controls) at an undervalue. Our investigations are continuing and we are awaiting further advice from our lawyers on

the claim. For the purposes of this report we have attributed a value of \$400K to this potential claim, however the actual recoverable value (if any) will not be known for some time.

Our preliminary investigations have not identified any other unreasonable director-related transactions to date.

12.4 UNFAIR LOANS (S588FD)

A loan is unfair if it is made to a Company at extortionate interest rates or the charges in relation to the loan are extortionate. In considering whether interest and charges are extortionate, regard must be had to the following:

- ▲ Risk the lender is exposed to;
- ▲ Value of the security;
- ▲ Term;
- ▲ Repayment schedule; and
- ▲ Amount of loan.

Our preliminary investigations have not identified any such transactions to date.

12.5 DISCHARGE OF RELATED PARTY DEBTS (S588FH)

A transaction is considered to have discharged a related party's debt if funds from the Company are used to pay that Creditor which has had the effect of discharging, to the extent of a particular amount, a liability (whether under a guarantee or otherwise) of a related entity the Company.

Our preliminary investigations have not identified any such payments.

12.6 TRANSACTIONS FOR THE PURPOSE OF DEFEATING CREDITORS (S588FE)

Transactions involving the removal or concealment of assets of the Company for the purpose of preventing the Liquidators from realising their value are voidable transactions and are recoverable by Liquidators. These actions may constitute fraud by the director or any other person.

Our preliminary investigations have not identified any such transactions.

12.7 CIRCULATING SECURITY INTERESTS CREATED WITHIN SIX MONTHS BEFORE THE RELATION-BACK DAY (S588FJ)

A circulating security interest in property of the company created within six months before the relation-back day may be void against a Liquidator. However, circulating security interests that are created within this period for consideration paid at or after the date of creation remains valid.

We note that the Current Director had registered a security interest against the Company shortly prior to our appointment, which we understand was in respect of the loans advanced totalling \$800K for working capital. We also obtained legal advice and determined that this security interest was not registered within the required timeframe and there was no fresh consideration at the time of registration. Accordingly, we concluded that the security interest was invalid and requested the Current Director remove same. We confirm the Current Director has now removed the security interest, and the issue is resolved.

We have not identified any other security interests that may be void as against a liquidator.

12.8 BREACH OF DUTY CLAIMS

As mentioned earlier, it is possible that if the dividend transactions (totalling circa \$4.1M) can be challenged, that recovery may be pursued as breach of duty claims. The dividends transaction extinguished loans owed to the Company, arguably for the benefit of the Former and Current Directors and not in the interests of the Company. Similarly, the purported undervalue disposal of the Disputed Assets to Freeman Freightlines, could be pursued as breach of duties. Our investigations are ongoing, and we are awaiting advice. However, for the purposes of this report we note that the transactions could potentially be pursued as:

- ▲ Failure to exercise reasonable care and diligence;
- ▲ Failure to act in good faith; and
- ▲ Improper use of position.

We note that the related party entity recipients of the transactions (receiving funds, forgiveness and/or assets) may also be potential defendants to such claim, by way of Accessorial liability.

Further work is required, to determine if claims are available and are commercially viable to pursue. In this regard, a public examination (discussed earlier) may be an initial step to gather the necessary evidence.

12.9 OTHER CLAIMS

In our preliminary investigations, we have necessarily considered the background to the sale of business, which at its essence involved, a sale of the shares of the Company and an acquisition of the Fleet Assets by Yau Freightlines. Based on the information provided to us, and preliminary legal advice, it appears that there may be claims relating to the sale transaction to explore.

We note that the Current Director has advised that the Former Director made various representations in the course of the transaction, including that he would cease to operate in the transport/logistics industry due to certain personal reasons. Ultimately, the Former Director (via entities he controls) resumed activity directly competing with the Company. The management accounts report that the Company incurred losses, and failed around eight (8) months after the sale was transacted. We note that the sale agreements do not contain any restraint provisions, as is normal to mitigate such risks. Regardless, and without waiving privilege, it appears that preliminary legal advice we have received suggests that there may be claims to explore in respect of:

- ▲ Misleading or deceptive conduct in respect of alleged pre-contractual representations made
- ▲ Breach of fiduciary duties owed to the Company by dealing with clients and staff, causing detrimental harm to the Company's revenue and failing to act in the best interests of the Company (breach arising from Consultancy agreement)
- ▲ Tortious interference with clients' contractual relationships with Company clients, staff and suppliers
- ▲ Passing off by operating Freeman Freightlines in direct competition with the Company

We note that the Current Director (personally and via entities he controls) appears to be the largest creditor of the Company and Yau Freightlines, in respect of the substantial losses he suffered following

his acquisition of the business and the assets. As such, it is possible that some of these potential claims (and others) may be available to the Current Director independently or jointly.

Currently, we do not have a view as to the merits of these potential claims, as additional evidence and legal advice is necessary. Furthermore, it is entirely possible that there may be valid defences to any such claim, or commercial considerations. Our investigations are ongoing, and subject to further legal advice being provided, we may explore these matters via a public examination (as discussed earlier).

13 SUMMARY OF POTENTIAL OFFENCES

In summary, we consider there are various potential contraventions of the Act as follows:

Section	Potential Offence Identified	Summary of Offence
180	Failure to exercise reasonable care and diligence	Dividend declared and extinguishing related party loans Undervalue disposal of Disputed Assets
181	Failure to act in good faith	Dividend declared and extinguishing related party loans Undervalue disposal of Disputed Assets
182	Improper use of position	Dividend declared and extinguishing related party loans Undervalue disposal of Disputed Assets
588FB	Uncommercial transactions	Dividend declared and extinguishing related party loans
588FDA	Unreasonable director-related transactions	Dividend declared and extinguishing related party loans Undervalue disposal of Disputed Assets
588G	Director's duty to prevent insolvent trading	Insolvent Trading

We note that there are potentially other offences and/or claims which require further investigation.

14 RECEIPTS AND PAYMENTS

Attached as **Annexure "B"** is a summary of receipts and payments during the Liquidation period to the date of this Report. We note that we have received circa \$62K in unknown receipts (potentially payments in error from debtors), which may be repayable in due course.

We are required to lodge a statement of account with ASIC annually during the Liquidation. To date, our appointment has not exceeded (12) twelve months and as such, we are not required to lodge same but will do so if necessary, in accordance with the statutory timeframe.

15 REMUNERATION OF LIQUIDATORS

In our initial report, we provided estimates of our costs for the Liquidation to be circa \$155K.

During the course of the Liquidation, significant time-costs have been incurred which is summarised as follows:

- ▶ Collation and review of the incomplete manual Company records;
- ▶ Detailed reconciliation of the debtor claims, including Toll;
- ▶ Conducting investigations and liaising with solicitors in relation to the potential claims to be pursued in the Liquidation, including sale of business transaction;
- ▶ Ongoing attempts to recover the Disputed Assets from the Former Director, or compensation for same;
- ▶ Investigations regarding insurance covers and claims, including a significant accident in July 2023; and
- ▶ Calculating outstanding employee entitlements and verifications for FEG.

Given that we are currently exploring the commerciality of pursuing any potential claims identified as discussed in this Report, we are not seeking further remuneration approval from creditors at this point in time. However, we will seek approval in due course. Subject to the claims that may be pursued via litigation, we have included updated fee estimates in the annexures of between \$400K and \$1M.

16 ESTIMATED RETURN TO CREDITORS

Attached as **Annexure "F"** is an analysis of the advised estimated return to creditors that may be available in the Liquidation.

Based on recoveries to date, we anticipate there could be sufficient funds to discharge the priority creditor claims. However, any return to unsecured creditors is contingent on pursuing and recovering the various claims discussed above, which will likely require litigation. Creditors should be aware that litigation is costly and carries risks, and if unsuccessful, could erode the available funds and projected returns (including those to the priority creditors). We also note that there are various potential actions which can be run in parallel, and the quantum of the claims may vary to accord with the creditor claims. Our estimates contained herein are illustrative only, as the timing and outcome are unknown at this time.

In summary, we estimate the potential range of returns to creditors may be as follows:

Estimated Return to Creditors	High Cents/\$	Low Cents/\$
Secured Creditor	N/A	N/A
Priority Creditors	100.00	100.00
Unsecured Creditors	100.00	3.24

**Please note these figures are estimates only and the actual results may vary materially.*

The low scenario assumes that recovery actions are not pursued, and instead the available funds are distributed to creditors in the near term. However, any meaningful return to unsecured creditors will require litigation to be pursued, and based on the potential claims discussed herein, if successful, could be sufficient to discharge creditors in full. Conversely, should the litigation be unsuccessful, it could erode the available pool of funds, and the return for creditors (including priority creditors). There is also possibility of an outcome somewhere in between, whereby the assignment or settlement of claims is explored. It is simply too early to predict the outcome of litigation, and the results could vary materially from our estimates here. We will report to creditors prior to any significant litigation being commenced, to allow an opportunity for feedback.

We encourage any creditors who have not already done so, to lodge a POD together with relevant supporting documentation. A copy of the POD is attached as **Annexure "A"** in this regard.

17 TASKS REQUIRED IN THE LIQUIDATION

We anticipate that the following matters will be dealt with during the Liquidation moving forward:

- Lodgement of a confidential report pursuant to Section 533(1) of the Act and await response from ASIC;
- Finalising collection of pre-appointment debtors, including resolving disputes raised by various debtors;
- Liaising with FEG to finalise verification of outstanding employee entitlements;
- Conducting further investigations and liaising with solicitors in relation to the potential claims to be pursued in the Liquidation, including potential insolvent trading claim, sale of business dividend transactions and conduct of the Former Director;
- Liaising with solicitors with respect to recovery of the Disputed Assets from the Former Director, or compensation for same;
- Finalising any required insurance notifications to insurer with respect to a significant accident in July 2023;
- Statutory lodgements and general administrative matters; and
- Finalise.

Should any creditor have any relevant information which may assist our investigations or potential asset recoveries, they should contact our office without delay.

If the potential claims are not pursued, the Liquidation could complete within six (6) months. Otherwise, if we determine there is merit to the claims via litigation, the Liquidation could continue for one (1) to two (2) years.

18 CONCLUSION

It would be appreciated if you would consider the matters detailed in this report and please write to this office setting out full particulars if you are:

- ▲ Aware of any errors in the information contained within this report including the non-disclosure of any divisible assets; and
- ▲ Have any information that you consider is relevant for creditors' decision making or relevant information that may help assist the liquidator's investigations into the affairs of the Company.

Creditors should however, maintain their records in relation to the affairs of the Company and advise this office of any change of address.

Additional general information regarding liquidations which may be of assistance, is available from the following websites:

- ▲ ARITA at www.arita.com.au/creditors ; and
- ▲ ASIC at www.asic.gov.au (search for "insolvency information sheets"), also attached as "Annexure H" to this report.

Should you require assistance in completing the relevant forms or have any queries, please contact the Administration Contact shown at page 1 of this report.

Any further reports will be issued as considered appropriate.

Yours faithfully,

FREEMAN FREIGHTERS PTY LTD (IN LIQUIDATION)



JONATHON KEENAN

Joint and Several Liquidator

The logo for BRI Ferrier, featuring the text "BRI Ferrier" in white on a dark grey rectangular background. A green diagonal line runs from the bottom right corner of the grey rectangle to the right edge of the logo.

**Freeman Freighters Pty Ltd
(In Liquidation)
ACN 006 512 518**

**Annexure "A"
Form 535 Formal Proof of Debt or
Claim**

FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

To the Liquidators of Freeman Freighters Pty Ltd (In Liquidation) ACN 006 512 518

1. This is to state that the company was, on 14 August 2023, ⁽¹⁾ and still is, justly and truly indebted to ⁽²⁾ (full name):

.....
(‘Creditor’)

.....
of (full address)

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

Particulars of the debt are (please attach documents to support your claim e.g. purchase orders, invoices, interest schedules):

Date	Consideration ⁽³⁾ state how the debt arose	Amount \$ (Incl. GST)	Remarks ⁽⁴⁾ 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 ⁽⁵⁾

☐ I am a related creditor of the Company ⁽⁵⁾
relationship:

3A. ^{(6)*} 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. ^{(6)*} 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.

The External Administrators' (whether as Voluntary Administrators/Deed Administrators/Liquidators) will send and give electronic notification of documents in accordance with Section 600G and 105A of Corporations Act 2001. Please provide your email address below:

Contact Name:

Email Address:

DATED this.....day of.....2023

NAME IN BLOCK LETTERS

Occupation.....

Address.....

Signature of Signatory

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	\$
Reason for Admitting / Rejection			
PREP BY/AUTHORISED		TOTAL PROOF	\$
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.



**Freeman Freighters Pty Ltd
(In Liquidation)
ACN 006 512 518**

Annexure "B"
Summary of Receipts & Payments

Summarised Receipts & Payments

Freeman Freighters Pty Ltd

(In Liquidation)

Transactions From 14 August 2023 To 14 November 2023

A/C	Account	Net	GST	Gross
72	Sundry Debtors (B)	1,073,407.47	0.00	1,073,407.47
74	Cash at Bank	224,143.39	0.00	224,143.39
89	Liquidator Indemnity	40,000.00	0.00	40,000.00
227	Unearned Revenue	62,439.71	0.00	62,439.71
Total Receipts (inc GST)		\$1,399,990.57	\$0.00	\$1,399,990.57
132	Bank Charges	30.00	0.00	30.00
138	Insurance	2,000.00	200.00	2,200.00
139	Legal Fees (1)	14,051.50	1,405.15	15,456.65
140	Legal Disbursements	40.91	4.09	45.00
155	Storage Costs	1,177.58	117.77	1,295.35
157	Superannuation	2,167.18	0.00	2,167.18
160	Truck Rental	204.87	20.49	225.36
161	Wages & Salaries	20,538.44	0.00	20,538.44
167	Accounting Fee	7,000.00	700.00	7,700.00
168	Contractor	27,692.41	2,769.28	30,461.69
169	Return of Indemnity	40,000.00	0.00	40,000.00
227	Unearned Revenue	1,675.63	0.00	1,675.63
228	Superannuation Liability	(713.14)	0.00	(713.14)
234 - 1	Withholding Tax (PAYG) - Total Tax Withheld - OTE	(5,262.00)	0.00	(5,262.00)
Total Payments (inc GST)		\$110,603.38	\$5,216.78	\$115,820.16
Balance in Hand - By Bank Account				
212	Cheque Account			1,284,160.41
213	Westpac - Pre-appt Acct			10.00
				\$1,284,170.41



**Freeman Freighters Pty Ltd
(In Liquidation)
ACN 006 512 518**

**Annexure "C"
Comparative Balance Sheets**

Freeman Freighters Pty Ltd
A.C.N. 006 512 518
Balance Sheet
For the Financial Years Ended 30 June 2021 to 30 June 2023 and Part-Year Ended 14 Aug 2023

	EXTERNAL Year Ended 30-Jun-21 (\$)	EXTERNAL Year Ended 30-Jun-22 (\$)	EXTERNAL Period Ended 08-Dec-22 (\$)	MYOB Period Ended 08-Dec-22 (\$)	MYOB Year Ended 30-Jun-23 (\$)	MYOB Period Ended 14-Aug-23 (\$)
ASSETS						
Current Assets						
Cash at Bank	537,183	521,056	145,021	100,802	357,733	224,143
Trade Debtors	911,019	1,699,796	1,917,330	1,919,427	1,434,744	1,234,437
Sundry Debtors	177,372	7,227	138,405	7,227	7,227	7,227
Other Debtors	-	14,717	143,124	-	-	-
Deposits Paid	-	-	-	(8,187)	-	-
PrePaid Insurance	-	-	-	18,438	(18,759)	-
Electronic Clearing Account	-	-	-	24,728	33,051	-
Contra Payment	-	-	-	2,475	-	-
Total Current Assets	1,625,574	2,242,796	2,343,880	2,064,910	1,813,997	1,465,807
Non-Current Assets						
Leasehold Improvements	71,383	71,383	71,383	71,383	71,383	71,383
Less Accumulated Depreciation	(5,355)	(7,144)	(7,144)	-	-	-
Plant & Equipment	337,582	165,114	165,114	165,114	165,114	165,114
Less Accumulated Depreciation	(290,850)	(132,531)	(132,531)	(141,887)	(142,330)	(142,330)
Trucks	-	1,735,945	-	945	-	-
Employee Purchase	-	-	-	-	-	-
Darren Freeman Related Loans						
Freeman Freightlines Pty Ltd	338,000	-	-	-	-	-
NDF Developments	1,793,045	1,832,709	-	-	-	-
DJF Loan Account	1,325,824	2,071,835	233,713	906,021	906,021	906,021
Kevin Yau Related Loans						
Yau Holdings No 2 Pty Ltd	-	-	1,832,709	1,832,709	-	-
Total Non-Current Assets	3,569,629	5,737,311	2,163,244	2,834,285	1,000,188	1,000,188
TOTAL ASSETS	5,195,203	7,980,107	4,507,124	4,899,195	2,814,185	2,465,995
LIABILITIES						
Current Liabilities						
Sundry Creditors	944,968	46,109	36,638	(191)	-	-
Trade Creditors & Accrued Expenses	1,150,469	1,581,404	1,420,465	-	-	-
Yau Freightlines Pty Ltd	-	-	-	151,250	1,114,362	1,376,062
Other Trade Creditors & Accrued Expenses	-	-	-	1,702,189	1,305,069	1,353,840
Superannuation Payable	24,940	74,719	62,212	62,212	112,934	30,182
GST Payable	155,902	140,776	327,458	328,232	72,563	74,633
American Express	-	-	-	-	(43,955)	-
Overpayment of Account	-	-	-	16,130	15,932	10,934
NAB Credit Card #0211	-	-	-	-	33,154	-
Unallocated Payments	-	-	-	1,194	1,194	1,194
Provision for Annual Leave	168,824	171,621	186,736	186,736	206,904	214,713
Provision for Income Tax	121,426	251,644	-	90,545	165,673	-
Sundry Debtor Fuel Rebate	-	-	-	(137,794)	11,237	11,237
Child Support Payable	-	-	-	-	-	-
Provision for Redundancy	-	-	-	-	-	570,711
PAYG Withholdings Payable	-	-	-	(34,256)	118,264	244,807
Payroll Liabilities OSR	-	-	-	18,692	18,492	27,329
Total Current Liabilities	2,566,529	2,266,273	2,033,509	2,384,937	3,131,822	3,915,641
Non-Current Liabilities						
Darren Freeman Related Loans						
Freeman Freightlines Pty Ltd	-	1,881,545	-	-	-	-
Kevin Yau Related Loans						
Kevin Chor Ban Yau	-	-	500,000	500,000	800,000	800,000
Total Non-Current Liabilities	-	1,881,545	500,000	500,000	800,000	800,000
TOTAL LIABILITIES	2,566,529	4,147,818	2,533,509	2,884,937	3,931,822	4,715,641
NET ASSETS	2,628,674	3,832,289	1,973,615	2,014,258	(1,117,638)	(2,249,645)
EQUITY						
100 Fully Paid Ordinary Shares	100	100	100	100	100	100
Retained Earnings	1,853,784	2,628,574	3,832,189	3,633,043	3,633,043	(1,117,738)
Unexplained adjustment on Retained Earnings						
Darren accountant's adjustment on 8/12/2022				(1,659,528)	(1,659,528)	
Offset loan in Yau Holdings No. 2 on 9/12/2022					(1,832,709)	
Belinda's Adjustments on 13/08/2023						69,340
Current Earnings	774,928	1,403,615	473,161	40,643	(1,258,544)	(1,201,348)
Dividends Declared	-	(200,000)	(2,331,835)	-	-	-
TOTAL EQUITY	2,628,812	3,832,289	1,973,615	2,014,258	(1,117,638)	(2,249,645)

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 rectangle.

BRI Ferrier

**Freeman Freighters Pty Ltd
(In Liquidation)
ACN 006 512 518**

**Annexure "D"
Comparative Profit and Loss
Statements**

Freeman Freighters Pty Ltd
A.C.N. 006 512 518
Comparative Profit and Loss Statements
For the Financial Years Ended 30 June 2021 to 30 June 2023 and Part-Year Ended 14 Aug 2023

	EXTERNAL Year Ended 30-Jun-21 (\$)	EXTERNAL Year Ended 30-Jun-22 (\$)	EXTERNAL Period Ended 08-Dec-22 (\$)	MYOB Period Ended 08-Dec-22 (\$)	MYOB Year Ended 30-Jun-23 (\$)	MYOB Period Ended 14-Aug-23 (\$)
Income						
Plant Revenue	-	-	-	2,195,293	4,185,888	331,792
Interstate Revenue	-	-	-	6,394,937	13,190,766	1,277,966
Total Income	15,280,509	18,227,577	8,592,140	8,590,229	17,376,654	1,609,758
Expenses						
General Expenses						
General Expenses	-	11,995	-	-	5,331	(283)
Legal Expenses	32,329	113,159	62,289	62,289	64,709	-
Computer Costs	12,505	9,153	1,429	3,969	8,685	1,408
Insurance	389,289	427,811	198,387	262,636	507,753	54,082
Advertising	1,460	-	6,050	6,050	6,050	-
Non-truck Repairs & Maintenance	55,790	44,259	37,096	37,096	80,391	15,102
Instant Asset Write-Off	-	-	-	-	-	-
Warehouse & Office Rent and Outgoings	355,518	353,418	167,888	193,804	453,747	114,099
Uniforms	10,723	19,034	4,255	4,255	10,314	598
Temporary Staff Hire	25,267	63,765	34,237	41,337	96,578	20,246
Travel Expenses	77,190	92,042	69,102	69,928	96,602	2,407
Subscriptions	3,867	5,732	3,436	3,436	28,356	136
Warehouse Cleaning	7,719	9,281	2,989	6,320	12,649	1,050
Christmas Expenses	-	-	-	-	12,000	-
Bad Debts	-	3,779	-	-	-	-
Professional Services	-	-	-	-	-	-
Carriers	292,191	180,553	157,886	159,430	293,905	38,317
Donations	5,400	10,460	27,800	27,500	27,500	-
Telephone/Internet	30,885	27,279	9,955	9,955	18,013	1,689
Postage	-	-	-	8,466	8,808	-
Printing & Stationary	10,035	12,932	9,889	1,424	7,915	-
Depreciation	89,382	15,165	-	2,212	2,655	-
Non-Deductible Expenses	5,077	6,149	1,726	-	-	-
Garbage Collection	-	-	-	2,989	6,970	833
Motor Vehicle Expenses						
Truck Rental	2,519,635	2,192,290	766,664	982,931	2,390,596	416,751
Fuel	4,023,848	5,935,535	3,266,203	3,272,154	6,674,276	653,423
Truck Repairs & Maintenance	-	-	-	538,875	1,705,848	133,986
Tolls & Parking	405,072	409,324	167,870	167,870	380,028	31,497
Other Vehicle Costs	1,832,958	1,786,065	780,456	340,425	642,056	40,011
Finance Costs						
Accounting Costs	37,476	30,565	42,365	42,365	80,916	10,305
Bank Fees	9,949	6,905	3,637	3,635	6,474	620
Bank Interest Paid	6,692	4,692	6,033	5,312	8,347	3,035
Payroll Expenses						
Superannuation	320,722	335,750	159,441	157,633	323,566	40,364
Employee Expenses Reimbursed	-	-	-	(289)	141	-
Wages & Salaries	4,189,851	4,206,437	1,854,195	1,854,195	4,391,526	1,103,145
Trip Reimbursement	658,348	649,502	279,103	276,001	610,175	76,276
Annual Leave	30,942	2,797	15,114	15,114	35,283	7,809
OSR Payroll Tax	126,095	124,278	74,917	74,917	138,682	-
Staff Amenities	-	-	-	3,591	12,243	425
Staff Recruitment	5,227	16,505	10,163	10,163	20,716	865
Staff Training	132,472	149,443	53,954	49,755	139,318	29,389
Meal Allowance	-	-	-	3,391	13,482	3,598
Total Expenses	15,703,914	17,256,054	8,274,529	8,701,133	19,322,603	2,801,181
Operating Profit	(423,405)	971,523	317,611	(110,904)	(1,945,949)	(1,191,423)
Other Income						
Jobkeeper	696,000	-	-	-	-	-
Interest Received	531	53,173	5,000	-	-	-
Fuel Rebate	691,353	565,846	150,550	149,939	573,601	-
Interest ATO	-	-	-	-	53	-
Rounding Error	-	-	-	(596)	107,555	-
Late Payment Fee	-	-	-	-	(1)	(1,118)
Rent Income	-	-	-	(900)	(900)	-
Service NSW Grant	-	218,852	-	-	-	-
ATO Cashflow Boost	50,000	-	-	-	-	-
Administration fee	-	-	-	4,583	8,334	444
Sundry Income	24,670	10,380	-	-	-	-
Profit on Sale of Assets	-	(1,663)	-	-	245	-
Total Other Income	1,462,554	846,588	155,550	153,026	688,886	(674)
Other Expenses						
Loss on sale of Asset	-	-	-	-	-	-
Income Tax	264,221	414,496	-	-	-	-
Late Payment Fees ATO	-	-	-	1,480	1,480	-
Suspense Account	-	-	-	-	-	701
Total Other Expenses	264,221	414,496	-	1,480	1,480	701
Net Profit / (Loss)	774,928	1,403,615	473,161	40,642	(1,258,544)	(1,192,798)



**Freeman Freighters Pty Ltd
(In Liquidation)
ACN 006 512 518**

**Annexure "E"
Deficiency Statement**

Freeman Freighters Pty Ltd A.C.N. 006 512 518				
	Book Value as at 14/08/2023 (\$)	Director's ERV (per ROCAP) (\$)	Liquidators' ERV (\$)	Deficiency (\$)
Assets				
Cash and Cash Equivalents	224,143		224,143	
Trade Debtors	1,234,437	1,365,739	1,073,407	
Sundry Debtors	7,227			
Plant & Equipment	22,784	100,915	-	
Leasehold Improvements	71,383			
Loan - Darren Freeman	906,021			
Total Assets	2,465,995	1,466,654	1,297,551	
Liabilities				
Secured Creditors	-	-	-	
Priority Creditors	815,606	139,924	616,126	
Unsecured Creditors				
Statutory Creditors	346,769	255,510	286,995	
Related Party Creditors	2,176,062	2,176,062	1,798,895	
Other Unsecured Creditors	1,377,204	1,422,154	1,718,024	
Total Liabilities	4,715,641	3,993,650	4,420,040	
Estimated Net Asset / (Deficiency)	(2,249,645)	(2,526,995)	(3,122,489)	3,122,489

Freeman Freighters Pty Ltd A.C.N. 006 512 518 Deficiency Statement				
		Amount (\$)	Amount (\$)	
Deficiency of Assets to Liabilities				3,122,489
Plus: Contributed Equity		100		
Estimated Total Deficiency of Assets to meet Liabilities				3,122,589
These losses are represented by:				
a) Retained Earnings				
Accumulated Loss as at 30 June 2023		1,048,398		
Current Year Loss as at 14 August 2023		1,201,348		2,249,745
b) Estimated Loss on Realisation of Assets				
	Book Value as at 14/08/2023 (\$)	Liquidators' ERV (\$)	Loss on Realisation (\$)	
Asset				
Cash and Cash Equivalents	224,143	224,143	-	
Trade Debtors	1,234,437	1,073,407	161,029	
Sundry Debtors	7,227	-	7,227	
Plant & Equipment	22,784	-	22,784	
Leasehold Improvements	71,383	-	71,383	
Loan - Darren Freeman	906,021	-	906,021	
Total	2,465,995	1,297,551	1,168,444	1,168,444
c) Increase in Creditor Claims not disclosed in Balance Sheet				
	Book Value as at 14/08/2023 (\$)	Liquidators' ERV (\$)	Unreported Liabilities (\$)	
Liabilities				
Secured Creditors	-	-	-	
Priority Creditors	815,606	616,126	(199,479)	
Unsecured Creditors				
Statutory Creditors	346,769	286,995	(59,775)	
Related Party Creditors	2,176,062	1,798,895	(377,167)	
Other Unsecured Creditors	1,377,204	1,718,024	340,820	
Total	4,715,641	4,420,040	(295,601)	(295,601)
Deficiency as Above				3,122,589



**Freeman Freighters Pty Ltd
(In Liquidation)
ACN 006 512 518**

**Annexure "F"
Estimated Outcome Statement**

Freeman Freighters Pty Ltd (In Liquidation) Estimated Outcome Statement				
	Book Value	ROCAP (\$)	Liquidation	
			High (\$)	Low (\$)
Assets				
Cash and Cash Equivalents	224,143	-	224,143	224,143
Trade Debtors	1,234,437	1,365,739	1,227,452	1,073,407
Sundry Debtors	7,227	-	-	-
Plant & Equipment	22,784	100,915	400,000	-
Leasehold Improvements	71,383	-	-	-
Loan - Darren Freeman	906,021	-	906,021	-
Total Realisations	2,465,995	1,466,654	2,757,617	1,297,551
Realisation Costs				
Wages			18,462	23,077
Contractor Payments			36,492	45,615
Workers Compensation			1,923	2,404
Trading Profit/Loss	-	-	56,877	71,096
Recovery in Liquidation				
Voidable Transactions			-	-
Other Claims				
Ampol Fuel Card Transactions Claims			56,762	-
Dividend declared by the Former Director			2,331,835	-
Extinguishment of Loans owed by Yau Holdings No.2			1,832,709	-
Insolvent Trading Claims			934,856	-
Total Recovery	-	-	5,156,162	-
Less: Administration Costs				
Liquidators Remuneration (Est.)			1,000,000	400,000
Liquidator's Disbursements (Est.)			35,000	25,000
Accounting Fees & Reporting Costs			20,000	10,000
Insurance Broker's Fees			2,000	2,000
Legal Costs			500,000	50,000
Total Administration Costs	-	-	1,557,000	487,000
Estimated Surplus Available for Secured Creditors	2,465,995	1,466,654	6,299,901	739,455
Secured Creditor Claims (Estimated)				
Secured Creditor Claims	-	-	-	-
Total Secured Creditor Claims	-	-	-	-
Estimated Surplus Available to Priority Creditors	2,465,995	1,466,654	6,299,901	739,455
Priority Creditor Claims (Estimated)				
Wages and Superannuation	30,182	6,152	78,182	78,182
Annual Leave & Long Service Leave	214,713	133,772	190,949	190,949
PILN and Redundancy	570,711	-	346,995	346,995
Total Priority Creditor Claims	815,606	139,924	616,126	616,126
Estimated Surplus Available to Unsecured Creditors	1,650,390	1,326,730	5,683,775	123,329
Unsecured Creditors				
Statutory Creditors	346,769	255,510	286,995	286,995
Related Party Creditors	2,176,062	2,176,062	1,798,895	1,798,895
Other Unsecured Creditors	1,377,204	1,422,154	1,718,024	1,718,024
Total Unsecured Creditors	3,900,035	3,853,726	3,803,914	3,803,914
Net Surplus / Deficiency for Creditors	(2,249,645)	(2,526,995)	1,879,862	(3,680,585)

Summary of Return to Creditors			Liquidation	
			High Cents/\$	Low Cents/\$
Secured Creditor			N/A	N/A
Priority Creditors			100.00	100.00
Unsecured Creditors			100.00	3.24



**Freeman Freighters Pty Ltd
(In Liquidation)
ACN 006 512 518**

Annexure "G"
**ASIC Information Sheet – Insolvency
Information for Directors,
Employees, Creditors and
Shareholders**



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.

Last updated: 01/09/2017 10:57

The logo for BRI Ferrier, featuring the text "BRI Ferrier" in white on a dark grey background, with a green diagonal stripe on the right side.

BRI Ferrier

**Freeman Freighters Pty Ltd
(In Liquidation)
ACN 006 512 518**

**Annexure "H"
ARITA Information Sheet –
Offences, Recoverable Transactions
and Insolvent Trading**

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.