

BRI Ferrier

SECOND REPORT TO CREDITORS

**EARLWOOD SMASH REPAIRS PTY. LIMITED
(ADMINISTRATORS APPOINTED)**

ACN: 056 358 233

ABN: 64 056 358 233

13 December 2023

**ANDREW CUMMINS
PETER KREJCI
Joint and Several Administrators**

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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
AP Eagers	A.P Eagers Limited
ANZ	Australia and New Zealand Banking Group Limited
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
BAR	Bespoke Accident Replacement Pty Ltd
COI	Committee of Inspection
CVL	Creditors Voluntary Liquidation
Company	Earlwood Smash Repairs Pty. Limited
DIRRI	Declaration of Independence, Relevant Relationships & Indemnities
DOCA	Deed of Company Arrangement
DPN	Director Penalty Notice
Department	Department of Employment and Workplace Relations
Director	Antonia Bell
FEG	Fair Entitlements Guarantee
First Report	First Report to Creditors issued on 24 November 2023
Former Director	Derek Bell
FOI	Freedom of Information
Firm	BRI Ferrier
GST	Goods and Services Tax
IPR	Insolvency Practice Rules (Corporations) 2016
IPS	Insolvency Practice Schedule (Corporations)
PAYG	Pay As You Go Withholding
POD	Proof of Debt
PPSR	Personal Properties Securities Register
RBP	Relation Back Period
ROT	Retention of Title
ROCAP	Report on Company Activities and Property
SGC	Superannuation Guarantee Charge
VA	Voluntary Administration

INTRODUCTION

We refer to our First Report to Creditors dated 24 November 2023 in which our appointment as Joint and Several Administrators of the Company was advised along with an explanation of the Voluntary Administration process.

The objective of Part 5.3A of the Act is to provide for the business, property and affairs of an insolvent (or likely to become insolvent) company to be administered in a way that maximises the chances of the company, or as much as possible of its business, continuing in existence, or, if this is not possible, results in a better return for the company's creditors than would result from an immediate winding up of the company.

Section 438A of the Act requires that, as soon as practicable, the Administrators must investigate the business, property, affairs and financial circumstances of the Company and form an opinion about each of the following matters:

- ▲ Whether it would be in the Creditors' interests for the Company to execute a DOCA;
- ▲ Whether it would be in the Creditors' interests for the Administration to end; and
- ▲ Whether it would be in the Creditors' interests for the Company to be wound up.

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

COMPANY DETAILS

Name	Earlwood Smash Repairs Pty. Limited (Administrators Appointed)
Incorporated	4 June 1992
ACN	056 358 233
ABN	64 056 358 233
Registered Office	Commercial Associates Level 11, 117 Clarence Street, Sydney NSW 2000
Trading Address	419-431 Canterbury Road, Campsie NSW 2194

ADMINISTRATORS

Name	Andrew Cummins and Peter Krejci
Date Appointed	22 November 2023

ADMINISTRATION CONTACT

Name	Mankirth Mandair
Email	mmandair@brifnsw.com.au
Phone	02 8263 2333

EXECUTIVE SUMMARY

As you are aware, we, Andrew Cummins and Peter Krejci, were appointed Joint and Several Administrators of the Company on 22 November 2023 pursuant to Section 436A of the Act.

Pursuant to Section 439A of the Act, we have convened the Second Meeting of Creditors to be held on **Thursday, 21 December 2023 at 11:00AM AEDT**. Please find attached as **Annexure "1"** the Notice of Second Meeting of Creditors for your information. The meeting will be held in our offices with virtual meeting technology also made available should creditors wish to attend the meeting virtually. Further details on the meeting are disclosed in Section 20 of this report.

We summarise below our observations of the Company's affairs, our preliminary investigations and the potential outcomes for creditors from this Administration process, including scenarios of a Liquidation or a DOCA proposal, which is currently being finalised.

The Company previously operated as an automotive body repair business from leased premises in Campsie, NSW. It has operated since 1992 and specialised in high-end luxury vehicles.

The Company has encountered significant issues pertaining to outstanding statutory debts. An audit of the Company's business in September/October 2023, resulted in a significant reassessment of the Company's liabilities in respect of superannuation and PAYG. This coupled with existing amounts owing to the ATO, resulted in the ATO issuing a Creditors Statutory Demand for Payment for approximately \$3.3M. The Director and Former Director were also issued with Director's Penalty Notices.

Prior to our appointment, the Company entered into a sale of business agreement, which include the purchase of all fixed assets and the assumption of employee entitlements and trading liabilities. However, the sale excluded statutory liabilities pertaining to the ATO, Revenue NSW and Worker Compensation.

We have conducted preliminary investigations into the Company's affairs, in particular, we have reviewed the sale of business. This investigation has raised concerns regarding the fair value of the consideration to be paid for the business. We have made various enquiries with the Company's accountant and have requested access to the Company's books and records. To date, we have received only a limited quantity of the records which are insufficient to satisfy our enquiries.

As a result of the upcoming holiday period, we have shorten timeframe for the issuance of this Report. As such, we have determined that it is appropriate to grant further time to the Director to provide further information and records.

We have also engaged with the Director's legal advisor regarding a DOCA proposal. The Director is keen to put forward a proposal to deal with creditors' claims however, requires further time to finalise this proposal.

For these two reasons, we believe that we are justified in recommending that the upcoming meeting be adjourned.

The Company is insolvent and as no DOCA has been proposed at this stage for creditors to consider, we must recommend that the Company be placed into Liquidation. However, we believe that it is in creditors interests for the administration to be extended to provide sufficient time for the Director to finalise her proposal for a DOCA.

1. BASIS OF REPORT

This report has been prepared primarily from information received from the Company's Director and external advisors to the business/Director.

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 Director's advisor;
- ▲ The ROCAP and questionnaire forms completed by the Director;
- ▲ Extracts from public information databases;
- ▲ Correspondence with creditors; and
- ▲ Documents obtained from the ATO in relation to the Company.

2. DISCLAIMER

This Report and the statements made herein are based upon available books and records, information provided by the Company's Director, advisors, and from our own enquiries. 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.

In considering the options available to Creditors and in formulating our recommendations, we have necessarily made forecasts and estimates of asset realisations and the ultimate quantum of Creditors' claims against the Company where appropriate. These forecasts and estimates may change as asset realisations progress and as Creditors' claims are made and adjudicated upon. Whilst the forecasts and estimates are the Administrators' best assessment in the circumstances, Creditors should note that the Company's ultimate deficiency, and therefore the outcome for Creditors could differ from the information provided in this Report.

Neither the Administrators 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 forecasts, estimates and assessments made for the purposes of these Reports.

Should any Creditor have material information in relation to the Company's affairs which they consider may impact on our investigation or Reports, please forward the details to our office as soon as possible.

3. DECLARATION OF INDEPENDENCE, RELEVANT RELATIONSHIPS AND INDEMNITIES

A DIRRI pursuant to Section 436DA of the Act was enclosed in the First Report. The DIRRI records that we undertook a proper assessment of the risks to our independence prior to accepting the appointment. There is no update required to the DIRRI.

4. CORPORATE INFORMATION

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

4.1 COMPANY DETAILS

Company Name	Earlwood Smash Repairs Pty. Limited
ABN	64 056 358 233
ACN	056 358 233
Incorporation Date	4 June 1992
Registered Address	Commercial Associates Level 2, 223 Castlereagh Street, Sydney NSW 2000
Principal Place of Business	419 - 431 Canterbury Road, Campsie NSW 2194

4.2 OFFICEHOLDERS

Name	Position	Appointed	Ceased
Antonia Bell	Director/Secretary	7/10/2020	Current
Derek Bell	Former Director/ Former Secretary	9/06/1992	7/10/2020

4.3 SHARE STRUCTURE AND SHAREHOLDERS

Name	Share Class	Number of Shares	Fully Paid Up	Status
Bell Truco Pty Limited	ORD	2	Y	Current
Adseti Pty. Limited	ORD	2	Y	Former
Derek Bell	ORD	1	Y	Former
Antonia Bell	ORD	1	Y	Former

4.4 CURRENT REGISTERED SECURITY INTERESTS

A search of the PPSR indicates the following registered security interests:

Registration Number	Secured Party	Start Date	Collateral
201112290312341	Macquarie Leasing Pty Ltd	30/1/2012	Motor Vehicle
201209070051369	Eastern Suburbs Factoring Pty Ltd	7/9/2012	Negotiable Instrument
201507280015382	Tynan Motors Pty Ltd	28/7/2015	Other Goods
201711100029723	Prestige Motors (Northshore) Pty Limited	10/11/2017	Other Goods
202310060050086	A.P Eagers Limited	6/10/2023	Other Goods

Please refer to Section 10.2.1 of this report for further comments on the above.

4.5 LEGAL PROCEEDINGS AGAINST THE COMPANY

Pursuant to Section 440D of the Act, upon our appointment as Administrators, all proceedings are automatically stayed.

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

4.6 DIRECTORS RELATED ENTITIES

The Director holds no other current directorships or any other directorships in the previous 2 years.

5. COMPANY HISTORY AND EVENTS LEADING UP TO ADMINISTRATION

The following information was obtained from the Company's books and records, enquiries with the external accountant and legal advisor and our own enquiries:

- ▶ The Company previously operated an auto body repair business from leased premises in Campsie, NSW.
- ▶ The services provided were automotive repair, maintenance and aftercare, accident management and body shop.
- ▶ It specialised in high-end luxury vehicles including Porsche and BMW.
- ▶ Prior to our appointment, the Company entered into a sales agreement with BAR.
- ▶ The sale of business agreement encompassed all available assets of the Company for an amount of \$76,750 and the assumption of outstanding trading liabilities. Further details regarding the sale of business are discussed in Section 8 of this report.
- ▶ Around late September 2023, the Company was subject to an audit by the ATO, in respect of unpaid superannuation. The audit resulted in a significant liability of \$128K. The Director attributes this audit and subsequent reassessment of liabilities to be the primary cause of the Company's failure.
- ▶ In early November 2023, the Company was issued with a Creditors Statutory Demand from the Deputy Commissioner of Taxation. In addition, the Director and Former Director were issued with DPN regarding unpaid Superannuation and PAYGW tax.
- ▶ The DPNs' appear to relate to historical debt from as early as April 2016 in respect of PAYG and GST and Superannuation Guarantee Charge from April 2019.
- ▶ The Company was not able to immediately satisfy these demands for payment and accordingly the Company was placed into Voluntary Administration.

6. REASONS FOR FAILURE

The Director in her ROCAP has advised the failure of the Company is attributable to the large ATO debt incurred by the Company. Further, that an ATO audit was performed in September/October 2023 resulting in a significant liability which the Company was unable to meet. The Company employed an administrative assistant who was made responsible for the maintenance of management accounts. However, as they were overworked, the management accounts were not properly maintained.

Whilst we do not disagree with the above, our investigations into the Company's affairs suggest the reasons for failure being:

- ▶ The Company has a significant history of unpaid statutory liabilities, with the outstanding GST and PAYG debt dating back to as early as April 2016. The recent audit only compounded the Company's liability.
- ▶ Poor financial control including a lack of records, where the Company appears to have a history of late lodgements with the ATO. This is supported by the lockdown DPN issued to the Director and Former Director for late lodgements. In addition, we have noted that the Company failed to lodge Income Tax Returns since 30 June 2018 (with exception of the FY20 return), PAYG payment summaries for FY16, FY 17, FY18 and Business Activity Statements for the period 1 July 2023 to the date of our appointment.
- ▶ Trading losses and accumulated losses since FY19, and Business Activity Statements recording payments consistently exceeding sales.

7. CONDUCT OF THE ADMINISTRATION

We have attended to the following major tasks during this appointment:

- ▶ Communicated with creditors regarding their claims and the recent sale of business;
- ▶ Conduct a review and investigated the sale of business agreement entered into with BAR;
- ▶ Secured limited books and records of the Company and conducted a review of the records;
- ▶ Liaised extensively with the Company's accountant to obtain Company records and conduct enquiries in respect of the records;
- ▶ Liaised with the Company's legal advisors regarding the formulation of a DOCA proposal for creditors consideration;
- ▶ Liaising with PPSR holders regarding their security interests and ROT claims, and arranging for the removal of their security interests, where appropriate;
- ▶ Convened the first meeting of creditors, where our appointment as Voluntary Administrators was confirmed, and it was agreed there was no need to form a Committee of Inspection;
- ▶ Perform a review of the Company's financial statements and make further enquiries where appropriate.

8. SALE OF BUSINESS

Immediately prior to our appointment, the business of the Company was sold to BAR. Given the proximity of the sale to our appointment, we have endeavored to fully investigate the terms of the sale. Overall, the terms of the sale are as follows:

- ▶ Purchase price of \$76,750 in instalments of \$26,750 on execution of the agreement, \$25,000 on or before 29 February 2024 and \$25,000 on or before 30 April 2023.
- ▶ The business is purchased on a walk in/walk out, going concern basis and includes all stock in trade, intellectual property and plant and equipment.
- ▶ The plant and equipment is valued at \$76,750, based on a valuation performed by Nirav Shah of Monita Valuation & Advisory dated 19 June 2023.

- ▲ Endeavour Capital subsequently performed a valuation of the business (and the assets) and determine that due to the large carry forward losses that an appropriate valuation of the business was on a liquidation valuation method.
- ▲ BAR has also agreed to pay trading debts of the business and has assumed liability for outstanding employee entitlements.

The initial deposit of \$26,750 was paid to the Company's preappointment bank account and the administrators have secured this amount by transferring the balance of the account to the administrators' bank account.

Our primary concerns are around the consideration paid and if the sale has been for fair value. We have made a number of enquiries, which at this stage have not been sufficiently addressed. We have detailed below the primary concerns around the sale.

- ▲ The sale to BAR is a non arm's length transaction, BAR is controlled by the director's son.
- ▲ The business valuation relies on financial information which is approximately 18 months old and unlikely to be an accurate reflection of its current financial position. We are also aware of material misstatements in the FY22 accounts.
- ▲ The business valuation has been undertaken on the basis that only fixed assets are sold. However, the sale has been undertaken to include all available assets including the business name, trade receivables, as well as an investment in a joint venture.
- ▲ We have attempted to compare the assets included in the sale of business agreement with the depreciation schedule in the FY22 financial statements, however, we have been unable to reconcile them as the depreciation schedule lacks sufficient details of plant and equipment acquired over 10 years previously.
- ▲ The sale agreement also provides that BAR will be responsible for the payment of selected creditors. Debts owing to statutory creditors have been excluded from the sale.
- ▲ We have been unable to verify the calculation of employee entitlements assumed under the sale. A significant portion of the entitlements are outstanding to the directors.

We are assured that further information in relation to the sale will be forthcoming. We will be in a position to make further comments once this information is received.

9. HISTORICAL FINANCIAL INFORMATION

We have reviewed the Company's available financial statements for the years ended 30 June 2019, 30 June 2020, 30 June 2021 and 30 June 2022.

We are advised that financial accounts for the year ended 30 June 2023 have not been prepared. We have reviewed the Company's bank statements so as to understand the Company's operations over the last 18 months.

Based on the Company's bank statements it appears that there was little to no trading undertaken by the Company in the last 18 months. However, we have been provided with a trade payables ledger which show liabilities have been incurred over the previous 3 months. These represent the debts assumed by the purchaser, BAR.

However, there are other indicators that the Company remained in operation. The Company continued to incur liabilities (as evidenced by the ATO and Revenue NSW tax records and creditors' claims).

Our observations are as follows:

- ▲ The Company's financial performance improved from FY21 to FY22, with increased sales and a smaller operating loss.
- ▲ Since FY20, sales have increased from \$1.8M to \$5.3M, however COGS have remained constant, resulting in improvements to its gross profit margin.
- ▲ The Company has reported significant year end losses since the financial year end 30 June 2019, with accumulated losses of \$9.6M since FY19.
- ▲ There are significant increases in office expenses from FY21 (\$17,416) to FY22 (\$102,281). We are advised that this was for office repairs and maintenance and some minor renovations.
- ▲ A significant portion of the losses recorded in FY21 and FY22, can be attributed to the payment of a service charge in each year of approximately \$1M. We are advised the payments were made to BAR for the provision of services. It is unclear what services were provided, given that employee related liabilities including PAYG, superannuation and payroll tax continued to accrue.
- ▲ Salary and Wages make up approximately 50% of the Company's overall operating expenses, but the Company's bank statements show limited payments to employees.

10. CURRENT FINANCIAL POSITION

Contained in this section is our analysis of the current financial position of the Company, with regard to the Director's ROCAP, available financial records and our enquiries to date.

We have included below the assets and liabilities of the Company as reported in the latest Financial Statements as of 30 June 2022, the Director's ROCAP and our projections as to likely current position.

	Report Reference	Book Value as at 30/06/2022 (\$)	Director's ERV (per ROCAP) (\$)	Administrators' ERV (Low) (\$)
Assets				
Cash and Cash	10.1.1	20,383.00	-	48,759.61
Trade Receivables	10.1.2	124,120.00	-	-
Fixed Assets	10.1.3	230,313.00	-	-
Prepayment	10.1.4	110.00	-	-
Equity in joint ventures	10.1.5	9,778.00	-	-
Total Assets		384,704.00	-	48,759.61
Liabilities				
Secured Creditors	10.2.1	-	-	-
Priority Creditors	10.2.2	-	-	202,183.60
Unsecured Creditors:	10.2.3			

Report Reference	Book Value as at 30/06/2022 (\$)	Director's ERV (per ROCAP) (\$)	Administrators' ERV (Low) (\$)
Statutory Creditors	2,828,370.00	3,370,225.51	3,211,820.33
Related Party Loans	6,455,336.00	6,455,336.00	6,455,336.00
Other Unsecured Creditors	786,068.00	-	-
Total Liabilities	10,069,774.00	9,825,561.51	9,869,339.93
Estimated Net Asset / (Deficiency)	(9,685,070.00)	(9,825,561.51)	(9,820,580.32)

10.1 ASSETS

10.1.1 Cash and Cash Equivalents

The Company held two bank accounts with ANZ with funds totalling \$48K which has been secured. These funds include \$26K, which represents the first tranche of funds due under the sale of business.

Our enquiries have not located any other bank accounts held by the Company.

10.1.2 Trade Receivables

The Company's FY22 statements reported trade receivables of \$20K. We understand the sale of the Business resulted in all the assets (including debtors) of the Company being transferred to BAR. The sale of business agreement does not provide any details of trade receivables. We have requested the Company's external accountant to provide further details on the trade receivables transferred.

10.1.3 Fixed Assets

The fixed assets represent the property plant and equipment of the smash repair business. We have been provided a depreciation schedule which supports the carrying value of plant and equipment, property improvements, motor vehicles and office fit out. Please refer to Section 8 of this report in regard to our further comments on the fixed assets, its valuation.

We are still awaiting a response to our search of the Transport NSW database. The depreciation schedule attached the FY22 financial statements indicates two (2) motor vehicles. We are not aware if these motor vehicles have been disposed/sold prior to our appointment or form a part of the sale of Business.

10.1.4 Prepayment

The Company's FY22 financial accounts reported prepayments of \$110. Given the time since this prepayment and its relatively low value, it is likely to have no realisable value.

10.1.5 Equity in Joint Ventures

The Company's FY22 financial account reported \$9k in equity in joint ventures. We are advised by the Company's accountant that the investment was immaterial and that he did not make enquiries in respect of its existence. He also advised that it is possible that the investment was settled 'years ago'

was not written off and therefore has been incorrectly carried forward year on year. Further investigations regarding its existence and realisable value are ongoing.

10.2 LIABILITIES

10.2.1 Secured Creditors

Correspondence was issued to all the secured parties requesting documentation to validate their claims.

Macquarie Leasing Pty Ltd, Tynan Motors Pty Ltd, Prestige Motors (Northshore) Pty Limited and Eastern Suburbs Factoring Pty Ltd have advised that have no outstanding debts owing from the Company and accordingly have provided us with confirmation that they have discharged their security interest on the PPSR.

AP Eagers initially advised of a claim of \$6,242.11, in relation to a supply of parts under a ROT arrangement. Under the sale of business agreement, the debt had been assumed by BAR. We were subsequently advised on 6 December 2023, that A.P Eagers had been paid out and no longer had a claim. They have subsequently discharged their security interest and withdrawn their Proof of Debt.

10.2.2 Priority Creditors

The ROCAP discloses the Company owed no amounts to priority creditors. The sale of business notes that the Company assumed outstanding employee entitlements.

However, the ROCAP also discloses a \$3.3M debt outstanding to the ATO. This claim includes a priority claim of \$202,183.60 in respect of unpaid SGC. This amount is afforded a priority claim under Section 556 of the Corporations Act.

10.2.2.1 Fair Entitlements Guarantee

In a Liquidation scenario, employees may be eligible to apply to the Federal Government, which has established a safety net scheme known as FEG, for payment of their outstanding entitlements (other than superannuation). FEG is administered by the Department of Employment and Workplace Relations for eligible employees who have been terminated as a result of their employer's insolvency and are owed entitlements. The FEG scheme is not available in a DOCA scenario.

For an employee to be eligible to claim outstanding entitlements under FEG:

- The employee must be an Australian citizen or permanent resident (contact FEG for further details); and
- The end of their employment must be due to the insolvency of the employer; or have occurred less than six (6) months before the appointment of an insolvency practitioner; or occurred on or after the appointment of an insolvency practitioner.

Employees may submit claims in respect of the following entitlements, provided they are entitled to claim under their respective industrial instrument, contract of employment or by any other means:

- ▲ Up to thirteen (13) weeks unpaid wages for the period ending at the earlier of the date on which employment ended or the appointment of an insolvency practitioner;
- ▲ Unpaid annual leave and long service leave;
- ▲ Up to a maximum of five (5) weeks unpaid payment in lieu of notice;
- ▲ Up to a maximum of four (4) weeks redundancy entitlement for each completed year of service.

In calculating employee entitlements payable under the scheme, the maximum annual wage applies.

FEG will not cover:

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

Please note that FEG will only assess claims if the Company is placed into Liquidation.

Should you wish to obtain further information, FEG may be contacted reached on 1300 135 040. Alternatively, you may visit their website at: <https://www.dewr.gov.au/fair-entitlements-guarantee>

10.2.3 Unsecured Creditors

10.2.3.1 Statutory Creditors

Statutory Creditors may be owned approximately \$3.2M, subject to further enquires and adjudication of claims. Below is a breakdown:

Unsecured Creditors	Directors' ERV (per ROCAP) (\$)	Administrators' ERV (\$)
Australian Taxation Office	3,307,827.08	3,112,462.60
Revenue NSW	62,398.43	64,905.14
Workers Compensation Nominal Insurer	-	34,452.59
Total	3,370,225.51	3,211,820.33

10.2.3.2 Australian Taxation Office

As previously discussed, the ATO issued DPNs' to the Director and the former Director for outstanding superannuation and PAYG.

The ATO has submitted a POD of \$3.3M of which \$3.1M relates to unpaid GST and PAYG. The balance of \$202K relates to Superannuation Guarantee Charge which is discussed above in Section 10.2.2.

10.2.3.3 Revenue NSW

Revenue NSW has submitted a POD of \$64K for outstanding payroll tax owing from FY23.

10.2.3.4 Related Party Loan

The ROCAP indicates a loan advanced to the Company by the Director totalling \$6,4M. We haven't been advised on the terms of the loan and have not been provided with no information whatsoever regarding it.

10.2.3.5 Other unsecured Creditors

We have not been advised of any other claims in the administration than the ones discussed above. As mentioned earlier, the sale of business resulted in BAR assuming all the debts of the Company.

Notwithstanding the above, should you have a claim in the administration of the Company, please complete the POD form attached as Annexure 2.

11. PRELIMINARY INVESTIGATIONS

11.1 OVERVIEW

During the course of the Administration, we have conducted investigations into the affairs of the Company to ascertain whether there are any transactions that appear to be voidable, or other causes of action available whereby money, property or other benefits may be recoverable by a liquidator pursuant to Part 5.7B of the Act, in the event that creditors resolve to wind up the Company. Creditors should be aware that an Administrator does not have the power to recover voidable transactions or take action for insolvent trading.

11.2 INVESTIGATION CONSTRAINTS

The Act sets out a strict timeline for the reporting of an Administrator's investigations of an insolvent company's affairs prior to the second meeting of creditors.

As such, our investigations into the Company's affairs are preliminary at this stage. The interim findings discussed below are based on the available records reviewed (or lack thereof) and time constraints. A Liquidator would conduct more detailed investigations, provided that necessary funding is available.

There are also a number of discrepancies regarding the limited records received to date. In the bank statements received to date compared with other records, we have observed the following:

- ▲ The Company is recording significant employee related liabilities, including PAYG, Workers Compensation, superannuation, payroll tax liabilities however, we have not observed wages being paid from the Company's bank accounts.
- ▲ Sales are recorded in the Company's financial statements as well as Business Activity Statements however, the bank statements show very little to no deposits in respect of sales, and do not indicate the level of sales claimed.

- ▶ The bank statements also show little to no expenditure incurred in relation to parts, paint and other costs of goods.

11.3 BOOKS AND RECORDS

Section 286 of the Act provides that:

“A company, registered scheme or disclosing entity must keep written financial records that:

- (a) correctly record and explain its transactions and financial position and performance; and
- (b) 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 were not maintained (Section 588E of the Act).

The books and records received comprise of the following:

- ▶ Externally prepared financial statements for FY19 to FY22;
- ▶ Completed ROCAP and director’s questionnaire;
- ▶ Copies of the DPNs’ issued to the Director and Former Director;
- ▶ Copy of the sale of business agreement; and
- ▶ Limited bank statements.

Late in the afternoon of 12 December 2023, we received further information from the Company’s accountant.

- ▶ Employee tax file number declaration forms;
- ▶ Business Activity Statements for the period 1 July 2019 to 30 June 2023;
- ▶ Company tax return for FY20;
- ▶ ATO’s Running Balance account in relation to GST/PAYG and SGC;

We have had insufficient time to properly review the additional records received. However, the Company’s external accountant has advised that the financial statements of the Company have been prepared up to FY22. They also advised that the FY23 financial statements have not yet been prepared and that Company does not maintain any management accounting system to track receipts and payments. He has advised that financial statements are prepared based on the Company’s bank statements, but at this stage we have yet to receive all the bank statements. From the bank statements received, we have been unable to reconcile the bank statements to the financial statements prepared.

Notably, we would expect that the Company would maintain at least the following records:

- ▶ Payroll records and employment contracts;
- ▶ Supplier and Customer agreements;

- Management accounts (including general ledger) to record receipts and payments and support the preparation of Financial Statements; and
- Company Tax Returns (and working papers to support).

Our correspondence with the external accountant also indicates that there are errors in the financial statements prepared for FY22.

The records of the ATO also indicate a history of late lodgements of statutory returns. Further, that the Company has failed to lodge tax returns for 5 of the 6 previous financial years.

Accordingly, our preliminary view is that the Company may not have kept sufficient books and records to prepare true and fair financial statements. As such, it may have breached the requirements of Section 286 of the Act. Further, the lack of records generally have made it difficult to complete our investigations. We note that if further records become available, we will provide details in a subsequent report.

11.4 RISK OF LITIGATION ACTION GENERALLY

Part 5.7B of the Act gives liquidators (but not administrators) the right to commence certain legal proceedings to recover money, property or other benefits for the benefit of the Unsecured Creditors of a company.

Creditors should note that recovery actions:

- have the potential to increase the pool of funds available to Creditors;
- are usually expensive, lengthy and have unpredictable outcomes;
- should not be commenced unless defendants have the financial resources to satisfy any judgement; and
- must be funded out of the Company's existing assets or, where such assets do not exist, by Creditors or by external litigation funders (who are likely to require a significant share of the proceeds of any judgement as a condition of funding the litigation).

11.5 INSOLVENCY & INSOLVENT TRADING (SECTION 588G)

The Act prohibits Insolvent Trading and provides that Directors can be required to compensate Creditors for losses they suffer because of Insolvent Trading by making a payment to a Liquidator of the Company. We have considered the prospects of such a claim, as it is one that is only available if creditors decide that the Company should be placed into Liquidation, and so may be relevant to the decisions Creditors take at the forthcoming Second Meeting of Creditors.

11.5.1 What Is Insolvent Trading?

Insolvent Trading is the incurring of a debt or liability at a time when the Company is insolvent and when the Director(s) have reasonable grounds to suspect, or a person in their position would have suspected, that the Company was insolvent.

If such a debt or liability is incurred, a Court may require the Director(s) to pay an amount of compensation to a Liquidator of the Company equal to the loss suffered by creditors. In determining that loss, it is necessary to have regard to any amount that may be recovered from the Company's assets or from the recovery of other claims such as Unfair Preferences.

Recovery for Insolvent Trading is only available in a Liquidation. A claim may be brought by a Liquidator, or, if, but only if, the Liquidator declines to pursue a claim, by one or more Creditors.

A Liquidator pursuing a claim must:

- demonstrate Insolvency
- show that the Director(s) suspected, or should have suspected, insolvency
- show that a debt or liability was incurred
- show the debt or liability has not been paid, so that the creditor has suffered loss.

A Director accused of Insolvent Trading can answer a claim by showing that:

- the Director had reasonable grounds to believe the debt would be paid; and/or
- the Director relied on information from another reliable person to believe the debt would be paid; and/or
- the Director did everything he or she could to avoid the incurring of the debt; and/or
- the Director was not participating in the management of the Company for some good reason, such as illness; and/or
- the Director was acting honestly and reasonably and, notwithstanding that a debt or liability was incurred that will be unpaid, he or she should be excused from liability; and/or
- the Director may assert a defence that they have relief from insolvent trading by way of using the Safe Harbour regime contained in the Corporations Act.

Litigation in respect of Insolvent Trading is carried out in the ordinary civil courts. This means that the costs of pursuit of a claim are borne by the Liquidator, who uses the Company's assets and may enter into a form of borrowing called "litigation funding" to do so, or may ask creditors to make a voluntary contribution to the pursuit of a claim.

If a claim is successful, some of the costs, but not all of them, may also be ordered to be paid by the Director(s). If the Liquidator fails in some or all of the claim, he or she may be ordered to pay some, or all of the costs incurred by the Director(s) in defending the claim. Because of this, in practice Liquidators can only pursue claims where they have funds available to meet both their own and the Defendants' costs, or they have the benefit of "insurance" against costs provided either by creditors or a commercial litigation funder.

If the Company has no assets and neither a litigation funder nor creditors are willing to fund the litigation, no claim can be pursued. Litigation in respect of Insolvent Trading can be expensive, slow

and risky. The Liquidator, funder and creditors are exposed to the risk that if the Director(s) are found liable, they may be unable to meet the judgment against them.

Where a Company is a subsidiary of another Company, a claim can also be brought against the holding Company.

11.5.2 Insolvency

One important element of liability for Insolvent Trading is if, and when, the Company became insolvent.

Section 95A of the *Corporations Act* defines solvency as follows:

“95A(1) [when person is solvent] A person is solvent if, and only if, the person is able to pay all the person’s debts, as and when they become due and payable.

95A(2) [insolvent person not solvent] A person who is not solvent is insolvent”.

Under Australian law, the test of insolvency is a “cashflow” test: it is focused on whether, in commercial reality, a company is able to meet its liabilities as and when they fall due for payment. The forensic assessment of insolvency, and preparation of a case on insolvency, involves a thorough, and costly, examination of the Company’s business, its market, its relationships with its customers, lenders, suppliers, owners and with regulators. Where a Company has had expectations of support from related parties, that support is a factor that has to be considered in the context of insolvency.

In elaborating on the cashflow test of insolvency, the Courts have provided extensive commentary on the subject to determining insolvency. One of the leading authorities is the judgment of the Victorian Supreme Court in *ASIC -v- Plymin*, in which Justice Mandie, relying on Expert Evidence, identified the following 14 indicators of insolvency:

- Continuing Losses;
- Liquidity ratios below 1;
- Overdue Commonwealth and State taxes;
- Poor relationship with present Bank, including inability to borrow further funds;
- No access to alternative finance;
- Inability to raise further equity capital;
- Suppliers placing company on COD, or otherwise demanding special payments before resuming supply;
- Creditors unpaid outside trading terms;
- Issuing of post-dated cheques;
- Dishonoured cheques;
- Special arrangements with selected creditors;

- ▶ Solicitors' letters, summons(es), judgements or warrants issued against the company;
- ▶ Payments to creditors of rounded sums which are not reconcilable to specific invoices;
- ▶ Inability to produce timely and accurate financial information to display the company's trading performance and financial position and make reliable forecasts.

Comprehensive forensic insolvency assessment requires the review of each of these indicators, as well as the Company's business, to answer the question "was it able to pay its debts as and when they fell due".

As part of reporting to you about Insolvent Trading we are required to form a preliminary view about when the Company became insolvent. Our opinion is necessarily formed summarily: a forensic analysis of insolvency would be more thorough, more expensive and slower than the Voluntary Administration process ordinarily permits. We have set out our views below.

11.5.3 Director's Knowledge

As well as insolvency, a Liquidator must also show when the Director suspected, or ought to have suspected, that the Company was insolvent. If a claim is brought, this will normally involve the comprehensive review of company records to show when the Director(s) first learnt of circumstances that could indicate insolvency. That review is typically thorough and expensive. Again, for the purpose of reporting to you we are required to make a summary assessment of when suspicions were or should have been formed. We have set out our views in this respect below as well.

11.5.4 Loss

Only losses *incurred* at or after the time of insolvency can form the basis of a claim, although all unpaid unsecured creditors are entitled to share in any recovery after costs. A debt or liability is "incurred" when the last event that could have avoided the liability arising occurs. For example, taking delivery will normally be the time at which a debt for the supply of goods is incurred.

Liabilities that have fallen due, but which were not freshly incurred during the period of insolvency cannot form the basis for a claim. Such liabilities commonly include ongoing contracts of employment, long term leases and hire-purchase arrangements, guarantees, loans and long-term supply and construction contracts.

11.5.5 Litigation and Funding

As noted above, if a Company does not have significant assets, a Liquidator contemplating bringing a claim for Insolvent Trading will only be able to pursue a claim if either Creditors or a commercial Litigation Funder is willing to fund the Liquidator's Legal and Accounting Costs and meet any costs the Liquidator may be liable to pay if the claim is unsuccessful.

Funding of this sort can be arranged as follows:

- ▶ A creditor or creditors may contribute funds for additional investigations and litigation. Such creditors need to indemnify the Liquidator against any adverse cost orders should the litigation prove unsuccessful. However, should the litigation be ultimately successful,

creditors who have funded the litigation may apply to the court to have their claim met in priority to other creditors not participating in the funding arrangement; and/or

- ▲ The Liquidator may request funding from an independent, specialist litigation funding firm. Generally, the litigation funder is compensated for its risk by receiving a share of up to 30 - 40% from any recoveries arising out of the litigation, where there is usually a minimal return (being a multiple of the risk) also required by the funder. Litigation funding is expensive in this regard, and therefore only feasible where the possible recoveries are significant.

11.5.6 Legal controversy

There are two (2) controversial areas of insolvency law that bear on the Company. These are:

- ▲ Set-off. Traditionally courts have not allowed set-off of claims such as those for Insolvent Trading. However, in modern cases the Courts have been more generous to parties owing money to an insolvent Company. They have said they would allow the setting off of claims by parties liable to make payments to Liquidators of amounts owed to them by the insolvent Company. This matter remains an unresolved issue at law.
- ▲ Financial Support. Until 1993, the test of insolvency in Australia required that a Company be able to meet its liabilities *from its own monies*. This requirement was removed in 1993. Subsequently, the Courts have held that the provision of “financial support” by a related party can be a basis on which a Company is solvent when, without that support, it would clearly be insolvent. Where solvency is disputed, the Court’s inquiry needs to extend to the nature and extent of that support. This remains a controversial issue in insolvency law.

11.6 ASSESSMENT OF INSOLVENCY

Our assessment has been based on the information available to us from the Company’s records, from information provided by the Company’s external accountant, the Director’s advisor, and Creditors and on the basis of separate investigations of the Company’s affairs. As noted above, this assessment has been undertaken on a preliminary basis. If the Company is placed into Liquidation and litigation were contemplated, we would need to undertake a more thorough and rigorous assessment. We would also need to obtain legal advice and gather substantial further evidence, including potentially holding public examinations of the relevant parties.

Based on our investigations conducted to date, it is our preliminary view that the Company has been insolvent from at least 1 July 2018 or earlier based on a balance sheet and cash flow basis. Below is our assessment of insolvency.

11.6.1 Continuing Losses

Continuing losses may indicate that the Company is unable to generate sufficient cash flows from its operations to pay its debts as and when they fell due and payable.

We refer to Section 9 of this report regarding our commentary of the Company's historical financial performance and the following extract of the profit and loss statements of the Company from FY19 to FY22.

	Year Ended 30-Jun-22 (\$)	Year Ended 30-Jun-21 (\$)	Year Ended 30-Jun-20 (\$)	Year Ended 30-Jun-19 (\$)
NET OPERATING PROFIT (LOSS)	(694,410)	(917,132)	(2,900,971)	(2,771,237)
Retained Profits (accumulated losses) at the beginning of the financial year	(8,990,662)	(8,073,530)	(5,172,559)	(2,401,321)
TOTAL AVAILABLE FOR APPROPRIATION (DEFICIT)	(9,685,072)	(8,990,662)	(8,079,530)	(5,172,559)
RETAINED PROFITS (ACCUMULATED LOSSES) AT THE END OF THE FINANCIAL YEAR	(9,685,072)	(8,990,662)	(8,073,530)	(5,172,559)

The Company's accumulated loss at FY22 of \$9.6M may indicate that the Company was unable to generate sufficient cash flow from its operations to enable payments of debts as and when they fell due.

11.6.2 Financial Statement Analysis

We refer to Section 9 regarding our commentary of the Company's historical financial position and financial performance.

The working capital analysis has been prepared based on our review of the Company's financial accounts. As noted earlier, these accounts are only available up to FY22. The financial statements for FY23 have not been prepared and the Company did not maintain any management accounts.

	Year Ended 30-Jun-22 (\$)	Year Ended 30-Jun-21 (\$)	Year Ended 30-Jun-20 (\$)	Year Ended 30-Jun-19 (\$)
Current Assets	144,613	59,495	285,009	216,190
Current Liabilities	3,614,438	2,637,961	1,826,933	1,811,136
Net Working Capital	(3,759,051)	(2,697,456)	(2,111,942)	(2,027,326)
Current Asset Ratio	0.04	0.02	0.16	0.12

We make the following observations in relation to the liquidity of the Company:

- ▲ The Company consistently reported a current asset ratio of below 1, with insufficient working capital, since at least 30 June 2019;

- Current Assets however, do not include details of raw materials, stock and work in progress. This is quite unusual given that the nature of the business;
- The Company's main current asset is its trade receivables. Without an aged receivables ledger, it is difficult to comment on the respective balances, including the collectability of these debtors;
- The significant increase in the current liabilities from FY 21 to FY 22 is mainly due the increase in the Company's GST and PAYG liabilities.

The Company has also recorded a significant deterioration in its net asset position as follows:

Net Asset Position	Year Ended 30-Jun-22 (\$)	Year Ended 30-Jun-21 (\$)	Year Ended 30-Jun-20 (\$)	Year Ended 30-Jun-19 (\$)
Assets	384,704	368,625	547,589	517,205
Liabilities	10,069,774	9,359,285	8,621,117	5,689,762
Net Asset Position	(\$9,685,070)	(\$8,990,660)	(\$8,073,528)	(\$5,172,557)

We make the following comments:

- The Company has recorded a negative net asset position since FY19.
- The Company's main non-current assets are its property plant and equipment, with a carrying amount of \$230K in FY22. These assets have subsequently been valued and have been assigned a realisable value of \$76K.
- The Company's has recorded that its largest creditor are the Director and Former Director of the Company. The liability significantly increases in FY 20 (increasing from \$3.8M in FY19 to \$6.7M), and currently stands at \$6.4M in FY19. Whilst the Director has included this amount in their ROCAP, we understand that if any DOCA proposal is accepted the Directors would not seek to enforce their claim. We are unable to comment on the loan account as we have not been provided a loan account ledger, despite requests.
- The Company's largest external liabilities, primarily relate to statutory debt (ATO, Revenue NSW and Icare) that has been accruing since April 2016. The ATO's claim, in particular has increased from \$635K (FY19) to \$2.8M (FY22).
- It appears in late 2019, the Company had entered into a payment arrangement with the ATO, but due to the onset of COVID-19 it appears that the arrangement was abandoned.
- More recently, the ATO has sought to enforce their debt, issuing Director Penalty Notices to the current and former director.

11.6.3 Indicators of Insolvency

In addition, we hold concerns that the Company has not maintained adequate books and records in order that true and fair financial statements can be prepared. We currently lack adequate records to definitively draw this conclusion, however, after making various enquiries some records (ie bank statements) do not correlate to the financial statements and business statements prepared. It is clear there are further records available that are yet to be provided and the financial statements also record material errors.

On this basis, it is our preliminary that a liquidator may presume the company was insolvent throughout the period where records were not maintained (Section 588E).

Notwithstanding, based on the limited records provided, the Company may have been insolvent since 1 July 2019.

11.6.4 Potential Amount of Claim

Determining the value of an insolvent trading or breach of duty 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.

Our preliminary view is that the Company was insolvent since 1 July 2019.

Based on the creditors' claims received to date, this would indicate that an insolvent trading claim may be valued up to \$3.4M. However, further investigation of the records is required to determine the possible claim amount.

11.6.5 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;
- ▲ They took all reasonable steps to prevent the company incurring the debt.

Based on the limited information available to us, we have not seen any particular strong evidence of defences that may be available to the Director. These are preliminary observations, and this will be explored further, should the Company be placed in Liquidation.

11.6.6 Recovery of Claim

In considering whether an insolvent trading or breach of duty claim could be pursued, a Liquidator would need to have regard to the financial positions of the potential defendant, being the current Director.

We have conducted property searches in NSW on the Director. At this stage we have not undertaken searches in other states.

The director is the current registered owner of a property as a joint tenant with the former Director. This property is encumbered and the equity value available is unknown. We understand that this is the Director's principal place of residence.

In the event an insolvent trading claim is pursued, we anticipate that significant costs would be incurred, for which a Liquidator would require funding. Given the unpredictable nature of litigation, and in particular the defences that may be brought, it is difficult to accurately estimate the costs that may be incurred. Furthermore, insolvent trading claims are to some extent speculative and are subject to the risks of litigation, defences discussed above, and the pursuit of enforcement of any successful judgment.

As an alternative, a Liquidator can consider selling the causes of action on a commercial basis, to obtain a return in a quicker timeframe, usually at a substantial discount given the removal of risk. It would be open to any creditor or any other party to submit an offer to the Liquidators, should they have such an interest.

Overall, our view is that pursuing an insolvent trading claim against the Director is highly speculative given their asserted financial capacity, and a Liquidator would require funding to mitigate those cost and recovery risks.

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 Administrators.

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.

ARITA has issued a creditor information sheet "Offences, Recoverable Transactions and Insolvent Trading" providing further information about voidable transactions. This information sheet is attached as **Annexure "9"**.

The transactions identified, if determined to be voidable, may be recoverable under the following provisions:

12.1 VOIDABLE TRANSACTION PROVISIONS

12.1.1 Unreasonable Director Related Transactions (S588FDA)

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.
- ▲ The transaction was entered into during the four (4) years leading to our appointment.

We have investigated the sale of business agreement and consider that the sale may form an unreasonable related transaction or uncommercial transaction. We explain further our reasons in Section 12.1.4 below.

12.1.2 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 Liquidator 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 Relation Back Period ("RBP").

Our preliminary investigations have not identified any unfair preference payments.

12.1.3 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 unfair loans.

12.1.4 Uncommercial Transactions (S588FB)

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.

The clawback provisions available to a Liquidator relate only to payments to unrelated parties made within two (2) years from the date of the appointment. The RBP can be extended to four (4) years for transactions with related parties.

We refer to Section 8 above, outlining the sale of the business and our primary concerns around the consideration paid and if the sale has been for a fair value. Primarily they are:

- ▶ The sale is on non-arms-length terms, it is to a Company controlled by the Director's son.
- ▶ The sale is based on a fixed asset valuation performed on 19 June 2023, and a subsequent business valuation performed on 5 July 2023. The business was sold 4 months later, in November 2023. The fixed asset valuation cannot be reconciled to the FY22 depreciation schedule, and therefore it is difficult to determine the completeness of the fixed asset valuation.
- ▶ The business valuation is performed based on accounts prepared for FY22 and therefore does not reflect the Company's true financial position as at the sale. We have also been made aware that the FY22 accounts are inaccurate and contain some material errors. Further, there are financial statements from year to year, which to date have not been sufficiently explained.
- ▶ The sale includes all assets, including stock and work in progress, however the financial statements do not disclose any details of these assets. In any event, these are likely to be inaccurate given the time between the FY22 accounts and the sale. The sale also included trade receivables however, a detailed ledger has not yet been provided to us. We have also been advised that there is no work in progress, which would appear unusual for this type of business.
- ▶ We have also not been able to verify the calculation of employee liabilities, assumed by the Purchaser. Further, we are currently advised that the calculations were performed by the Purchaser on behalf of the Company, however a significant portion of the entitlements assumed pertain to the Director and former Director. This has afforded the Directors a statutory priority for all entitlements over and above unsecured creditors (which would not be available in a liquidation scenario).

We will require further information and time to properly investigate the sale. Our review has highlighted our concerns that the transaction may be uncommercial. However, the Director may be able to produce the information necessary to address these concerns and should be allowed a further opportunity to do so. We believe this provides further justification for our recommendation that the upcoming meeting be adjourned. Further if the Director was to put forward a DOCA proposal we will be in a better position to analyse the proposal as against liquidation.

Additionally, we have also identified expenses paid in FY21 and FY22 totalling \$1.81M made in respect of 'service charges.' We were recently advised by the external accountant that this amount represents services provided by BAR to the Company. It is unclear what services were provided. However, the bank statements don't appear to correlate to these expenses and as such suggest that BAR may have

received the funds via other means. Again, we believe that further time should be allowed for the Director to explain the purpose of the payments.

12.1.5 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.

We have not identified any claim for discharge of related party debts.

12.1.6 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 (6) 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 have not identified any potential claims regarding recently registered circulating security interest claims.

13. BREACH OF DUTY CLAIMS

We have also considered whether there may be any breach of duty claims to be pursued against the Director or other parties.

As mentioned earlier, the sale of business and payments made to BAR may represent Uncommercial transactions. Similarly, they may also a breach of the Directors duties, where they have:

- failed to act with reasonable care a diligence for the Company's benefit;
- act in the best interests of the Company; and
- used they position to gain an advantage for themselves or someone else.

We anticipate that we will make further comments in respect of a Breach of Duties claims in subsequent reporting.

14. SUMMARY OF POTENTIAL OFFENCES

In summary, we consider there are various potential contraventions of Act to consider in a Liquidation scenario:

Section	Potential Offence Identified	Summary of Offence
180	Failure to exercise reasonable care and diligence in discharge of Director's duties	Insolvent Trading
182	Improper use of position	Sale of Business, Service Charge Payments
286	Inadequate books and records	Insufficient records to disclose the Company's financial position or for financial statements to be prepared
588G	Director's duty to prevent insolvent trading	Insolvent Trading

14.1 REPORT TO ASIC

At this stage, we have not reported any breaches to ASIC pursuant to section 438D of the Act, in respect of our preliminary investigations and any potential offences identified.

We will reassess this position on receipt of further information from the Director.

Should the Company be wound up, a Liquidator is required to complete an investigation into the Company's affairs and, if offences are identified, or if the Company is unable to pay its Creditors more than 50 cents in the dollar, lodge a report with ASIC pursuant to Section 533 of the Act.

15. DEED OF COMPANY ARRANGEMENT PROPOSAL

As discussed earlier, we have been working with the Director to explore whether a DOCA could be proposed to restructure the Company's financial affairs. The Director has indicated that they wish to propose a DOCA to address the outstanding debts not dealt with under the sale, particular the amounts owed to the ATO.

We have received a draft proposal from the Director, with the key terms as follows:

- A Deed fund to be established comprising all funds currently held by the Administrator, the balance of funds due under the sales agreement and a further as yet unquantified contribution to be made by the Director from personal asset holdings.
- Related parties as defined by the Corporations Act will not participate in distributions, and that upon the DOCA being wholly effectuated, their debts be extinguished.
- The Company will not trade during the DOCA, and that the Directors powers remain suspended.
- To guarantee the Deed Contribution, the Director has agreed to provide personal property as security and will permit a caveat to be lodged over property owned by her.

Importantly, we have not received an indication as to the amount of the Deed Contribution. We understand that the Director will be sourcing the deed contribution from personal assets however at this stage, is unable to advise of the dollar amount to be contributed. Given the level of detail provided regarding a draft DOCA proposal to date, I am minded to provide the Director with additional time to refine the proposal. On this basis, we believe there is merit to adjourn the upcoming meeting of creditors, pursuant to Rule 75-140(1)(b) of the IPR.

16. ESTIMATED RETURN TO CREDITORS

The likelihood of a dividend being paid to creditors will be affected by a number of factors including:

- the size and complexity of the administration.
- the amount of voidable transactions recovered and the costs of these recoveries;
- the statutory priority of certain claims and costs;
- the value of various classes of claims including secured, priority and unsecured creditor claims; and

- the volume of enquiries by creditors and other stakeholders.

Set out in **Annexure “5”** is an analysis of the estimated returns that may be available to creditors in a Liquidation compared with DOCA scenario. You will note that we have not included the following:

- A Deed contribution figure as the DOCA proposal from the Director is yet to be finalised.
- Recoverable values in respect of voidable actions which may be available in a liquidation scenario. On the basis that we currently hold insufficient records to determine if certain transactions constitute uncommercial transactions, and their value if appropriate.

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

In summary, the estimated return are as follows:

Summary of Return to Creditors	DOCA	Liquidation	
	Cents/\$	High Cents/\$	Low Cents/\$
Secured Creditors	N/A	N/A	N/A
Priority Creditors	-	-	-
Unsecured Creditors	-	-	-

We encourage any creditors who have not already done so, to lodge a Formal Proof of Debt (“POD”) together with relevant supporting documentation. A copy of the POD is attached as **Annexure “2”** in this regard.

17. RECOMMENDATION OF ADMINISTRATORS

Pursuant to Rule 75-225(3) of the IPR, the Administrators are required to make a statement setting out the Administrators’ opinion about each of the following matters and provide their reasons for those opinions:

- Whether it would be in the Creditors’ interests for the Company to execute a DOCA;
- Whether it would be in the Creditors’ interests for the administration to end;
- Whether it would be in the Creditors’ interests for the Company to be wound up.

We set out below our opinions as to each of these options:

17.1 DEED OF COMPANY ARRANGEMENT

We have had preliminary discussion with the director’s legal advisor to explore a proposal for a DOCA, however at this time there is no formal proposal available for creditors to consider. We have outlined the draft provisions in Section 15 above. In addition, no other party has come forward with a DOCA proposal. The Director through his advisor has advised that she requires additional time to formulate the proposal.

As such, at the forthcoming meeting, we will likely adjourn the Second Meeting of Creditors to provide further time to explore a DOCA proposal.

We do not recommend creditors resolve that the Company execute a DOCA on the basis that there is no DOCA proposal for creditors of consider.

17.2 ADMINISTRATION TO END

Creditors may resolve that the Administration of the Company should end and that control of the Company should be handed back to its Director.

The Company is insolvent and if the administration was to end, the Company would be placed in a similar position to that existing prior to our appointment as Administrators.

We do not recommend that creditors resolve the Administration end on the basis that the Company is insolvent.

17.3 LIQUIDATION

Should creditors decide to wind up the Company, the Administration would convert to a CVL and we would become the Liquidators, unless creditors resolved to appoint an alternative Liquidator.

One of the roles of the Liquidators would be to complete investigations into the reasons for the Company's failure and to identify any causes of action or voidable transaction recoveries against any entity or individual. The Liquidators are also required to report their findings to ASIC in the event that offences are identified.

On the basis of that the Company is insolvent and that no DOCA has been proposed for creditors' consideration, we recommend that Creditors resolve to wind up the Company.

Notwithstanding that the resolution to wind up the Company is an agenda item for the forthcoming meeting, as previously discussed, in order to provide further time to explore a DOCA proposal, pursuant to Rule 75-140(1)(b) of the IPR, we intend to adjourn the Second Meeting of Creditors for up to forty-five (45) business days.

18. RECEIPTS AND PAYMENTS

The receipts and payments up to date of this report are attached as "Annexure 6".

19. REMUNERATION OF ADMINISTRATORS / DEED ADMINISTRATORS / LIQUIDATORS

In compliance with the ARITA Code of Professional Practice and the requirements of the Act, we are required to provide detailed information in respect of our remuneration. We attach our Remuneration Approval Report as **Annexure "7"** which details the major tasks that have been and will be conducted in this administration. Our remuneration is calculated on the time spent by staff at hourly rates used by BRI Ferrier, as detailed in our Remuneration Matrix. This document is contained within the Remuneration Report. In addition, a schedule of hourly rates are attached as **Annexure "8"**.

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

For Creditors' information, ASIC information sheets (**Annexure "9"**) that relate to specific circumstances once an insolvency practitioner is appointed to a Company and approval of remuneration can be found at the following websites:

- ▶ <http://www.asic.gov.au/insolvencyinfosheets>
- ▶ https://www.arita.com.au/ARITA/ARITA/Insolvency_help/Insolvency-explained.aspx

19.1 VOLUNTARY ADMINISTRATION PERIOD

Creditors will be asked to approve the Administrators' remuneration at the Second Meeting of Creditors for the costs incurred.

Please refer to the Remuneration Approval Report, attached as **Annexure "7"** for further details.

19.2 LIQUIDATION PERIOD

If the Company is placed into liquidation at the forthcoming Second Meeting of Creditors, we will be appointed Liquidators of the Company, unless creditors resolve to appoint an alternate Liquidator. We note that we have not received an alternate consent to act as Liquidator.

If we are to be appointed Liquidators, we will also seek approval for our estimated remuneration in conducting the Liquidation. The attached remuneration report details an estimate of the initial costs likely to be incurred in a liquidation scenario. It is an interim estimate only and actual costs may be quite different, depending on the work required and/or if litigation is pursued, which may be significant. Therefore, the estimate may change depending on matters which occur during the course of the liquidation.

Please refer to the Remuneration Approval Report, attached as **Annexure "7"** for further details.

20. SECOND MEETING OF CREDITORS

The Second Meeting of Creditors will be held on Thursday, 21 December 2023 at 11:00AM AEDT. The formal Notice of Meeting is attached as **Annexure "1"** for your reference.

The purpose of the Second Meeting of Creditors is to enable Creditors to consider the Administrators' Report pursuant to Rule 75-225 of the IPR and to determine the Company's future.

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

- ▶ Provide us with a Proof of Debt detailing your claim to be a Creditor and/or eligible employee Creditor. Proofs of Debt are enclosed as **Annexure "2"**. If you have previously provided a proof of debt and wish to supplement it, you may do so. **Otherwise, Creditors whose proofs were accepted for voting at the First Meeting are not required to be re-lodged for the Second Meeting of Creditors.**
- ▶ Creditors may attend and vote in person, by proxy or by attorney. The appointment of a proxy, copies of which is attached as **Annexure "3"**, must be in accordance with Form 532. Persons attending on behalf of a corporate entity are required to have a proxy signed on behalf of that entity. **Proxies from the First Meeting cannot be used at the Second Meeting and it is necessary for Creditors attending to submit new proxies for the Second Meeting of Creditors.**
- ▶ A specific proxy can be lodged showing approval or rejection of each proposal. Creditors, in lodging specific proxies, need to be mindful that their intended voting patterns can become

academic or “contradictory” where the outcome of an earlier vote (in the order of proceedings) is determined in a way which could influence or change their intended voting. Proxy forms or facsimiles thereof must be lodged at my office by 4:00 PM one (1) business day prior to the meeting.

21. QUERIES

The BRI Ferrier staff member responsible for this matter is as follows:

- ▲ BRI Contact: Mankirth Mandair
- ▲ Phone: (02) 8263 2333
- ▲ Email: mmandair@brifnsw.com.au (preferred)
- ▲ Mailing: GPO Box 7079, Sydney NSW 2001

Yours faithfully,

**EARLWOOD SMASH REPAIRS PTY. LIMITED
(ADMINISTRATORS APPOINTED)**



ANDREW CUMMINS

Joint and Several Administrator

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

BRI Ferrier

**EARLWOOD SMASH REPAIRS
PTY. LIMITED
(ADMINISTRATORS
APPOINTED)
ACN 056 358 233**

**Annexure "1"
Notice of Second Meeting of
Creditors**

NOTICE OF SECOND MEETING OF CREDITORS

EARLWOOD SMASH REPAIRS PTY. LIMITED

(ADMINISTRATORS APPOINTED)

ACN 056 358 233

("THE COMPANY")

NOTICE is given that the Second Meeting of the Creditors of the Company will be held at the offices of BRI Ferrier, Level 26, 25 Bligh Street, Sydney NSW 2000 on **Thursday, 21 December 2023 at 11:00 AM AEDT.**

Virtual meeting technology will also be made available should creditors wish to attend the meeting virtually. To attend virtually, creditors will need to register their details at the following link:

<https://us06web.zoom.us/meeting/register/tZAvccuopj4rE9C-ZNnY1jCY0Y3PyBUI1D9T>

A G E N D A

1. To receive the Report of the Administrators and receive questions from creditors.
2. To consider approving the remuneration of the Administrators.
3. To consider approving the disbursements of the Administrators.
4. To consider adjournment of the meeting.
5. For Creditors to resolve:
 - a. That the Company execute a Deed of Company Arrangement; or
 - b. That the administration should end; or
 - c. That the Company be wound up.
6. If Creditors resolve to enter into a Deed of Company Arrangement:
 - a. To consider approving the remuneration of the Deed Administrator(s);
 - b. To consider approving the internal disbursements of the Deed Administrator(s);
7. If Creditors resolve to wind up the Company:
 - a. To consider approving the remuneration of the Liquidator(s);
 - b. To consider approving the internal disbursements of the Liquidator(s); and
 - c. To consider the early destruction of the Company's books and records.
8. To consider the appointment of a Committee of Inspection.

9. To consider any other business that may be lawfully brought forward.

Proxies to be used at the meeting should be lodged at the office of the Administrators by 4:00 PM AEDT on the business day prior to the meeting. A creditor can only be represented by proxy or by an attorney pursuant to Insolvency Practice Rules (Corporations) (IPR) 75-150 & 75-155 or, if a body corporate, by a representative appointed pursuant to Section 250D of the Corporations Act 2001.

Special Instructions for Meeting

Attendees who wish to attend the meeting virtually are required to register to attend the meeting at the above link.

You will also need to provide a Formal Proof of Debt Form (including documentation to support your claim) and proxy form, if you are a corporate creditor or wish to be represented by another person.

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

Upon receipt of a valid Formal Proof of Debt Form and Proxy, a link to access the virtual meeting will be emailed to you. This link will be unique for each attendee and unable to be shared with other parties. Telephone dial-in details will also be available for the virtual meeting. Those wishing to attend via telephone will also be required to complete the above registration process.

In accordance with IPR 5-5, a vote taken on a “show of hands” includes a vote taken using any electronic mechanism that indicates the intentions of a person in respect of a vote. This may include an attendee clicking a “raise a hand”, or similar button, on a virtual meeting computer program, as well as verbally indicating their vote if dialling in to the meeting.

This definition is necessary to ensure that a show of hands may be used at a virtual meeting as an alternative to a poll.

DATED this 13th day of December 2023



ANDREW CUMMINS
JOINT AND SEVERAL ADMINISTRATOR

BRI FERRIER
Level 26
25 Bligh Street
Sydney NSW 2000



**EARLWOOD SMASH REPAIRS
PTY. LIMITED
(ADMINISTRATORS
APPOINTED)
ACN 056 358 233**

**Annexure "2"
Formal Proof of Debt or Claim Form**

FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

To the Joint and Several Administrators of Earwood Smash Repairs Pty. Limited (Administrators Appointed) ACN 056 358 233

1. This is to state that the company was, on 22 November 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.

<input type="checkbox"/>	The External Administrators' (whether as Voluntary Administrators/Deed Administrators/Liquidators) will send and give electronic notification of documents. 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:

"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.

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

BRI Ferrier

**EARLWOOD SMASH REPAIRS
PTY. LIMITED
(ADMINISTRATORS
APPOINTED)
ACN 056 358 233**

**Annexure "3"
Appointment of Proxy Form**

APPOINTMENT OF PROXY

EARLWOOD SMASH REPAIRS PTY. LIMITED
(ADMINISTRATORS APPOINTED)ACN 056 358 233
("THE COMPANY")

*I/*We⁽¹⁾.....of.....
 a creditor of **Earlwood Smash Repairs Pty. Limited (Administrators Appointed)**, appoint⁽²⁾
 or in his or her absence
 as *my/our general/special proxy to vote at the Second Meeting of Creditors of the Company to be held on
 Thursday, 21 December 2023 at 11:00 AM AEDT, or at any adjournment of that meeting.

Please mark any boxes with an Proxy Type: General Special

	For	Against	Abstain
<p>Resolution 1: <i>"That the remuneration of the Joint and Several Administrators, their partners and staff for the period 22 November 2023 to 11 December 2023, be calculated on a time basis in accordance with the rates of charge annexed to the Voluntary Administrators' Second Report to Creditors dated 13 December 2023, be fixed and approved at \$64,507.00 (plus GST), and that the Joint and Several Administrators be authorised to draw that amount."</i></p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Resolution 2: <i>"That the remuneration of the Joint and Several Administrators, their partners and staff for the period 12 December 2023 to 21 December 2023 be calculated on a time basis in accordance with the rates of charge annexed to the Voluntary Administrators' Second Report to Creditors dated 13 December 2023, and approved to an interim cap of \$10,000.00 (plus GST) and that the Joint and Several Administrators be authorised to draw that amount as and when incurred."</i></p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	For	Against	Abstain
<p>Resolution 3: <i>“That the Joint and Several Administrators be allowed internal disbursements from 22 November 2023 to the conclusion of the Voluntary Administration at the rates of charge in the Voluntary Administrators’ Remuneration Approval Report dated 13 December 2023, up to an amount of \$1,000.00 (plus GST) and that the Joint and Several Voluntary Administrators be authorised to draw that amount as accrued.”</i></p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Resolution 4⁽³⁾: <i>“That the Company execute a Deed of Company Arrangement.”</i></p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Resolution 5⁽³⁾: <i>“That the Voluntary Administration should end.”</i></p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Resolution 6⁽³⁾: <i>“That the Company be wound up.”</i></p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p><u>If creditors resolve that the Company execute a Deed of Company Arrangement</u></p>			
<p>Resolution 7: <i>“That the remuneration of the Joint and Several Administrators, their partners and staff for the period 21 December 2023 to execution of the DOCA, be calculated on a time basis in accordance with the rates of charge annexed to the Voluntary Administrators’ Second Report to Creditors dated 13 December 2023, and approved to an interim cap of \$25,493.00 (plus GST), and that the Joint and Several Administrators be authorised to draw that amount as and when incurred.”</i></p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Resolution 8: <i>“That the remuneration of the Joint and Several Deed Administrators, their partners and staff from the execution of the DOCA to the finalisation of DOCA, be calculated on a time basis in accordance with the rates of charge annexed to the Voluntary Administrators’ Second Report to Creditors dated 13 December 2023, and approved to an interim cap of \$50,000.00 (plus GST), and that the Joint and Several Administrators be authorised to draw that amount as and when incurred.”</i></p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	For	Against	Abstain
<p>Resolution 9: <i>“That the Deed Administrators be allowed internal disbursements from the date of the execution of the Deed of Company Arrangement to the conclusion of the Deed of Company Arrangement at the rates of charge annexed to the Voluntary Administrators’ Remuneration Approval Report dated 13 December 2023, up to an amount of \$2,000.00 (plus GST) and that the Deed Administrators be authorised to draw that amount as accrued.”</i></p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>If creditors resolve to place the Company into Liquidation</u>			
<p>Resolution 10: <i>“That the remuneration of the Joint and Several Liquidators, their partners and staff for the period 21 December 2023 to the conclusion of the Liquidation, be calculated on a time basis in accordance with the rates of charge annexed to the Voluntary Administrators’ Report to Creditors dated 13 December 2023, and approved to an interim cap of \$100,000.00 (plus GST), and that the Joint and Several Liquidators be authorised to draw that amount as and when incurred.”</i></p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Resolution 11: <i>“That the Liquidators be allowed internal disbursements for the period 21 December 2023 to the conclusion of the Liquidation at the rates of charge annexed to the Voluntary Administrators’ Remuneration Approval Report dated 13 December 2023, up to an amount of \$2,000.00 (plus GST) and that the Liquidators be authorised to draw that amount as accrued.”</i></p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Resolution 12: <i>“That subject to the consent of the Australian Securities & Investments Commission, the Liquidators be approved to destroy the books and records of the Company at any time after the dissolution of the Company.”</i></p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

INSTRUCTIONS FOR COMPLETING:

- * Strike out if inapplicable.
 - (1) Insert name and address. If a firm, strike out "I" and set out the full name of the firm.
 - (2) Insert the name, address and description of the person appointed.
 - (3) You may only vote in “favour” for one of these 3 resolutions relating to the future of the Company. You must vote “against” the other 2 resolutions.
-

DATED thisday of 2023

Signature

Proxies should be returned to the offices of BRI Ferrier by 4.00 PM AEDT one (1) business day prior to the meeting by: Email: mmandair@brifnsw.com.au, or Post: GPO Box 7079 SYDNEY NSW 2001

CERTIFICATE OF WITNESS – (This certificate is to be completed only if the person giving the proxy is blind or incapable of writing)

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

DATED thisday of 2023

Signature of Witness:

Description:

Place of Residence:

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

BRI Ferrier

**EARLWOOD SMASH REPAIRS
PTY. LIMITED
(ADMINISTRATORS
APPOINTED)
ACN 056 358 233**

**Annexure "4"
Comparative Financial Statements**

Earlwood Smash Repairs Pty. Limited
A.C.N. 056 358 233
Comparative Profit and Loss Statements
For the Financial Years Ended 30 June 2019 to 30 June 2022

	Year Ended 30-Jun-22 (\$)	Year Ended 30-Jun-21 (\$)	Year Ended 30-Jun-20 (\$)	Year Ended 30-Jun-19 (\$)
SALES				
Sales	5,337,902	4,190,125	1,876,480	2,102,937
COST OF GOODS SOLD				
Parts	1,711,534	1,478,890	929,956	1,198,413
Paint	4,409	1,527	9,450	112,488
Other direct costs	192,636	147,264	1,057,501	462,393
	<u>1,908,579</u>	<u>1,627,681</u>	<u>1,996,907</u>	<u>1,773,294</u>
MANUFACTURING COSTS				
Subcontractors	267,874	116,993	1,359	-
Gross Profit	<u>3,161,449</u>	<u>2,445,451</u>	<u>(121,786)</u>	<u>329,643</u>
Expenses				
Accountancy Fees	88,840	82,267	72,520	34,107
Advertising	9,264	76,541	10,285	27,267
Bank charges	11,141	31,153	2,329	6,178
Cleaning	5,866	2,790	8,173	18,712
Commission paid	-	-	-	6,100
Consultancy fees	8,747	-	-	-
Computer expenses	4,923	15,001	12,380	9,888
Depreciation - property improvements	39,761	33,755	52,687	141,336
Depreciation - plant and equipment	28,665	35,829	38,777	40,689
Depreciation - motor vehicles	597	5,762	2,103	2,593
Depreciation - office furniture and equipment	16	23	33	46
Donations	-	-	-	27
Gifts	-	4,228	-	-
Electricity and gas	63,580	58,214	45,309	67,778
Employees' amenities	11,202	3,526	325	4,233
Filing fees	5,774	-	-	-
Fines	385	2,891	507	(25,148)
General expenses	687	136	42,436	45,883
Hire of plant and equipment	-	-	84,645	149,000
Insurance	62,385	64,126	38,217	79,694
Interest paid	163,238	250,377	76,504	84,618
Legal costs	2,250	875	16,122	45,051
Low value assets	-	5,797	23,412	7,984
Motor vehicle expenses	22,404	24,020	16,553	27,222
Office expenses	102,281	17,416	1,824	1,172
Payroll tax	20,905	15,106	31,334	7,976
Permits, licences and fees	1,126	613	1,605	2,243
Postage	100	2,957	1,781	512
Printing and stationery	2,252	5,345	130	3,123
Professional Services	3,500	25,970	-	-
Recruitment	7,895	2,235	570	-
Rent	300,000	350,000	525,000	600,000
Repairs and maintenance	10,877	14,590	7,673	26,230
Salaries and wage	1,873,106	1,381,870	1,523,229	1,424,006
Security costs	8,479	9,606	6,138	8,236
Staff training and welfare	-	-	4,205	-
Service charges	875,732	938,141	-	-
Subscriptions	15,327	5,974	7,760	13,850
Superannuation contributions	188,962	129,590	143,342	144,201
Telephone	27,875	30,099	36,415	43,757
Towing	12,545	24,881	25,059	17,908
Travelling expenses	10,654	4,785	-	-
Waste disposal	10,293	23,094	16,809	16,322
Worker's insurance	37,591	-	25,511	18,086
Total Expenses	<u>4,039,225</u>	<u>3,679,583</u>	<u>2,901,702</u>	<u>3,100,880</u>
	(877,776)	(1,234,132)	(3,023,488)	(2,771,237)
OTHER INCOME				
Interest received	-	-	17	-
Other income	183,366	317,000	122,500	-
NET OPERATING PROFIT (LOSS)	<u>(694,410)</u>	<u>(917,132)</u>	<u>(2,900,971)</u>	<u>(2,771,237)</u>
Retained Profits (accumulated losses) at the beginning of the financial year	(8,990,662)	(8,073,530)	(5,172,559)	(2,401,321)
TOTAL AVAILABLE FOR APPROPRIATION (DEFICIT)	<u>(9,685,072)</u>	<u>(8,990,662)</u>	<u>(8,079,530)</u>	<u>(5,172,559)</u>
RETAINED PROFITS (ACCUMULATED LOSSES) AT THE END OF THE FINANCIAL YEAR	<u>(9,685,072)</u>	<u>(8,990,662)</u>	<u>(8,073,530)</u>	<u>(5,172,559)</u>

Earlwood Smash Repairs Pty. Limited
A.C.N. 056 358 233
Comparative Balance Sheet
For the Financial Years Ended 30 June 2019 to 30 June 2022

	Year Ended 30-Jun-22 (\$)	Year Ended 30-Jun-21 (\$)	Year Ended 30-Jun-20 (\$)	Year Ended 30-Jun-19 (\$)
ASSETS				
Current Assets				
Cash at bank	20,108	5,583	238,335	84,740
Cash in transit	275	275	275	275
Trade receivables	124,120	53,637	46,399	131,175
Prepayment	110	-	-	-
	<u>144,613</u>	<u>59,495</u>	<u>285,009</u>	<u>216,190</u>
NON-CURRENT ASSETS				
Equity in joint ventures	9,778	9,778	9,778	9,778
Property, plant and equipment	230,313	299,352	252,802	291,237
TOTAL ASSETS	<u>384,704</u>	<u>368,625</u>	<u>547,589</u>	<u>517,205</u>
LIABILITIES				
Current Liabilities				
Trade creditors	421,305	436,271	149,901	338,246
Other creditors	364,763	96,912	825,151	837,237
Withholding taxes payable	822,276	337,202	605,882	285,243
Goods and services tax	2,006,094	1,767,576	245,999	350,410
	<u>3,614,438</u>	<u>2,637,961</u>	<u>1,826,933</u>	<u>1,811,136</u>
NON-CURRENT LIABILITIES				
Loans from directors	6,455,336	6,721,324	6,794,184	3,878,626
	<u>6,455,336</u>	<u>6,721,324</u>	<u>6,794,184</u>	<u>3,878,626</u>
TOTAL LIABILITIES	<u>10,069,774</u>	<u>9,359,285</u>	<u>8,621,117</u>	<u>5,689,762</u>
NET ASSETS	<u>(9,685,070)</u>	<u>(8,990,660)</u>	<u>(8,073,528)</u>	<u>(5,172,557)</u>
EQUITY				
Fully paid ordinary share of \$1.00 each	2	2	2	2
Retained Profits (Accumulated Losses)	(9,685,072)	(8,990,662)	(8,073,530)	(5,172,559)
TOTAL EQUITY (DEFICIT)	<u>(9,685,070)</u>	<u>(8,990,660)</u>	<u>(8,073,528)</u>	<u>(5,172,557)</u>

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BRI Ferrier

**EARLWOOD SMASH REPAIRS
PTY. LIMITED
(ADMINISTRATORS
APPOINTED)
ACN 056 358 233**

**Annexure "5"
Estimated Outcome Statement**

Earlwood Smash Repairs Pty. Limited (Administrators Appointed)

ACN 056 358 233

Estimated Outcome Statement

	Book Value	ROCAP	DOCA	Liquidation	
	as at 30/6/2022	(\$)	(\$)	High (\$)	Low (\$)
Assets					
Cash and Cash Equivalents	20,383	-	-	48,760	48,760
Trade Receivables	124,120	-	-	-	-
Prepayments	110	-	-	-	-
Equity in joint ventures	9,778	-	-	-	-
Property, plant and equipment	230,313	-	-	-	-
Sale of Business Proceeds			50,000	50,000	-
Total Realisations	384,704	-	50,000	98,760	48,760
DOCA Contribution					
DOCA Funds	-	-	TBA	N/A	N/A
Total DOCA Contribution	-	-	-	-	-
Recovery in Liquidation					
Uncommercial Transaction Claim	-	-	-	unknown	unknown
Insolvent Trading Claims	-	-	-	unknown	unknown
Breach of Director Duties Claims	-	-	-	unknown	unknown
Total Recovery	-	-	-	-	-
Less: Administration Costs					
Administrators' Remuneration (Accrued)	-	-	64,507	64,507	64,507
Administrators' Additional Remuneration (Future)	-	-	35,493	35,493	35,493
Administrators' Disbursements	-	-	1,000	1,000	1,000
Deed Administrators' Remuneration (Est.)	-	-	50,000	-	-
Deed Administrators' Disbursements (Est.)	-	-	2,000	-	-
Liquidators Remuneration (Est.)	-	-	-	100,000	200,000
Liquidator's Disbursements (Est.)	-	-	-	2,000	2,000
Legal Costs	-	-	7,000	-	-
Total Administration Costs	-	-	160,000	203,000	303,000
Estimated Surplus Available for Secured Creditors	384,704	-	-	-	-
Secured Creditor Claims (Estimated)	-	-	-	-	-
Total Secured Creditor Claims	-	-	-	-	-
Estimated Surplus Available to Priority Creditors	384,704	-	-	-	-
Priority Creditor Claims (Estimated)					
Wages and Superannuation	137,104	-	202,184	202,184	202,184
Annual Leave & Long Service Leave	-	-	-	-	-
PILN and Redundancy	-	-	-	-	-
Total Priority Creditor Claims	137,104	-	202,184	202,184	202,184
Estimated Surplus Available to Unsecured Creditors	247,600	-	-	-	-
Unsecured Creditors					
Statutory Creditors	2,691,266	3,370,226	3,211,820	3,211,820	3,211,820
Directors Loan Account	6,455,336	6,455,336	6,455,336	6,455,336	6,455,336
Other Creditors	786,068	-	-	-	-
Total Unsecured Creditors	9,932,670	9,825,562	9,667,156	9,667,156	9,667,156
Net Surplus / Deficiency for Creditors	(9,685,070)	(9,825,562)	(9,667,156)	(9,667,156)	(9,667,156)

Summary of Return to Creditors	DOCA	Liquidation	
	Cents/\$	High Cents/\$	Low Cents/\$
Secured Creditors	N/A	N/A	N/A
Priority Creditors	-	-	-
Unsecured Creditors	-	-	-

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BRI Ferrier

**EARLWOOD SMASH REPAIRS
PTY. LIMITED
(ADMINISTRATORS
APPOINTED)
ACN 056 358 233**

**Annexure "6"
Summary of Receipts and Payments**

Summarised Receipts & Payments

Earlwood Smash Repairs Pty. Limited
(Administrators Appointed)

Transactions From 22 November 2023 To 13 December 2023

A/C	Account	Net	GST	Gross
74	Cash at Bank	48,759.61	0.00	48,759.61
Total Receipts (inc GST)		\$48,759.61	\$0.00	\$48,759.61
Total Payments (inc GST)		\$0.00	\$0.00	\$0.00
Balance in Hand - By Bank Account				
212	Cheque Account			48,759.61
				\$48,759.61

Andrew Cummins
Joint and Several Administrator

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BRI Ferrier

**EARLWOOD SMASH REPAIRS
PTY. LIMITED
(ADMINISTRATORS
APPOINTED)
ACN 056 358 233**

**Annexure "7"
Remuneration Approval Report**

Remuneration Approval Report

**EARLWOOD SMASH REPAIRS PTY.
LIMITED**
ACN 056 358 233

13 December 2023

Andrew Cummins and Peter Krejci
Joint and Several Liquidators

Novabrif Pty Ltd ABN 61 643 013 610
Level 26, 25 Bligh Street, Sydney NSW 2000
GPO Box 7079, Sydney NSW 2001
Phone (02) 8263 2333
Email: info@brifnsw.com.au
Website: www.briferrier.com.au



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1. EXECUTIVE SUMMARY

We are asking creditors to approve the following remuneration and disbursements:

	Remuneration (\$, excl GST)	Disbursements (\$, excl GST)
Voluntary Administration	100,000.00	1,000.00
If a DOCA is accepted	50,000.00	2,000.00
If Company is liquidated	100,000.00	2,000.00

Details of remuneration can be found in section 3 of this report.

Creditors have not previously approved our remuneration.

We estimated the total cost of this Voluntary Administration will be approximately \$80,000 to \$100,000. This is consistent with the estimate provided in our Initial Remuneration Notice dated 24 November 2023.

2. DECLARATION

We, Andrew Cummins and Peter Krejci of BRI Ferrier, have undertaken an assessment of this remuneration claim in accordance with the law and applicable professional standards. We are satisfied that the remuneration and disbursement claimed is necessary and proper.

We have reviewed the work in progress report for the Administration to ensure that remuneration is only being claimed for necessary and proper work performed and no adjustment was necessary.

3. REMUNERATION APPROVAL SOUGHT

The remuneration we are asking creditors to approve is as follows:

For	Period	Amount (\$, excl. GST)	Rates to apply	When it will be drawn
Work we have already done	22 November 2023 to 11 December 2023	64,507.00	Provided in our Second Report to Creditors dated 13 December 2023	It will be drawn when funds are available
Future work to meeting date	12 December 2023 to 21 December 2023	10,000.00	Provided in our Second Report to Creditors dated 13 December 2023	It will be drawn when funds are available and incurred
Future Work from meeting to execution of DOCA	21 December 2023 to execution of the DOCA	25,493.00	Provided in our Second Report to Creditors dated 13 December 2023	It will be drawn when funds are available
VA total		100,000.00		

For	Period	Amount (\$, excl. GST)	Rates to apply	When it will be drawn
Future Work DOCA	Execution of DOCA to finalisation of DOCA	50,000.00	Provided in our Second Report to Creditors dated 13 December 2023	It will be drawn when funds are available
DOCA total		50,000.00		
Future work – Liquidation	21 December 2023 to finalisation of liquidation	100,000.00	Provided in our Second Report to Creditors dated 13 December 2023	It will be drawn when funds are available
Liquidation Total		100,000.00		

Details of the work done for the period 22 November 2023 to 11 December 2023 and future work expected for the period 12 December 2023 to 21 December 2023 are included at **Schedule A**.

Details of future work that we intend to do (either in a DOCA or Liquidation) are included at **Schedule B**.

A breakdown of time spent by staff members on each major task for work completed from 22 November 2023 to 11 December 2023 is included in **Schedule C**.

Actual resolutions to be put to the meeting are included at **Schedule D** for your information. These resolutions also appear in the proxy form for the meeting provided to you.

We will only seek approval of the resolution for the liquidation if creditors vote to place the Company into liquidation.

4. DISBURSEMENTS SOUGHT

We are not required to seek creditor approval for costs paid to third parties or where we are recovering a cost incurred on behalf of the administration, but we must provide details to creditors. To date, we have not paid any such costs in the administration.

We are required to obtain creditor’s consent for the payment of a disbursement where we, or a related entity of ourselves, may directly or indirectly obtain a profit.

For more information about disbursements, please refer to the Advice to Creditors regarding Remuneration annexed as Annexure 8.

The disbursements we would like creditors to approve is as follows:

For	Period	Amount (\$, excl. GST)
Voluntary Administration	22 November 2023 to Conclusion of the Administration	1,000.00
If a DOCA is executed	Execution of the DOCA to conclusion	2,000.00
If Company is liquidated - Future disbursements	21 December 2023 to conclusion	2,000.00

Details of disbursements incurred and future disbursements are included at **Schedule E**. Actual resolutions to be put to the meeting are included at **Schedule D** for your information. These resolutions also appear in the proxy form for the meeting provided to you.

5. LIKELY IMPACT ON DIVIDENDS

The Corporations Act sets the order for payment of claims against the Company and it provides for the remuneration of the Administrators to be paid in priority to other claims. This ensures that when there are sufficient funds, the Administrators receives payment for the work done to recover assets, investigate the Company's affairs, report to creditors and ASIC and distribute any available funds. Even if creditors approve our remuneration, this does not guarantee that we will be paid, as we are only paid if sufficient assets are recovered.

An estimated outcome statement is attached as **Annexure 5** of the Second Report to Creditors dated 13 December 2023. Any dividend payable to creditors will depend on a range of variables, particularly the decision creditors make on the future of the Company, future realisations, our estimated remuneration as we have set out in this report and creditor claims.

6. SUMMARY OF RECEIPTS AND PAYMENTS

A summary of the receipts and payments as at 13 December 2023 is attached.

7. QUERIES & INFORMATION SHEET

If you have any queries in relation to the information in this report, please contact our office. You can also access information which may assist you on the following websites:

ARITA at www.arita.com.au/creditors

ASIC at <http://www.asic.gov.au> (search for INFO 85)

Further supporting documentation for our remuneration claim can be provided to creditors on request.

8. ATTACHMENTS

Schedule A – Details of work from 22 November 2023 to 21 December 2023.

Schedule B – Details of work from the 21 December 2023 to the conclusion of the external administration

Schedule C – A breakdown of time spent by staff members on each major task for work completed from 22 November 2023 to 11 December 2023.

Schedule D – Resolutions

Schedule E – Disbursements

SCHEDULE A – DETAILS OF WORK FROM 22 NOVEMBER 2023 TO 21 DECEMBER 2023

		Tasks	
		Work completed (excl. GST)	Future work (excl. GST)
Period		22 November 2023 to 11 December 2023	12 December 2023 to 21 December 2023
Amount (excl. GST)		\$64,507.00	\$10,000.00
Task Area	General Description		
Assets		3.2 Hours \$1,336.00	\$1,000.00
	Plant and Equipment	Review RMS motor vehicle search results Correspondence with Director regarding further information on motor vehicles listed on depreciation schedule	Correspondence with Director regarding motor vehicles
	Assets subject to specific charges	Review PPSR charge documents Consider validity of registered security interests Liaising with PPSR creditors and obtaining details of security Liaising with PPSR creditors regarding security registrations and withdrawal of claim	N/A
	Other Asset	Liaise with ANZ bank regarding preappointment bank statements	Reviewing bank statements received from ANZ Bank
Creditors		64.5 Hours \$34,524.00	\$4,000.00

	Creditor Enquiries	<p>Receive and respond to creditor enquiries</p> <p>Receive and follow up creditor enquiries by telephone</p> <p>Correspondence with director and the related party regarding the creditors</p>	<p>Receive and respond to creditor enquiries</p> <p>Receive and follow up creditor enquiries by telephone</p> <p>Review and prepare correspondence to creditors and their representatives by email</p> <p>Responding to information requested by creditors</p>
	Creditor Reports	<p>Preparing and issuing First Report to Creditors regarding notification of appointment and convening First Meeting of Creditors</p> <p>Preparation of necessary annexures for First Report to Creditors</p> <p>Commence preparation of Second Report to Creditors</p>	<p>Preparing Second Report to Creditors detailing investigations</p> <p>Prepare DOCA commentary analysis and projections, and supporting documentation for creditors' consideration</p> <p>Preparation of necessary annexures for Second Report to Creditors</p>
	Dealing with proofs of debt	<p>Receipting, processing and filing PODs</p>	<p>Receipting, processing, and filing Proofs of Debts when not related to a dividend</p> <p>Maintaining register of Proofs of Debts received</p> <p>Reviewing supporting documentation from creditors</p>
	Secured creditor reporting	<p>Notifying PPSR creditors of appointment</p>	<p>N/A</p>
	First Meeting of Creditors	<p>Preparation of meeting notices, proxies and advertisements</p> <p>Sending Notice of Meeting to all known creditors</p> <p>Preparation of meeting file, including agenda, attendance register, list of creditors, report to creditors, advertisement of meeting and draft minutes of meeting</p> <p>Preparation of minutes of meetings with ASIC</p>	<p>Lodgement of minutes of meetings with ASIC</p> <p>Responding to stakeholder queries and questions immediately following meeting</p>

	Proposal for Deed of Company Arrangement	Liaising with Director and lawyers regarding possible DOCA proposal	Liaising with Director and lawyers regarding DOCA proposal Review of draft DOCA and liaise with Director and lawyers regarding same
	Second Meeting of Creditors	N/A	Preparation of meeting notices, proxies and advertisements Sending Notice of Meeting to all known creditors Preparation of meeting file, including agenda, attendance register, list of creditors, report to creditors, advertisement of meeting and draft minutes of meeting
Investigation		40.7 Hours \$18,277.00	\$4,000.00
	Conducting Investigation	Conducting and summarising statutory searches Reviewing limited Company's books and records Preparation of comparative financial statements Preparation of working capital analysis Preparation of investigation file Review of specific transactions and liaising with Company's accountant regarding certain transactions Liaising with Company accountant to obtain records Review ROCAP completed by Director Consider recovery actions available in Liquidation scenario	Correspondence with Director regarding enquiries into financial statements Finalise working capital analysis Consider recovery actions available in Liquidation scenario
	Sale of Business	Review Sale of business agreement and consider terms of sale Liaising with Director's solicitor regarding sale terms Reconcile asset depreciation schedule to plant and equipment valuation	

Administration	ASIC Reporting	N/A	Preparing statutory investigation reports Liaising with ASIC
		21.1 Hours \$10,370.00	\$1,000.00
	ASIC Forms and lodgements	Preparing and lodging ASIC forms including 505, 531, 507 etc Preparing and lodging ASIC PNW advertisement	Preparing and lodging ASIC forms including 5011, 530 etc Preparing and lodging ASIC PNW advertisement
	Bank account administration	Preparing correspondence opening bank account	Bank account reconciliations
	Correspondence	Correspondence with various parties	Correspondence with various parties
	Document maintenance/file review/checklist	Preparing and updating job checklists Filing of documents	Updating job checklists Filing of documents
	ATO and other statutory reporting	Notification of appointment Liaising with ATO to obtain access to tax records	Liaising with ATO to obtain access to tax records
	Planning / Review	Discussions regarding status of administration	Discussions regarding status of administration
	Finalisation	N/A	Notifying ATO of finalisation Completing checklists Finalising WIP

SCHEDULE B – DETAILS OF WORK FROM 21 DECEMBER 2023 TO THE CONCLUSION OF THE EXTERNAL ADMINISTRATION

		Tasks		
		If DOCA approved		If wound up
		Future work from 21 December 2023 to execution of DOCA	DOCA work	Liquidation Work
Period		21 December 2023 to execution of DOCA	From execution of DOCA to finalisation of DOCA	21 December 2023 to conclusion
Amount (excl. GST)		\$25,493.00	\$50,000.00	\$100,000.00
Task Area	General Description			
Assets		\$3,000.00	\$5,000.00	\$15,000.00
	Plant and Equipment	N/A	N/A	Discussions with Director and management regarding motor vehicles Tasks associated with realising motor vehicles
	Sale of Business	Collect balance of sale of business proceeds Liaising with Purchaser regarding transferring ownership of assets	Collect balance of sale of business proceeds Liaising with Purchaser regarding transferring ownership of assets	Liaise with Purchaser regarding proceeding with sale of business
Creditors		\$15,000.00	\$25,000.00	\$22,000.00

	Creditor Enquiries	<p>Receive and respond to creditor enquiries</p> <p>Receive and follow up creditor enquiries by telephone</p> <p>Review and prepare correspondence to creditors and their representatives by email and post</p>	<p>Receive and respond to creditor enquiries</p> <p>Receive and follow up creditor enquiries by telephone</p> <p>Review and prepare correspondence to creditors and their representatives by email</p> <p>Compiling information requested by creditors</p>	<p>Receive and respond to creditor enquiries</p> <p>Receive and follow up creditor enquiries by telephone</p> <p>Review and prepare initial correspondence to creditors and their representatives</p> <p>Considering reasonableness of creditor's request</p> <p>Obtaining legal advice on requests</p> <p>Compiling information requested by creditors</p>
	Creditor Reports	<p>Preparing and issuing Supplementary Second Report to Creditors to resume Second Meeting of Creditors</p>	<p>Preparing Report to Creditors to update creditors</p>	<p>Prepare Circular to Creditors regarding Liquidation</p> <p>Prepare Statutory Report to Creditors</p> <p>Preparation of necessary annexures for Statutory Report to Creditors</p>
	Dealing with proofs of debt	<p>Receipting, processing, and filing Proofs of Debts</p>	<p>Receipting, processing, and filing Proofs of Debts</p> <p>Maintaining register of Proofs of Debts received</p> <p>Reviewing supporting documentation from creditors</p>	<p>Receipting, processing, and filing Proofs of Debts when not related to a dividend</p> <p>Maintaining register of Proofs of Debts received</p> <p>Reviewing supporting documentation from creditors</p>
	Deed of Company Arrangement	<p>Liaising with Director and advisors regarding execution of DOCA and preparation</p>	<p>Liaising with Director and lawyers regarding DOCA</p> <p>Ongoing monitoring and enquiries with proponents as to DOCA progress</p>	N/A

		Draft of Deed of Company Arrangement including liaising with DOCA proponent	Periodically updating returns to creditors	
	Meeting of Creditors	Preparation of Minutes of Meeting	Preparation of Minutes of Meeting Convening creditors meeting as necessary	Preparation of Minutes of Meeting Convening creditors meeting as necessary
Investigation		\$5,493.00	N/A	\$55,000.00
	Conducting Investigation	N/A	N/A	Obtaining and reviewing further Company's books and records Review of specific transactions and liaising with Director regarding certain transactions Conducting further investigations into potential voidable transactions Conducting further investigations into solvency analysis Preparation of updated investigation file Lodgement of investigation with ASIC Preparation and lodgement of supplementary report if required
	Litigation/ Recoveries	N/A	N/A	Conducting investigations into potential claims against Director and related parties Consider conducting public examinations

				<p>Seeking funding to conduct further investigations and public examinations</p> <p>Preparing brief to solicitors</p> <p>Attend public examinations</p> <p>Consider outcome from public examinations</p> <p>Liaising with solicitors regarding recovery actions</p> <p>Commencing recovery action against Director and/or related parties</p> <p>Negotiating commercial settlement, if necessary</p>
	ASIC Reporting	Prepare and finalise s438D report	N/A	<p>Preparing statutory investigation reports</p> <p>Liaising with ASIC</p> <p>Preparation of application for funding to conduct further investigations</p>
Dividend		N/A	\$12,000.00	N/A
	Dividend Procedures	N/A	<p>Advertise intention to declare dividend</p> <p>Correspondence to creditors advising of intention to declare dividend</p> <p>Calculation of dividend</p> <p>Adjudicate PODs and supporting documentation</p>	N/A

Administration			Request further and better particulars as necessary Reporting to Creditors regarding dividend quantum and timing Completing outstanding tax lodgements and seeking tax clearance Preparing dividend file	
	Declaring Dividend	N/A	Declaring interim dividends, as available Correspondence with creditors	N/A
		\$2,000.00	\$8,000.00	\$8,000.00
	ASIC Forms and lodgements	Preparing and lodging ASIC forms Correspondence with ASIC regarding statutory forms	Preparing and lodging ASIC forms Correspondence with ASIC regarding statutory forms	Preparing and lodging ASIC forms Correspondence with ASIC regarding statutory forms
	Bank account administration	Preparing receipt and payment vouchers	Preparing correspondence opening DOCA contribution bank account Preparing receipts and payment vouchers Bank account reconciliations	Preparing receipt and payment vouchers Bank account reconciliations
	Correspondence	Correspondence with various parties	Correspondence with various parties	Correspondence with various parties
	Document maintenance/file review/checklist	Preparing and updating job checklists	Updating job checklists Filing of documents	Filing of documents File reviews Updating checklists

	ATO and other statutory reporting	N/A	Notification of appointment Preparing BAS	Notification of appointment Preparing BAS
	Planning / Review	Discussions regarding status of administration	Discussions regarding status of administration	Discussions regarding status of administration
	Finalisation	N/A	Notifying ATO of finalisation Completing checklists Finalising WIP	Notifying ATO of finalisation Cancelling ABN/GST/PAYG registration Completing checklists Finalising WIP

SCHEDULE C – TIME SPENT BY STAFF ON MAJOR TASKS – 22 NOVEMBER 2023 TO 11 DECEMBER 2023

Earlwood Smash Repairs Pty. Limited (Administrators Appointed)

ACN: 056 358 233

For the period 22 November 2023 to 11 December 2023

Staff Classification	Name	Hourly Rate (\$, ex GST)	Administration		Assets		Creditors		Investigation		Total	
			Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$
Appointee/Principal	Andrew Cummins	730.00	3.6	2,628.00			3.0	2,190.00	2.9	2,117.00	9.5	6,935.00
Appointee/Principal	Peter Krejci	730.00	1.7	1,241.00							1.7	1,241.00
Senior Manager	Pauline Yeow	590.00	2.5	1,475.00	0.2	118.00	28.2	16,638.00	7.1	4,189.00	38.0	22,420.00
Manager	Savio Monis	550.00	5.0	2,750.00	1.4	770.00	23.6	12,980.00	12.5	6,875.00	42.5	23,375.00
Intermediate 2	Hugh Matthews	280.00	0.7	196.00			2.7	756.00	0.4	112.00	3.8	1,064.00
Intermediate 2	Mankirth Mandair	280.00	6.4	1,792.00	1.6	448.00	7.0	1,960.00	17.8	4,984.00	32.8	9,184.00
Senior Administrator	Sonia Stelmach	240.00	1.2	288.00							1.2	288.00
Total			21.1	10,370.00	3.2	1,336.00	64.5	34,524.00	40.7	18,277.00	129.5	64,507.00
											GST	6,450.70
											Total (incl GST)	70,957.70
Average rate per hour			491.47	417.50	535.26	449.07	498.12					

SCHEDULE D – RESOLUTIONS

We will be seeking approval of the following resolutions to approve our remuneration and disbursements. Details to support these resolutions are included in **sections 3 and 4** and in the attached Schedules.

Resolution 1: Administrators' Remuneration for the period 22 November 2023 to 11 December 2023

“That the remuneration of the Joint and Several Administrators, their partners and staff for the period 22 November 2023 to 11 December 2023, be calculated on a time basis in accordance with the rates of charge annexed to the Voluntary Administrators' Second Report to Creditors dated 13 December 2023, be fixed and approved at \$64,507.00 (plus GST), and that the Joint and Several Administrators be authorised to draw that amount.”

Resolution 2: Administrators' Remuneration for the period 12 December 2023 to 21 December 2023

“That the remuneration of the Joint and Several Administrators, their partners and staff for the period 12 December 2023 to 21 December 2023 be calculated on a time basis in accordance with the rates of charge annexed to the Voluntary Administrators' Second Report to Creditors dated 13 December 2023, and approved to an interim cap of \$10,000.00 (plus GST) and that the Joint and Several Administrators be authorised to draw that amount as and when incurred.”

If a Deed of Company Arrangement is accepted:

Resolution 7: Administrators' Remuneration for the period 21 December 2023 to the execution of DOCA

“That the remuneration of the Joint and Several Administrators, their partners and staff for the period 21 December 2023 to execution of the DOCA, be calculated on a time basis in accordance with the rates of charge annexed to the Voluntary Administrators' Second Report to Creditors dated 13 December 2023, and approved to an interim cap of \$25,493.00 (plus GST), and that the Joint and Several Administrators be authorised to draw that amount as and when incurred.”

Resolution 8: Deed Administrators' Remuneration from the execution of DOCA to finalisation of DOCA

“That the remuneration of the Joint and Several Deed Administrators, their partners and staff from the execution of the DOCA to the finalisation of DOCA, be calculated on a time basis in accordance with the rates of charge annexed to the Voluntary Administrators' Second Report to Creditors dated 13 December 2023, and approved to an interim cap of \$50,000.00 (plus GST), and that the Joint and Several Administrators be authorised to draw that amount as and when incurred.”

If the Company is wound up:

Resolution 10: Liquidators' Remuneration for the period 21 December 2023 to Conclusion

“That the remuneration of the Joint and Several Liquidators, their partners and staff for the period 21 December 2023 to the conclusion of the Liquidation, be calculated on a time basis in accordance with the rates of charge annexed to the Voluntary Administrators' Report to Creditors dated 13 December 2023, and approved to an interim cap of \$100,000.00 (plus GST), and that the Joint and Several Liquidators be authorised to draw that amount as and when incurred.”

SCHEDULE E – DISBURSEMENTS

Disbursements are divided into three types:

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

We advise that to date we have not paid any disbursements incurred during this Administration by our Firm.

We are not obliged to seek creditor approval for disbursements paid to third parties, but must account to creditors, this includes providing details of the basis of charging for these types of disbursements to creditors as part of the Remuneration Approval Report. We are required to seek creditor approval for internal disbursements where there could be a profit or advantage. Accordingly, we will be seeking approval from creditors for the following resolution:

Resolution 3: Administrators' Internal Disbursements for the period 22 November 2023 to Conclusion of the Voluntary Administration

"That the Joint and Several Administrators be allowed internal disbursements from 22 November 2023 to the conclusion of the Voluntary Administration at the rates of charge annexed to the Voluntary Administrators' Second Report to Creditors dated 13 December 2023, up to an amount of \$1,000.00 (plus GST) and that the Joint and Several Voluntary Administrators be authorised to draw that amount as accrued."

Resolution 9: Deed Administrators' Internal Disbursements from Execution to Conclusion

"That the Deed Administrators be allowed internal disbursements from the date of the execution of the Deed of Company Arrangement to the conclusion of the Deed of Company Arrangement at the rates of charge annexed to the Voluntary Administrators' Second Report to Creditors dated 13 December 2023, up to an amount of \$2,000.00 (plus GST) and that the Deed Administrators be authorised to draw that amount as accrued."

Resolution 11: Liquidators' Internal Disbursements for the period 21 December 2023 to Conclusion

"That the Liquidators be allowed internal disbursements for the period 21 December 2023 to the conclusion of the Liquidation at the rates of charge annexed to the Voluntary Administrators' Second Report to Creditors dated 13 December 2023, up to an amount of \$2,000.00 (plus GST) and that the Liquidators be authorised to draw that amount as accrued."

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**EARLWOOD SMASH REPAIRS
PTY. LIMITED
(ADMINISTRATORS
APPOINTED)
ACN 056 358 233**

**Annexure "8"
Advice to Creditors
About Remuneration**

ADVICE TO CREDITORS ABOUT REMUNERATION

Insolvency Practice Schedule (Corporations) 70-50
Insolvency Practice Rules (Corporations) 70-35

EARLWOOD SMASH REPAIRS PTY. LIMITED (ADMINISTRATORS APPOINTED) ACN 056 358 233 ("THE COMPANY")

A REMUNERATION METHOD

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

- Time based / hourly rates or "Time Cost"

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

- Fixed Fee

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

- Percentage

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

- Contingency

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

B METHOD CHOSEN

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

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

BRI Ferrier reviews its hourly rates every twelve months. The hourly rates quoted below remain current. BRI Ferrier may increase the hourly rates charged for work performed and if hourly rates are increased, we will seek creditors' approval.

C EXPLANATION OF HOURLY RATES

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

Title	Description	Hourly Rates (ex GST)
Principal/Appointee	A Liquidator and/or Registered Trustee. A senior accountant with over 10 years' experience who brings specialist skills and experience to the appointment. Leads the team carrying out the appointment.	\$730
Director	An accountant with more than 10 years' experience. May be a Registered Liquidator. Fully qualified and able to control all aspects of an appointment. May have specialist industry knowledge or skills. Assists with all facets of appointment.	\$640
Senior Manager	An accountant with more than 7 years' experience. Qualified and answerable to the Team Leader. Self-sufficient in completing and planning all aspects of large appointments.	\$590
Manager	An accountant with at least 6 years' experience. Qualified with well-developed technical and commercial skills. Controls and plans all aspects of medium to larger appointments, reporting to the Team Leader.	\$550
Supervisor	An accountant with more than 3 years' experience. Typically qualified with sound knowledge of insolvency principles and developing commercial skill. Assists to plan and control specific tasks on medium to larger appointments. Often undertaking post qualification study specialising in Insolvency and Reconstruction.	\$480
Senior 1	An accountant with more than 2 years' experience. Typically, a graduate undertaking study leading to professional qualification as a Chartered Accountant or CPA. Able to complete work on appointments with limited supervision.	\$420
Senior 2	An accountant with less than 2 years' experience. Typically a graduate who has commenced study leading to professional qualifications. Able to complete many tasks on medium to large appointments under supervision.	\$380
Intermediate 1	An accountant with less than 2 years' experience. Typically a graduate and commencing study for qualifications. Able to complete multiple tasks on smaller to medium appointments under supervision.	\$330
Intermediate 2	An accountant with less than 1 years' experience. A trainee undertaking degree with an accountancy major. Assists in the appointment under supervision.	\$280
Senior Administration	Appropriately skilled and undertakes support activities including but not limited to treasury, word processing and other administrative, clerical and secretarial tasks.	\$240
Junior Administration	Appropriately skilled and undertakes support activities including but not limited to treasury, word processing and other administrative, clerical and secretarial tasks.	\$180

D DISBURSEMENTS

Disbursements are divided into three types:

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

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

We are required to obtain creditor’s consent for the payment of internal disbursements. Creditors will be asked to approve our internal disbursements prior to these disbursements being paid from the administration.

Details of the basis of recovering disbursements in this administration are provided below.

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

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

Insolvency information for directors, employees, creditors and shareholders

This is **Information Sheet 39 (INFO 39)**. It 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](#).

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

This information sheet was updated on 1 September 2017.

Last updated: 24/03/2023 08:46

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**Annexure "10"
ARITA Information Sheet – Offences,
Recoverable Transactions and
Insolvent Trading**

Voluntary Administration 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.
588G	Incurring liabilities while insolvent
588GAB	Officer's duty to prevent creditor-defeating disposition
588GAC	A person must not procure a company to make a creditor-defeating disposition
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.
596AB	Entering into an agreement or transaction to avoid employee entitlements.

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.

Creditor-defeating disposition

Creditor-defeating dispositions are the transfer of company assets for less than market value (or the best price reasonably obtainable) that prevents, hinders or significantly delay creditors' access to the company's assets in liquidation. Creditor-defeating dispositions are voidable by a liquidator.

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 or from members of a corporate group (Contribution Order).

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.

Queries about the voluntary administration should be directed to the administrator's office.