



SECOND REPORT TO CREDITORS

DARLINGHURST THEATRE LIMITED
(ADMINISTRATORS APPOINTED)
ACN: 077 963 234 ("COMPANY")

12 July 2024

JONATHON KEENAN
PETER KREJCI
Joint and Several Administrators

DARLINGHURST THEATRE COMPANY

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GLOSSARY OF COMMON ACRONYMS & ABBREVIATIONS

ABN	Australian Business Number
ACN	Australian Company Number
ACNC	Australian Charities and Not-For-Profits Commission
Act	Corporations Act 2001 (Cth)
Administrators	Jonathon Keenan and Peter Krejci
ARITA	Australian Restructuring Insolvency and Turnaround Association
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
COI	Committee of Inspection
Company	Darlinghurst Theatre Limited (Administrators Appointed)
CVL	Creditors Voluntary Liquidation
DOCA	Deed of Company Arrangement
Directors or Board	Jan Van Deventer, James Behringer, Joydeep Hor, Kevin Farmer and Patricia Skalsky
DIRRI	Declaration of Independence, Relevant Relationships & Indemnities
FEG	Fair Entitlements Guarantee scheme
Firm	BRI Ferrier NSW
GST	Goods and Services Tax
IPR	Insolvency Practice Rules (Corporations) 2016
IPS	Insolvency Practice Schedule (Corporations)
LSL	Long Service Leave
NAB	National Australia Bank
O'Maras	O'Maras Auctioneers
PILN	Payment in Lieu of Notice
POD	Proof of Debt
PPE	Plant and Equipment
PPSR	Personal Properties Securities Register
RBP	Relation Back Period
SGC	Superannuation Guarantee Charge
VA	Voluntary Administration
Westpac	Westpac Banking Corporation

INTRODUCTION

We refer to our First Report to Creditors dated 19 June 2024 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	Darlinghurst Theatre Limited (Administrators Appointed)
Incorporated	21 March 1997
ACN	077 963 234
ABN	28 077 963 234
Registered Office	Eternity Playhouse 19 Burton Street Darlinghurst NSW 2010
Trading Address	Eternity Playhouse 19 Burton Street Darlinghurst NSW 2010

ADMINISTRATORS

Name	Jonathon Keenan and Peter Krejci
Date Appointed	17 June 2024

ADMINISTRATION CONTACT

Name	Frane Babic
Email	FBabic@brifnsw.com.au
Phone	02 8263 2333

1. QUICK SHEET

KEY QUESTIONS	ANSWERS
Nature of the business?	Charity organisation operating as an arts and theatre company in Darlinghurst NSW.
Is the business still trading?	No, trading ceased on 17 June 2024.
When is the Second Meeting of Creditors?	The Second Meeting of Creditors will be held on Monday, 22 July 2024 at 3:00PM AEST. Held in person, with virtual facilities also available
What assets are available?	The Company has cash at bank and PPE. We have recovered the cash at bank and are currently pursuing a sale of the PPE. We are unable to disclose the PPE value at this time.
What are the total liabilities?	Approximately \$550K in total creditor claims, including \$50K for employees, \$85K for trade and venue depositors, \$210K for statutory and government creditors, \$188K for related party claims and \$15K for customers.
Is a restructure possible?	No funding has been offered from government or potential benefactors, and therefore no restructure is possible.
Is a Deed of Company Arrangement proposed?	No parties have come forward to propose a DOCA.
What was the date of insolvency?	Preliminary investigations indicate the Company became insolvent on or around the appointment in June 2024.
Are there any claims against the Directors in a Liquidation scenario?	No, there are no insolvent trading or voidable transaction claims currently identified against the Directors. Further investigations may be conducted in a Liquidation.
Will the creditors get paid?	Current estimates for a Liquidation scenario indicate that there will be a return to creditors. However, the amount is subject to the PPE sale, which is still ongoing.
What is the Administrators' recommendation that creditors vote for at the Second Meeting of Creditors?	We recommend that creditors should vote in favour of <u>Liquidation.</u>

2. EXECUTIVE SUMMARY

As you are aware, we, Jonathon Keenan and Peter Krejci, were appointed Joint and Several Administrators of the Company on 17 June 2024 by resolution of the Directors 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 **Monday, 22 July 2024 at 3:00PM 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 19 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 a Liquidation.

The Company was incorporated in 1997 as a company limited by guarantee, a not-for-profit and registered charity. The Company is known as the “Darlinghurst Theatre Company” and has been providing live arts and theatre offerings for the Sydney community, currently operating from the Eternity Playhouse in Darlinghurst.

As a charity organisation focused on community interests, it ran on break-even or small profit/loss basis. Apart from box office (ticket) sales, its funding requirements appear to have been underwritten by government grant funding and donations from members or the public. The financial records indicate that following Covid-19, the revenues and funding sources reduced and cashflow issues arose. This compounded when the former founder left the organisation in early 2022. Since 2022, the Company has had three (3) different Executive Directors (or CEOs) running the business, and there were progressive financial and operational challenges encountered.

It appears that in late 2023, the Directors informed themselves of the Company’s financial situation and took steps to attempt to pursue an informal restructure of the business, focussed on reducing costs, obtaining new funding sources and improving the underlying business model. Unfortunately, the turnaround efforts were not successful.

On our appointment, we conducted an immediate assessment of the financial position and determined that the business could not continue to trade. Accordingly, we took steps to suspend all trade, terminate staff and reduce non-essential costs, whilst we explored restructure opportunities to save the Company.

The liabilities are relatively modest, however the business also needs fresh working capital to move forward. We sought further funding from Federal, State and Local government bodies, which was declined. We also approached existing members, potential benefactors and other interested parties, however, no funding offers were forthcoming.

The Company’s assets consist of cash at bank of \$190K and the plant and equipment (\$320K book value) located at the Eternity Playhouse. Shortly following our appointment, we became aware of a material dispute with City of Sydney Council over the ownership of certain items of the plant and equipment, including elements of the fitout. This was contrary to the views of the Directors, however the Company’s supporting documentation was lacking. Our investigations indicate that the bulk of the equipment was installed by the City of Sydney Council, when they undertook the major refurbishment

in 2013. The Company's funding went to acquiring certain theatre equipment and was also spent on general upkeep of the facility.

The total liabilities of the Company may be around \$550K, which are represented by priority (employees) at \$50K, statutory and government bodies at \$210K, trade creditors and venue depositors at \$85K and pre-paid ticket holders (customers) at \$15K. There are also certain related party claims totalling \$188K, however they require further investigation to determine validity.

Our preliminary investigations indicate that the Company was able to satisfy its debts in the ordinary course, and became insolvent in around June 2024, shortly prior to the Company being placed into Administration. We have not identified any breach of duty, voidable transaction or other recovery actions that are commercial to pursue. Accordingly, at this stage we have not identified any recovery actions to pursue against the Directors, or other parties, although further enquires will be conducted in a Liquidation scenario.

As the only viable option appears to be Liquidation, we are currently pursuing a sale of the Company's equipment. We have initially invited the City of Sydney Council to acquire the Company's assets, such that Eternity Theatre remains functional and the recoverable value from the assets is improved (as compared to auction). That process is currently ongoing, and we are unable to disclose the particulars at this time, so as not to prejudice the sale. Any residual assets will likely be sold via auction, depending on the commercial assessment. We note that the Company's assets are secured to Westpac, whose debt will be dependent on chargeback claims from customers.

Any return to priority (employee) and unsecured creditors is dependent on the net recoverable value from the asset sale, after costs, and total creditor claims. As best estimates at this time, and subject to the outcome of the asset sale, we anticipate that priority (employee) creditors may be paid in full from the asset realisations and a minimal return may be available for unsecured creditors. The returns are subject to numerous variables, which will not be known for some time.

Overall, the Company is insolvent and there is no restructure offer that will recapitalise the business or compromise creditors' claims via a DOCA. **Accordingly, it is our recommendation that creditors resolve to place the Company into Liquidation at the forthcoming meeting.**

3. BASIS OF REPORT

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

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

- ▲ ASIC and ACNC;
- ▲ The books and records of the Company;
- ▲ Discussions with the Directors and advisors;
- ▲ The ROCAP and questionnaire forms completed by the Directors;
- ▲ Extracts from public information databases;
- ▲ Correspondence with creditors; and
- ▲ Documents obtained from the ATO in relation to the Company.

4. DISCLAIMER

This Report and the statements made herein are based upon available books and records, information provided by the Company's Directors, 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.

5. 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.

6. CORPORATE INFORMATION

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

6.1 COMPANY DETAILS

Company Name	Darlinghurst Theatre Limited
ABN	28 077 963 234
ACN	077 963 234
Incorporation Date	21 March 1997
Registered Address	Eternity Playhouse 19 Burton Street Darlinghurst NSW 2010
Principal Place of Business	Eternity Playhouse 19 Burton Street Darlinghurst NSW 2010

6.2 CURRENT OFFICEHOLDERS

Name	Position(s)	Start Date	Cease Date
James Edward Behringer	Director	17/12/2007	Current
	Secretary	17/12/2007	
Jan Van Deventer	Director	Unknown	Current
Kevin Farmer	Director	Unknown	Current
Patricia Wendy Skalsky	Director	15/04/2014	Current
Joydeep Hor	Director	Unknown	Current

6.3 MEMBERS

The Company is a not-for-profit entity, limited by guarantee. The Directors provided us a listing, which indicates that there may be 24 current members of the Company. However, the register does not appear to be up to date and some memberships may have lapsed.

As the Company is insolvent and likely to be placed into Liquidation, any discrepancies in the member register are somewhat irrelevant. We note that the constitution limits each member's guarantee in a winding up to be \$2.

6.4 CURRENT REGISTERED SECURITY INTERESTS

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

Registration Number	Secured Party	Start Date	Collateral
202106040039197	Bidfood Australia Limited	4/06/2021	Other goods
202205020024527	Canon Finance Australia	2/05/2022	Other goods
202403270084907	GC Leasing Sydney Pty Ltd	28/07/2022	Other goods
202207280025556	GC Leasing Sydney Pty Ltd	28/07/2022	Other goods
202011240027496	Metcash & Others	24/11/2020	Other goods
201806070016151	Northern Managed Finance	7/06/2018	Other Goods
201112280179252	Westpac Banking Corporation	30/01/2012	All PAP with Exception
201112290001426	Westpac Banking Corporation	30/01/2012	All PAP

Please refer to Section 11.2.1 of this report for further comments on the above.

6.5 LEGAL PROCEEDINGS AGAINST THE COMPANY

Pursuant to Section 440D of the Act, upon our appointment as Administrators, all proceedings against the Company 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 of any proceedings involving the Company.

7. COMPANY HISTORY AND EVENTS LEADING UP TO ADMINISTRATION

The following information was obtained from the Company's books and records, enquiries with the Directors, advisors and Company records provided to us and our own enquiries:

- ▲ The Company was incorporated in 1997 as a company limited by guarantee, a not-for-profit entity. It is also a registered charity with ACNC and a Deductible Gift Recipient with the ATO.
- ▲ The charity originally operated from the Hayes Theatre, in Potts Points NSW.
- ▲ The Company took up residence at the Eternity Playhouse in 2013, following a major refurbishment by the City of Sydney Council.
- ▲ Mr Glenn Terry was the founder, who ran the charity from 1997 to 2022 (around 25 years).
- ▲ The Company employed various Executive Directors over the years, which is a role akin to a Chief Executive Officer (CEO) of the business:
 - Mr Terry - 1997 to February 2022
 - Ms Vivian Rosman - March 2022 to November 2022
 - Ms Suzanne Pereira - December 2022 to December 2023 (also a former Board member)
 - Mr Kevin Farmer - December 2023 to date (Interim unpaid role, also a current Board member)

- ▶ The available financial statements indicate that the Company's overall profitability varied from a small loss to a small surplus, which is consistent with it operating as a charity for community benefit.
- ▶ The Company revenues were majority from box office (ticket sales) and venue hire fees. However, it appears that government support (by way of grants and other incentives) and donations from the public, underwrote a significant portion of the operating costs.
- ▶ The Company raised funds from the members and public via campaigns, and those funds were used to acquire new equipment and pay for the upkeep on the facilities. One of those campaigns was "Light It Up", where funds were raised to assist development of essential equipment in the Eternity Playhouse.
- ▶ From 2020/21, the Covid-19 pandemic appears to have materially impacted trading, given the various lockdowns. We understand that the Company claimed certain JobKeeper amounts in error, which had to be repaid, placing some stress on cashflows.
- ▶ In March 2022, Mr Terry left the organisation and brought a claim for various unpaid entitlements. The Company discharged all entitlements via a gardening leave period, and agreed to a further commercial arrangement to settle the matter by way of an ongoing consulting fee of \$36K per year for five (5) years, plus a small royalty payment up to a maximum of \$170K.
- ▶ Ms Rosman was appointed Executive Director of the Company from March 2022. Whilst the revenues were strong during 2022, the Company reported a small loss.
- ▶ Ms Perriera was appointed Executive Director of the Company in December 2022. We are advised that there was a change in direction of the programming, moving toward a "community experience". Overall, the Company reported a small profit for the 2023 year.
- ▶ Around August 2023 the Company's artist director took extended leave. It appears that the Company did not set the 2024 program (usually done in advance), which negatively impacted pre-sale and subscription revenues. The result being unclear strategic direction, given the lack of confidence in the future cashflows and funding requirements. The Company also had to settle certain unpaid royalties on past shows, which had not been accounted for, further impacting cashflow requirements.
- ▶ By December 2023, the Company's financial position was deteriorating. The Board elected not to renew Ms Perriera's contract, and appointed Mr Farmer as Interim Executive Director (an unpaid role). It appears the Mr Farmer's focus was initially to undertake an assessment of the Company's financial and operational affairs. Thereafter, Mr Farmer and the Board pursued an informal restructure, locating a new Executive Director, reducing costs and seeking necessary funding for the operations.
- ▶ During recent months in 2024, it appears that the Company sought critical funding from various government and public sources, however they did not secure the necessary resources. The management accounts indicate that the Company incurred losses during 2024, which is not uncommon when businesses are in financial distress.

- By June 2024, the Board resolved to place the Company into Voluntary Administration.

8. REASONS FOR FAILURE

The Directors have advised, in their view, the reasons for the failure of the Company were:-

- Reduction in customer demand for the arts following Covid-19.
- Reduced funding support from government and public donations.
- Change in programming to appeal to a newer audience, which did not result in the required financial returns.
- Combined effect were cashflow challenges, resulting in historical debt with the ATO on top of a Services NSW COVID grant overclaim.

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

- The core theatre business was not self-sufficient, instead reliant on supplemental government and donation funding, which reduced over recent years given external market forces.
- Changes in management at the Company, led to a poor strategic direction for the business, negatively impacted the financial position.

9. CONDUCT OF THE ADMINISTRATION

In summary, during our appointment we have attended to the following major tasks:

- Conducted an assessment of the financial affairs, and took steps to suspend trading and notify relevant parties;
- Inspected and secured the Company's physical assets, and arranged for an independent valuation;
- Explored potential restructure and/or recapitalisation options with Federal, State and Local government bodies, members of the Company and potential benefactors;
- Consulted with Directors and management regarding resourcing requirements for a restructured business, including working capital, staffing and programming needs;
- Retained essential staff to assist with the administrative aspects and asset preservation;
- Liaised with City of Sydney Council in respect of the dispute over asset ownership and explored sale of the Company's interest;
- Engaged with landlords in respect of lease arrangements;
- Dealt with various secured creditors claims and sought releases where appropriate;
- Investigated existing insurance covers for the business and considered the adequacy of existing policies;

- Communicated with employees, customers, funders, government bodies, creditors and suppliers in relation to the Administration;
- Secured funds held in the Company's pre-appointment bank account;
- Liaised with ACNC regarding the charity status and reporting;
- Obtained copies of the Company's records, financial statements and management accounts;
- Reported to creditors and held the first meeting;
- Conducted preliminary investigations into the historical financial records, including potential recovery actions that may be available to a Liquidator;
- Liaised with the Directors regarding various queries on the Company's financial accounts, and requested further information as needed for our investigations;
- Prepared this report and convened the second meeting of creditors;
- Prepared to sell the Company's physical assets, including negotiations with City of Sydney Council and also preparation for auction; and
- Attended to various administrative matters.

10. HISTORICAL FINANCIAL INFORMATION

We have reviewed the Company's externally prepared audited financial statements for FY2020 to FY2023 and available management accounts to the part-period ended 17 June 2024. The management accounts are unaudited, based on reports extracted from the Company's MYOB accounting system, and have not been reviewed by the Company's external accountant. We note that the Company reported on a calendar year basis, ended 31 December.

We have prepared our financial analysis on the available information, which is discussed below.

10.1 BALANCE SHEETS

Attached as **Annexure "4"** is a comparative analysis of the Balance Sheets for the abovementioned periods.

We make the following comments with respect to the Company's comparative Balance Sheets:

- The Company's assets are largely represented by cash at bank and plant and equipment. The Company's cash reserves have declined since 2021 consistent with the deteriorating financial position over recent years. Plant and equipment has remained relatively steady and is the major asset in 2024. However, the realisable value is likely far lower than reported in the balance sheet, noting that the ownership of certain assets is disputed and they are tied to the leasehold premises (in part). Please refer to section 11.1.3 for further detail.
- We note that the predominant liability accounts are payables, "other" and employee benefits. The payables account has fluctuated over the 4-year period and consists of trade creditors. The employee benefits account are made up of various employee entitlements, which have

remained consistent. We note that the reported employee entitlements in 2024 is likely overstated, based on our enquiries of the remaining claims. The “other” liability appears to relate to unearned revenue such as unacquitted grant funding, venue deposits and pre-paid ticket sales.

- We note that the current tax liabilities account is understated. We estimate that is account should be closer to \$64K. However, the actual debt may change pending further investigation.
- We observe that the Company reported a net asset surplus throughout the review period. That net asset surplus however, is largely represented by the plant and equipment asset, where the realisable value is likely below the book value, given it is now a distressed sale.

10.2 PROFIT AND LOSS STATEMENTS

Attached as **Annexure “5”** is a comparative analysis of the Profit and Loss Statements for the abovementioned periods.

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

- The Company’s revenue has fluctuated dramatically following the Covid-19 pandemic, increasing from \$1.7M in FY2020 to \$3.4M in FY2021, increasing to \$5M during FY2022, decreasing to \$4.7M in FY2023 and then sharply declining to \$390K by June 2024. The primary income stream up to 2023 is box office sales, consistent with the Company’s business as a performing theatre. However, the overall income is materially supplemented by various funding from government grants and donation sources, which have sharply reduced in 2023/24. We note that box office sales in 2024 is significantly reduced reflective of lack of programming and the distressed nature of the operations.
- With respect to expenses, the major items were variable operating and production expenses, also consistent with the Company’s business as a performing theatre. It is clear that expenditure has been reduced in 2024, given the financial circumstances. Fixed operating expenses remain relatively steady.
- The Company has reported marginal profits and losses from 2020 to 2023, reflective of the not-for-profit nature of the charity. The 2024 loss has increased, however the full period accounting has not been completed.

11. CURRENT FINANCIAL POSITION

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

Darlinghurst Theatre Limited (Administrators Appointed) A.C.N. 077 963 234			
	Book Value as at 17/06/2024 (\$)	Directors' ERV (per ROCAP) (\$)	Administrators' ERV (\$)
Assets			
Cash and Cash Equivalents	129,012	194,611	189,605
Trade Debtors	36,481	6,659	6,659
Plant & Equipment	320,235	324,938	<i>Withheld</i>
Stock on Hand	14,105	14,000	-
Other	2,250	-	-
Total Assets	502,083	540,208	196,264
Liabilities			
Secured Creditors	-	-	-
Priority Creditors	119,894	48,935	49,733
Unsecured Creditors			
Statutory & Government Creditors	232,068	177,030	210,572
Trade Creditors & Deposits	102,462	75,646	85,211
Related Party Creditors	-	53,184	187,484
Customers	6,359	14,980	14,796
Total Liabilities	460,783	369,775	547,796
Estimated Net Asset / (Deficiency)	41,299	170,433	(351,532)

11.1 ASSETS

11.1.1 Cash and Cash Equivalents

The Company held funds in multiple accounts with Westpac and NAB. We note that the management accounts were not reconciled to the date of our appointment, and certain receipts (including donations) had not been entered, such that the reported balances were understated in the management accounts by around \$59K.

Following our appointment, we wrote to all banks, and secured the Company's funds, totalling \$190K.

There was a minor amount of petty cash held on a gift card, which we will explore recovery in due course (if possible).

11.1.2 Trade Debtors

The management accounts indicate that there was around \$36K in debtors on our appointment. We have since recovered around \$7K. However, it appears that the balance of the debtors relates to

invoices issued in advance for events (venue hires), which will not be recoverable in the current circumstances.

Accordingly, we do not anticipate any further material recoveries from debtors.

11.1.3 Plant & Equipment

The physical assets were the largest value assets reported by the Company. These assets are the Company's plant and equipment, and contributions to the fitout at the Eternity Playhouse. The management accounts reported the book value at \$320K. However, those assets had been acquired over a number of years and were subject to depreciation.

The landlord, City of Sydney Council, raised a dispute shortly after our appointment in respect of which assets were owned by the Company. This was contrary to what the Board considered was owned by the Company, however the supporting records were disorganised. We engaged in a process to resolve the dispute, which included a joint inspection with representatives of both parties, independent valuers and an exchange of supporting documentation. Taking a commercial approach, it appears that we have resolved the disputes as to which assets are owned by the Company (as tenant) versus the City of Sydney Council (as landlord).

We engaged an independent valuer to provide us a valuation of the Company's assets. The valuation figures cannot be disclosed herein, so as not to prejudice the sale of those assets, which is currently underway. The City of Sydney Council, as the landlord and most practical purchaser, has been invited to make an offer, and we hope to negotiate an agreeable outcome in the coming days. It is likely that there will be some residual assets, which we will explore a sale on a commercial basis (possibly via auction, subject to costs).

We note that the physical assets appear to be secured to Westpac as the first ranking secured creditor. We have written to Westpac informing them of the situation and advising of our intended disposal. We have not received any response or objection from Westpac.

The realisable value of the plant and equipment will determine what funds are available for the creditors in due course.

11.1.4 Stock on Hand

The Company reported a minor amount of stock on hand of \$14K. Our independent valuer has reviewed that stock, and determined that there is limited value, noting that it includes some open and perishable goods. The stock with realisable value, after costs, will be sold via abovementioned sale of residual assets (likely via auction). We anticipate minimal recoveries from the stock.

11.1.5 Other Assets

The other assets are sundry certain prepaid expenses, which are not realisable in the current circumstances.

11.2 LIABILITIES

11.2.1 Secured Creditors

The table below provides a summary of the registered security interests:-

PPSR Creditors	Estimated Claims \$	Comment
Westpac Banking Corporation	Nil currently, however, may increase due to ChargeBack claims from customers	Westpac had provided the Company with an overdraft and EFTPOS facility. Currently there is no debt owed. Westpac holds the first ranking AllPAAP security interest over the Company's assets. Westpac has been requested to provide a partial release of security for the sale of the Company's assets. Westpac has not responded or objected.
Canon Finance Australia	Unknown	Relates to a rental printer/copier. The Company has repudiated the agreement. The secured creditor has collected its property.
GC Leasing Sydney Pty Ltd	Unknown	Relates to a rental telephone system. The Company has repudiated the agreement. The secured creditor has been invited to collect its property.
Metcash & Others	Nil	Relates to a minor amount of stock supplies. Security has been discharged following the collection of goods from the premises.
Bidfood Australia Limited	Nil reported	Security has been discharged following notification of our appointment.
Northern Managed Finance	Nil reported	Security has been discharged following notification of our appointment.

We note that only Westpac has a registered AllPAAP charge, such that they may have a claim against circulating and non-circulating asset realisations. The extent of the security is subject to Westpac's final debt position, which will be impacted by "chargeback" claims from customers. We note that the Company does not have any debt owed to Westpac currently.

The other claims above have either been discharged or are partly secured against specific property which has been returned. The residual claims resulting from the termination of the agreements, will become unsecured creditor claims.

11.2.2 Priority (Employee) Creditors

The management accounts report that priority (employee) creditors are owed approximately \$120K. However, our enquiries indicate that this is materially overstated.

All employees were terminated on, or shortly after, our appointment. The external accountant and Directors have provided a schedule of the employee entitlements. Below is summary of the potential priority claims as prepared by the Company's external accountant:

Entitlements	Administrators' ERV \$
Superannuation	10,718
Wages	5,910
Annual Leave	10,051
Payment in Lieu of Notice	8,460
Redundancy	14,594
Total	49,733

We provide our commentary as follows:

- ▲ The Directors have advised the Company employed four (4) permanent and seventeen (17) casual staff before the Company ceased trading. The employees were provided verbal and written notice of termination of their employment by way of formal redundancy following our appointment. We note that the employees did not work during their notice period.
- ▲ Small businesses with less than 15 employees are exempt from redundancy claims. In respect of the Company, the majority of staff were employed on a casual basis and rostered to work as needed (primarily for events). Therefore, it is likely that the small business exemptions will apply. This will be explored further when claims are being adjudicated for dividend purposes.
- ▲ We note that Mr Glenn Terry ceased employment with the Company in early 2022. We are advised that all entitlements owed to Mr Terry were discharged at that time.
- ▲ We are not aware of any other priority claims against the Company at this time.

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

Whilst we believe the Company may have sufficient funds in due course to discharge the employee claims, this will not be possible for some time. As such, we encourage employees to lodge claims with FEG, assuming that creditors resolve to place the Company into Liquidation.

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 (there

than superannuation). FEG is administered by the Department 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.

In order 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>.

11.2.3 Unsecured Creditors

Unsecured Creditors may be owed approximately \$498K, subject to further enquiries and adjudication of claims. Below is a breakdown:

Unsecured Creditors	Administrators' ERV \$
ATO & Other Government Bodies	210,572
Trade Creditors & Deposits	85,211
Related Party Creditors	187,184
Customers	14,796
Total	498,063

We provide our commentary as follows:

- Our review of the ATO records indicates that the total debt owed is approximately \$64K currently. The tax debts may increase after lodgement of the outstanding pre-appointment tax lodgements.
- The records indicate that the Company owes between \$60K to \$97K to Creative Australia in respect of unacquitted grant funding, which now represents an unsecured creditor claim.
- There may be approximately \$49K owed to the City of Sydney Council in respect of unpaid rent and unacquitted grant funding, which are also unsecured creditor claims in the circumstances. We note that City of Sydney Council resolved to reduce the rent payable on the Eternity Playhouse premises to nil for one year, commencing 1 July 2024. The total claim owed to City of Sydney Council may increase, subject to any damages claims they may arise from the early termination of lease agreements, should the Company be placed into Liquidation.
- The total trade creditors estimate of \$85K includes various suppliers, subcontractors, suppliers, professionals, consultants, utility providers and venue hire depositors.
- The related party creditors include the previously mentioned termination claim from Glenn Terry of \$137K. There is also a claim from People and Culture Strategies (an entity which the current chair Joydeep Hor is a principal) for \$50K purportedly relating to a production during 2023. That claim was previously accounted for as a donation, however Mr Hor has now asserted that the Company owes that amount as a debt. Further review of these claims will be required in a dividend scenario.
- The Company had pre-sold tickets totalling around \$15K to customer for certain events which will no longer be held. Those customers will have unsecured creditor claims against the Company. However, it may be possible for customers who have pre-paid tickets via credit card, to pursue a refund via a "chargeback" from their credit card provider. Those credit card companies may then have a claim against the Company, as subrogated (substituted) creditors.

12. EXPLANATION OF DEFICIENCY

Attached as **Annexure “6”** is the deficiency statement based on pessimistic scenario estimates. We note that the deficiency for the Company’s creditors is circa \$351K, before the costs of the Administration and Liquidation. Summarised below are the key aspects of the deficiency:

Summary of deficiency	Amount \$
Loss on Realisation of Assets	305,819
Understated Liabilities	87,013
Adjustment for Retained Earnings	(41,299)
	351,532

We note that the deficiency is predominantly represented by the loss on realisation of the assets. However, we have not disclosed herein the plant and equipment values, so as not to prejudice the sale process that is currently underway. As such, we anticipate that the actual deficiency will be smaller than reported above.

13. PRELIMINARY INVESTIGATIONS

13.1 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.

13.2 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 and under time constraints. A Liquidator would conduct more detailed investigations, provided that necessary funding is available.

13.3 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 Company's books and records include the following:

- ▲ Externally prepared and audited financial statements;
- ▲ Company's management accounts maintained via MYOB;
- ▲ Correspondence issued by the ATO in relation to payment plans agreed with the Company;
- ▲ Bank statements; and
- ▲ Backup of electronic records, including customer records, payroll and contractual documents.

The Company's financial year ends on 31 December. We note that the Company's current auditor is Judy Brown of Brown Auditing Services Pty Ltd and the audited financial statements to 31 December 2023 were completed on 17 May 2024. Management accounts have been prepared for 2024 (part year), which appear reasonably accurate, although incomplete in parts. The financial records appear to be reasonably complete and reliable in respect of the business transaction activity, including cash transactions and creditors.

Accordingly, our preliminary view is that the Company has maintained sufficient books and records to meet the requirements of Section 286 of the Act.

13.4 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).

13.5 INSOLVENCY & INSOLVENT TRADING (SECTION 588G)

The *Corporations Act 2001* prohibits Insolvent Trading and provides that the Director(s) 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.

13.5.1 What Is Insolvent Trading?

Insolvent Trading is the incurrence 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 against a company in liquidation must:

- demonstrate Insolvency
- show that the Director(s) suspected, or should have suspected, insolvency;
- show that a debt or liability was incurred at a time that the company was insolvent; and
- 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 a competent and 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; and/or
- the government provided legislative relief from insolvent trading from March to December 2020 in response to the COVID-19 pandemic.

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.

13.5.2 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.

13.5.3 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.

13.5.4 ACNC Governance Standards

As a not-for-profit entity and registered charity with ACNC, the Directors have duties pursuant to the ACNC Governance Standards. In particular, Governance Standard 5 states that:

"Governance Standard 5 requires charities to take reasonable steps to make sure that the following duties apply to Responsible People and that they follow them. The duties can be summarised as follows:

to act with reasonable care and diligence

to act honestly and fairly in the best interests of the charity and for its charitable purposes

not to misuse their position or information they gain as a Responsible Person

to disclose conflicts of interest

to ensure that the financial affairs of the charity are managed responsibly, and

not to allow the charity to operate while it is insolvent.

Generally, the duties mean that Responsible People should act with standards of integrity and common sense.”

Whilst there are consequences for insolvent trading, the threshold to prove a claim is higher and therefore more difficult.

13.5.5 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.

13.5.6 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 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. Many factors will impact the decision of funding from prospective litigation funders. Some litigation funders may require further information about recoveries from claims against directors and/or the strength of any defence by directors. Accordingly, litigation funders could provide funding conditional on a public examination first being conducted on persons of interest in the affairs of the Company. A public examination is a formal process conducted by a Liquidator in an open court in which the liquidator can make enquires about and obtain information about a company’s affairs, history and management. If the Liquidator decides to conduct a public examination, the Liquidator

will likely seek legal assistance which can also impact the total sum available to creditors if recoveries are made.

13.5.7 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.

13.6 ASSESSMENT OF INSOLVENCY

Our assessment has been based on the information available to us from the Company’s records, from information provided by the Directors and their advisors, 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 was able to satisfy its debts in the ordinary course, and became insolvent in around June 2024, shortly prior to the Company being placed into Administration.

Our assessment of the Company’s solvency is detailed below.

13.6.1 Working Capital Analysis

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

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

The below working capital analysis has been prepared based on the Company's available financial statements and management accounts, which shows the Company had a working capital deficiency from January 2024.

Working Capital Analysis	As at Jan-24	As at Feb-24	As at Mar-24	As at Apr-24	As at May-24	As at Jun-24
Current Assets	442,735.87	374,810.78	253,846.49	222,271.30	220,228.02	192,347.65
Current Liabilities	530,917.82	552,039.67	478,439.40	446,058.43	480,858.77	471,283.41
Working Capital	(88,181.95)	(177,228.89)	(224,592.91)	(223,787.13)	(260,630.75)	(278,935.76)
Current Ratio	0.834	0.679	0.531	0.498	0.458	0.408

However, our preliminary investigations indicate that the Company's management accounts need to be adjusted to reflect certain matters, as follows:

- ▲ A donation of \$50K was received in May 2024 which had not been recorded in the management accounts. Accordingly, we have made an adjustment to account for these funds.
- ▲ The Grants in Advance amount has remained a stagnant figure in the management accounts from January 2024 onwards for the sum of \$157K, which largely relates to grant funding received from Creative Australia. Our understanding of the Company's grant funding arrangements is that these funds would be spent on ongoing production development. We are advised that the management accounts are overstated and approximately \$60K of grant funding remained to be spent by the Company. As such, this amount has been adjusted in the current liabilities, until the Administration appointment triggered a default.
- ▲ In October 2023, the Company entered into a payment arrangement with the ATO to pay \$2K/week starting from late March 2024, in respect of a historical debt balance of approximately \$85K. This debt was separately recorded in the management accounts and we have made adjustments to reflect the payment arrangement amounts that were due and payable each month, until the Administration appointment triggered a default on the payment arrangement.
- ▲ The Company's management accounts recorded stagnant figures for annual leave entitlements of \$63K as current liabilities, which we understand are materially overstated. Regardless, annual leave balances are not immediately due and payable until employees take leave. The payroll records indicate an amount of circa \$25K was paid for annual leave taken by employees during this period. As such, we have made an adjustment to deduct 50% of the balance during this period.
- ▲ Similarly, the Company's management accounts recorded stagnant figures for long service leave entitlements of \$46K as current liabilities. We are advised that this provision largely relates to a former employee which resigned. We are not aware of any employees that are entitled to long service leave entitlements. Accordingly, we have removed this balance in the current liabilities.

The adjusted working capital analysis is summarised below:

Adjusted Working Capital Analysis	As at Jan-24	As at Feb-24	As at Mar-24	As at Apr-24	As at May-24	As at Jun-24
Current Assets	442,735.87	374,810.78	253,846.49	222,271.30	220,228.02	192,347.65
Add: Donation	-	-	-	-	50,000.00	50,000.00
Adjusted Current Assets	442,735.87	374,810.78	253,846.49	222,271.30	270,228.02	242,347.65
Current Liabilities	530,917.82	552,039.67	478,439.40	446,058.43	480,858.77	471,283.41
Less: Grants in Advance	(96,742.78)	(96,742.78)	(96,742.78)	(96,742.78)	(96,742.78)	-
Less: ATO Historical Debt	(84,933.80)	(84,933.80)	(84,933.80)	(74,933.80)	(66,933.80)	-
Add: ATO Payment Plan	-	-	4,500.00	10,000.00	8,000.00	-
Less: Annual Leave	(31,379.90)	(31,379.90)	(31,379.90)	(31,379.90)	(31,379.90)	(31,379.90)
Less: Long Service Leave	(46,346.85)	(46,346.85)	(46,346.85)	(46,346.85)	(46,346.85)	(46,346.85)
Adjusted Current Liabilities	271,514.49	292,636.34	223,536.07	206,655.10	247,455.44	393,556.66
Adjusted Working Capital	171,221.38	82,174.44	30,310.42	15,616.20	22,772.58	(151,209.01)
Adjusted Current Ratio	1.631	1.281	1.136	1.076	1.092	0.616

Based on the above, the Company appears to have had sufficient funds available to satisfy its immediately due debts in the ordinary course, however the current ratio deteriorates steadily from January 2024 becoming below 1 in June 2024, shortly prior to the Company being placed into Administration. We note that the various grants and payment arrangements would also default upon the Company being placed into Administration.

13.6.2 Indicators of Insolvency

In addition, we have observed the following facts relevant to the solvency of the Company:

- ▶ The Company entered into multiple payment arrangement with the ATO in October 2023 in respect of SGC and PAYG tax liabilities.
- ▶ The Company engaged with the City of Sydney Council to seek rent abatement for the Eternity Playhouse, which was later granted.
- ▶ During the months prior to our appointment, the Company sought critical funding from various government and public sources, however was ultimately unsuccessful in securing sufficient funding to continue operations.
- ▶ The founder of the Company, Mr Glenn Terry, left the organisation in March 2022 and the Executive Directors who were appointed to replace Mr Terry, had short tenures.

13.6.3 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 solvent on a cashflow basis until around June 2024, shortly prior to the Company being placed into Administration. The Directors took prompt action and accordingly, there does not appear to be an insolvent trading claim to pursue.

If the Company is placed into Liquidation, a Liquidator may conduct further enquiries on the solvency and claims.

13.6.4 Defences Available

As discussed above, there is no potential insolvent trading claims according to our preliminary investigations on the Company's solvency position. However, should further investigations be conducted and indicate an insolvent trading claim might be available to pursue, we note that a defence may be 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; or
- If the Director availed himself of the protections under the Safe Harbour regime.

As discussed above, the Directors took steps to seek accommodations from key creditors, including the ATO and the City of Sydney Council, to assist with cashflow requirements, where our preliminary analysis indicates the Company was able to pay its debts as and when they fell due.

A Liquidator would conduct further investigations and consider potential defences, before pursuing any recovery action.

14. 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 "12"**.

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

14.1 VOIDABLE TRANSACTION PROVISIONS & OTHER CLAIMS

14.1.1 Unfair Preferences

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

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

The clawback provisions available to the 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 RBP.

We refer to our previous discussion in relation to our preliminary investigations on the Company's solvency position. It is our preliminary view that the Company became insolvent in June 2024, shortly prior to the Company being placed into Administration.

Therefore, we have not identified any material preferential payments to pursue. If the insolvency date changes, then the claims analysis may be reviewed.

Further investigations would be undertaken by a Liquidator if appointed.

14.1.2 Uncommercial Transactions

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

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

Our preliminary investigations have not identified any uncommercial transactions.

14.1.3 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.

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

14.1.4 Unfair Loans (S588FD)

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

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

Our preliminary investigations have not identified any unfair loans.

14.1.5 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 claims for discharge of related party debts.

14.1.6 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 securities registered within six (6) months before the relation-back day.

14.2 BREACH OF DUTY CLAIMS

We have considered whether there are any potential breach of duty claims to be pursued against the Directors.

Arguably, the Directors could have caused the Company to cease trading earlier, around late 2023, which could have reduced the loss suffered by the current creditors. However, the Company's balance sheet consistently reported a surplus of net assets, and the shortfall now is only determined when the primary plant and equipment assets are being realised in a distressed sale environment. It is unclear

if the Directors should have had a distressed sale mindset when assessing the trading position at that time.

Instead, in late 2023, the Directors appear to have taken reasonable steps to inform themselves of the Company's financial situation and consider options available. Thereafter, the Directors appointed a new interim Executive Director and sought to pursue an informal restructure of the business, focussed on reducing costs, obtaining new funding sources and improving the underlying business model. Further, the Directors had the audited accounts and employee entitlement claims brought up to date.

Whilst the turnaround efforts were not successful, our preliminary view is that the Directors acted in good faith and with reasonable care and diligence in those months leading to the appointment. Furthermore, there is no evidence that they preferred their own interests over the Company or its creditors - to the contrary, Mr Farmer did not draw any wage for that six (6) month period, nor did any Directors take a fee.

Finally, we note the total creditor claims are relatively modest, and it appears uncommercial to pursue any recovery actions via litigation, having regard to costs and inherent risks involved.

Accordingly, we have not identified any breach of duty claims to pursue at this time. Further enquiries may be conducted by a Liquidator.

14.3 REPORT TO ASIC

As we have not identified any breaches at this stage, therefore we do not intend to lodge a confidential report to ASIC pursuant to Section 438D of the Act, or equivalent with ACNC.

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. ESTIMATED RETURN TO CREDITORS

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

- the realisable value of the available assets;
- 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 "7"** is an analysis of the estimated returns that may be available to creditors under a Liquidation scenario noting that we have not received a DOCA proposal. However, as we are currently still in the process of pursuing a sale of the Company's PPE, we are unable to disclose a value

in the analysis, so as not to prejudice any sale. As such, if we are able to successfully complete a sale of the PPE, the estimated return to creditors may be higher than the current reported estimates.

Please note these figures are estimates only, and the actual results may vary materially. In summary, the estimated returns are as follows:

Summary of Return to Creditors	Liquidation High Cents/\$	Liquidation Low Cents/\$
Secured Creditors	100	100
Priority Creditors	100	21
Unsecured Creditors	5	Nil

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.

16. 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 administration to end;
- Whether it would be in the Creditors' interests for the Company to enter into a Deed of Company Arrangement;
- 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:

16.1 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 Directors.

The Company is insolvent and not expected to return to solvency.

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

16.2 DEED OF COMPANY ARRANGEMENT

Creditors may resolve that the Company should execute a DOCA.

We explored potential funding options to restructure and/or recapitalise the business, via a DOCA.

Unfortunately, no funding or DOCA proposal has been forthcoming, and the Company remains insolvent.

We do NOT recommend that creditors resolve that the Company enter into a DOCA.

16.3 LIQUIDATION

Should creditors decide to wind up the Company, the Administration would convert to a Creditors Voluntary Liquidation 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 (and likely ACNC) in the event that offences are identified.

Our preliminary investigations have not identified any insolvent trading or voidable recovery actions to pursue. Any return to priority and unsecured creditors is dependent on the outcome of the sale of the Company's assets, which is currently underway.

Furthermore, we note that the Company is insolvent and no DOCA has been proposed. Liquidation is the only viable option.

BASED ON THE ABOVE FACTORS, WE RECOMMEND THAT THE CREDITORS RESOLVE TO PLACE THE COMPANY INTO LIQUIDATION.

17. RECEIPTS AND PAYMENTS

The receipts and payments up to date of this report are attached as **Annexure "8"**.

18. REMUNERATION OF 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 "9"** 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 "10"**.

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 "11"**) 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>

- <http://www.arita.com.au/insolvency-you/insolvency-explained/insolvency-fact-sheet>

18.1 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 "9"** for further details.

18.2 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 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, including the sale of the assets and dividend work 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 "9"** for further details.

19. SECOND MEETING OF CREDITORS

The Second Meeting of Creditors will be held on Monday, 22 July 2024 at 3:00PM AEST. The formal Notice of Meeting is attached as **Annexure "1"** for your reference. Virtual meeting facilities will be available.

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, you should:

- Provide us with a Proof of Debt detailing your claim to be a 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.

20. QUERIES

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

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

Yours faithfully,

DARLINGHURST THEATRE LIMITED
(ADMINISTRATORS APPOINTED)



JONATHON KEENAN
Joint and Several Administrator



**Darlinghurst Theatre Limited
(Administrators Appointed)**

ACN 077 963 234

ABN 28 077 963 234

Annexure "1"
Notice of Second Meeting of Creditors

CORPORATIONS ACT 2001

Section 439A

Insolvency Practice Rules (Corporations)

75-10, 75-15 & 75-20

NOTICE OF SECOND MEETING OF CREDITORS

**DARLINGHURST THEATRE LIMITED
(ADMINISTRATORS APPOINTED)**

**ACN 077 963 234 / ABN 28 077 963 234
("THE COMPANY")**

NOTICE is given that a 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 **Monday, 22 July 2024 at 3:00 PM AEST.**

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/tZckdu2trDwuEtaahMuc_KGRhQD6M5JX3Y6I

A G E N D A

1. To receive the Report of the Administrators and receive questions from creditors.
2. To determine the current remuneration of the Administrators.
3. To determine the future remuneration of the Administrators.
4. 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.
5. 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 books and records.
6. To consider the appointment of a Committee of Inspection.
7. 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 AEST 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 12th day of July 2024



JONATHON KEENAN
JOINT AND SEVERAL ADMINISTRATOR

BRI FERRIER
Level 26
25 Bligh Street
Sydney NSW 2000



**Darlinghurst Theatre Limited
(Administrators Appointed)**

ACN 077 963 234

ABN 28 077 963 234

Annexure "2"
Formal Proof of Debt or Claim Form

FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

To the Joint and Several Administrators Darlingshurst Theatre Limited (Administrators Appointed) ACN 077 963 234

1. This is to state that the company was, on 17 June 2024 ⁽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:

Date	Consideration ⁽³⁾ state how the debt arose	Amount \$	GST included \$	Remarks ⁽⁴⁾ include details of voucher substantiating payment

2. To my knowledge or belief the creditor has not, nor has any person by the creditor's order, had or received any manner of satisfaction or security for the sum or any part of it except for the following:

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

Date	Drawer	Acceptor	Amount \$ c	Due Date

☐ I am **not** a related creditor of the Company ⁽⁵⁾

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

3A.^{(6)*} I am employed by the creditor and authorised in writing by the creditor to make this statement. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, still remains unpaid and unsatisfied.

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

The External Administrators' (whether as Voluntary Administrators/Deed Administrators/Liquidators) will send and give electronic notification of documents. Please provide your email address below:

Contact Name:

Email Address:

DATED this.....day of.....2024

Signature of Signatory

NAME IN BLOCK LETTERS

Occupation.....

Address.....

OFFICE USE ONLY

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

Proof of Debt Form Directions

- * Strike out whichever is inapplicable.
- (1) Insert date of Court Order in winding up by the Court, or date of resolution to wind up, if a voluntary winding up.
 - (2) Insert full name and address (including ABN) of the creditor and, if applicable, the creditor's partners. If prepared by an employee or agent of the creditor, also insert a description of the occupation of the creditor.
 - (3) Under "Consideration" state how the debt arose, for example "goods sold and delivered to the company between the dates of", "moneys advanced in respect of the Bill of Exchange".
 - (4) Under "Remarks" include details of vouchers substantiating payment.
 - (5) Related Party / Entity: Director, relative of Director, related company, beneficiary of a related trust.
 - (6) If the Creditor is a natural person and this proof is made by the Creditor personally. In other cases, if, for example, you are the director of a corporate Creditor or the solicitor or accountant of the Creditor, you sign this form as the Creditor's authorised agent (delete item 3A). If you are an authorised employee of the Creditor (credit manager etc), delete item 3B.

Annexures

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



**Darlinghurst Theatre Limited
(Administrators Appointed)**

ACN 077 963 234

ABN 28 077 963 234

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

APPOINTMENT OF PROXY

DARLINGHURST THEATRE LIMITED
(ADMINISTRATORS APPOINTED)

ACN 077 963 234 / ABN 28 077 963 234
("THE COMPANY")

*I/*We⁽¹⁾of.....
a creditor of **Darlinghurst Theatre 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 Monday,
22 July 2024 at 3:00 PM AEST, or at any adjournment of that meeting.

Please mark any boxes with an ☒ X

Proxy Type: ☐ General ☐ Special

	For	Against	Abstain
Resolution 1: <i>"That the remuneration of the Joint and Several Administrators, their partners and staff for the period 17 June 2024 to 10 July 2024, be calculated on a time basis in accordance with the rates of charge annexed to the Voluntary Administrators' Second Report to Creditors dated 12 July 2024, be fixed and approved at \$56,291.00 (plus GST), and that the Joint and Several Administrators be authorised to draw that amount."</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Resolution 2: <i>"That the remuneration of the Joint and Several Administrators, their partners and staff for the period 11 July 2024 to 22 July 2024 be calculated on a time basis in accordance with the rates of charge annexed to the Voluntary Administrators' Second Report to Creditors dated 12 July 2024 and approved to an interim cap of \$35,000.00 (plus GST), and that the Joint and Several Administrators be authorised to draw that amount as and when incurred."</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<u>Resolution 3:</u> <i>"That the Voluntary Administration should end."</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Resolution 4:</u> <i>"That the Company enter into a Deed of Company Arrangement."</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Resolution 5:</u> <i>"That the Company be wound up."</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>If creditors resolve that the Company be wound up:</u>			
<u>Resolution 6:</u> <i>"That the remuneration of the Joint and Several Liquidators, their partners and staff for the period 22 July 2024 to the conclusion of the Liquidation, be calculated on a time basis in accordance with the rates of charge annexed to the Voluntary Administrators' Second Report to Creditors dated 12 July 2024, and approved to an interim cap of \$45,000.00 (plus GST), and that the Joint and Several Liquidators be authorised to draw that amount as and when incurred."</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Resolution 7:</u> <i>"That the Liquidators be allowed internal disbursements for the period 22 July 2024 to the conclusion of the Liquidation at the rates of charge annexed to the Voluntary Administrators' Remuneration Approval Report dated 12 July 2024, up to an amount of \$1,000.00 (plus GST) and that the Liquidators be authorised to draw that amount as accrued."</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Resolution 8:</u> <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>	<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 2 resolutions relating to the future of the Company. You must vote "against" the other 1 resolution.
-

DATED thisday of 2024

Signature

Proxies should be returned to the offices of BRI Ferrier by 4.00 PM AEST one (1) business day prior to the meeting by: Email: fbabic@brifnsw.com.au, or Fax: (02) 8263 2333, 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 2024

Signature of Witness:

Description:

Place of Residence:



Darlinghurst Theatre Limited
(Administrators Appointed)

ACN 077 963 234

ABN 28 077 963 234

Annexure "4"
Comparative Balance Sheets

Darlinghurst Theatre Limited

A.C.N. 077 963 234

Balance Sheet

For the Financial Years Ended 31 Decemeber 2020 to 31 December 2023 and Part-Year Ended 17 June 2024

	AUDITED Year Ended 31-Dec-20 (\$)	AUDITED Year Ended 31-Dec-21 (\$)	AUDITED Period Ended 31-Dec-22 (\$)	AUDITED Period Ended 31-Dec-23 (\$)	MYOB Period Ended 17-Jun-24 (\$)
ASSETS					
Current Assets					
Cash assets	447,827	1,083,122	591,337	448,204	129,012
Receivables	56,961	21,534	19,220	94,397	36,481
Inventories	40,465	27,813	14,104	14,105	14,105
Current tax assets	9,939	-	-	-	-
Other	55,905	114,952	34,985	12,250	12,750
Total Current Assets	611,097	1,247,421	659,646	568,956	192,348
Non-Current Assets					
Property, plant and equipment	189,496	296,417	292,153	320,235	320,235
Total Non-Current Assets	189,496	296,417	292,153	320,235	320,235
TOTAL ASSETS	800,593	1,543,838	951,799	889,191	512,583
LIABILITIES					
Current Liabilities					
Payables	14,228	209,356	387,084	216,064	59,125
Finiancial liabilities	52,051	-	-	-	-
Current tax liabilities	15,737	-	-	-	28,220
Provisions	109,662	-	-	-	-
Other	501,537	834,011	245,859	208,335	216,939
Employee Benefits	-	198,277	183,960	138,282	166,999
Total Current Liabilities	693,215	1,241,644	816,903	562,681	471,283
TOTAL LIABILITIES	693,215	1,241,644	816,903	562,681	471,283
NET ASSETS	107,378	302,194	134,896	326,510	41,299
EQUITY					
Members' guarantee	200	-	-	-	-
Retained surplus	117,929	107,379	302,194	134,896	326,510
Current Earnings	(10,750)	194,815	(171,872)	191,614	(285,201)
TOTAL EQUITY	107,379	302,194	130,322	326,510	41,309

Working Capital Analysis

	Year Ended 31-Dec-20 (\$)	Year Ended 31-Dec-21 (\$)	Period Ended 31-Dec-22 (\$)	Period Ended 31-Dec-23 (\$)	Period Ended 17-Jun-24 (\$)
Working Capital Analysis					
Current Assets	611,097	1,247,421	659,646	568,956	192,348
Current Liabiltiies	693,215	1,241,644	816,903	562,681	471,283
Net Working Capital	(82,118)	5,777	(157,257)	6,275	(278,936)
Current Asset Ratio	0.88	1.00	0.81	1.01	0.41

Net Asset Analysis

	Year Ended 31-Dec-20 (\$)	Year Ended 31-Dec-21 (\$)	Period Ended 31-Dec-22 (\$)	Period Ended 31-Dec-23 (\$)	Period Ended 17-Jun-24 (\$)
Adjusted Net Asset Analysis					
Total Assets	800,593	1,543,838	951,799	889,191	512,583
Total Liabilities	(693,215)	(1,241,644)	(816,903)	(562,681)	(471,283)
Net Asset Position	107,378	302,194	134,896	326,510	41,299



**Darlinghurst Theatre Limited
(Administrators Appointed)**

ACN 077 963 234

ABN 28 077 963 234

**Annexure "5"
Comparative Profit and Loss
Statements**

Darlinghurst Theatre Limited
A.C.N. 077 963 234
Comparative Profit and Loss Statements
For the Financial Years Ended 31 December 2020 to 31 December 2023 and Part Year Ended 17 June 2024

	Year Ended 31-Dec-20 (\$)	Year Ended 31-Dec-21 (\$)	Year Ended 31-Dec-22 (\$)	Year Ended 31-Dec-23 (\$)	Part Period 17-Jun-24 (\$)
Income					
Box Office Sales	512,824	516,457	3,361,078	2,472,052	188,694
Venue Hire	22,186	50,768	52,576	242,178	131,410
Bar Sales	120,355	161,205	301,694	135,002	2,212
Funding - Arts NSW	410,000	-	-	-	-
Donations & Fundraising	184,158	117,796	152,312	85,448	(1,200)
Sponsorship	-	10,000	-	-	-
City of Sydney project funding	76,000	7,200	59,175	224,609	70,033
Australia Council CCD project funding	5,000	-	-	-	-
Foundation funding	10,000	-	-	-	-
Jobkeeper payments	246,450	414,838	(218,449)	-	-
NSW Govt Grant	13,000	1,308,372	1,174,861	742,000	-
ATO Cashflow Boost	72,182	-	-	-	-
Presenter fees	-	162,163	104,777	310,784	-
Interest	-	-	1,093	-	-
Program Sales	-	-	20,279	36,822	-
Other income	-	-	22,621	437,861	2,083
RISE Funding	-	605,562	-	-	-
Partner Income	-	40,000	-	-	-
Instruments & Small Equipment	-	-	-	1,081	-
Gross Profit	1,672,155	3,394,361	5,032,017	4,687,837	393,231
Expenses					
Marketing Expenses	84,226	283,547	189,322	227,761	5,907
Fixed Operating Expenses	584,413	228,275	431,353	221,445	175,689
Variable Operating Expenses	191,190	983,946	1,343,102	2,713,715	348,553
Production Expenses	600,469	1,363,066	2,899,208	1,283,893	140,457
Front of House Expenses	222,608	340,712	340,904	49,409	6,490
Total Expenses	1,682,906	3,199,546	5,203,889	4,496,223	677,096
Profit / (Loss) Before Income Tax	- 10,751	194,815	(171,872)	191,614	(283,865)
Other Income					
Bank Interest	-	-	-	-	37
Total Other Income	-	-	-	-	37
Other Expenses					
ATO Penalties & Fines	-	-	-	-	1,373
Total Other Expenses	-	-	-	-	1,373
Profit / (Loss) After Income Tax	(10,751)	194,815	(171,872)	191,614	(285,201)
Retained Profits (Accum Losses) - Opening Balance	118,129	107,378	302,193	130,321	321,935
Retained Profits (Accum Losses) - Closing Balance	107,378	302,193	130,321	321,935	36,734



**Darlinghurst Theatre Limited
(Administrators Appointed)**

ACN 077 963 234

ABN 28 077 963 234

**Annexure "6"
Deficiency Statement**

Darlinghurst Theatre Limited (Administrators Appointed)				
A.C.N. 077 963 234				
	Book Value as at 17/06/2024 (\$)	Directors' ERV (per ROCAP) (\$)	Administrators' ERV (\$)	Deficiency (\$)
Assets				
Cash and Cash Equivalents	129,012	194,611	189,605	
Trade Debtors	36,481	6,659	6,659	
Plant & Equipment	320,235	324,938	<i>Withheld</i>	
Stock on Hand	14,105	14,000	-	
Other	2,250	-	-	
Total Assets	502,083	540,208	196,264	
Liabilities				
Secured Creditors	-	-	-	
Priority Creditors	119,894	48,935	49,733	
Unsecured Creditors				
Statutory & Government Creditors	232,068	177,030	210,572	
Trade Creditors & Deposits	102,462	75,646	85,211	
Related Party Creditors	-	53,184	187,484	
Customers	6,359	14,980	14,796	
Total Liabilities	460,783	369,775	547,796	
Estimated Net Asset / (Deficiency)	41,299	170,433	(351,532)	351,532

Darlinghurst Theatre Limited (Administrators Appointed)				
A.C.N. 077 963 234				
Deficiency Statement				
		Amount (\$)	Amount (\$)	
Deficiency of Assets to Liabilities				351,532
Add: Loss of Share Capital		-		
Estimated Total Deficiency of Assets to meet Liabilities				351,532
These losses are represented by:				
a) Retained Earnings				
Retained Earnings as at 31 December 2023		(326,500)		
Current Year Loss as at 17 June 2024		285,201		(41,299)
b) Estimated Loss on Realisation of Assets				
	Book Value as at 17/06/2024 (\$)	Administrators' ERV (\$)	Loss on Realisation (\$)	
Asset				
Cash and Cash Equivalents	129,012	189,605	(60,594)	
Trade Debtors	36,481	6,659	29,822	
Plant & Equipment	320,235	<i>Withheld</i>	320,235	
Stock on Hand	14,105	-	14,105	
Other	2,250	-	2,250	
Total	502,083	196,264	305,819	305,819
c) Increase in Creditor Claims not disclosed in Balance Sheet				
	Book Value as at 17/06/2024 (\$)	Administrators' ERV (\$)	Unreported Liabilities (\$)	
Liabilities				
Secured Creditors	-	-	-	
Priority Creditors	119,894	49,733	(70,161)	
Unsecured Creditors	-	-	-	
Statutory & Government Creditors	232,068	210,572	(21,496)	
Trade Creditors & Deposits	102,462	85,211	(17,251)	
Related Party Creditors	-	187,484	187,484	
Customers	6,359	14,796	8,437	
Total	460,783	547,796	87,013	87,013
Deficiency as Above				351,532



**Darlinghurst Theatre Limited
(Administrators Appointed)**

ACN 077 963 234

ABN 28 077 963 234

**Annexure "7"
Estimated Outcome Statement**

Darlinghurst Theatre Limited (Administrators Appointed)				
Estimated Outcome Statement				
	Book Value as at 17/06/2024 (\$)	Administrators' ERV Liquidation (High)	Administrators' ERV Liquidation (Low)	
ASSETS				
Cash and Cash Equivalents	129,012	189,605	189,605	
Trade Debtors	36,481	6,659	6,659	
Plant & Equipment	320,235	<i>Withheld</i>	<i>Withheld</i>	
Less: Realisation Costs	-	<i>Unknown</i>	<i>Unknown</i>	
Stock on Hand	14,105	-	-	
Other	2,250	-	-	
Total Assets	502,083	196,264	196,264	
Recoveries in Liquidation				
Voidable Transactions & Recoveries		-	-	
Breach of Director Duties Claims		-	-	
Total Recovery	-	-	-	
Administration Costs				
Administration Costs				
Administrators' Remuneration from 17 June 2024 to 10 July 2024 (Accrued)		56,291	56,291	
Administrators' Additional Remuneration (Future)		25,000	35,000	
Administrators' Disbursements		1,000	1,000	
Administrators' Legal Fees		-	-	
Administrators' Operating Costs (Valuation, Utilities, Wages, Insurance, Rent, etc)		20,000	30,000	
Liquidation Costs				
Liquidators' Remuneration		30,000	45,000	
Liquidators' Disbursements		1,000	1,000	
Liquidators' Legal Fees		-	-	
Litigation Funder (40% of recovery)		-	-	
Accounting Fees		1,500	2,500	
Total Costs of Administration Costs	-	134,791	170,791	
Estimated Surplus Available for Secured Creditors		61,473	25,473	
Secured Creditor Claims (Estimated)				
Secured Creditor Claims		-	15,000	
Total Secured Creditor Claims		-	15,000	
Estimated Surplus Available to Priority Creditors		61,473	10,473	
Priority Creditors				
Wages and Superannuation	10,787	16,628	16,628	
Annual Leave & Long Service Leave	109,107	10,051	10,051	
PILN and Redundancy	-	8,460	23,054	
Total Priority Creditors	119,894	35,139	49,733	
Estimated Surplus Available to Unsecured Creditors		26,334	(39,260)	
Unsecured Creditors	-			
Statutory & Government Creditors	232,068	210,572	210,572	
Trade Creditors & Deposits	102,462	85,211	85,211	
Related Party Creditors	-	187,484	187,484	
Customers	6,359	14,796	14,796	
Contingency		-	50,000	
Total Other Unsecured Creditors	340,889	498,063	548,063	
Estimated Surplus/(Shortfall)		(471,729)	(587,323)	

Summary of Return to Creditors		Liquidation High Cents/\$	Liquidation Low Cents/\$
Secured Creditors		100	100
Priority Creditors		100	21
Unsecured Creditors		5	Nil

*Note - Plant & Equipment realisable value has been withheld, to not prejudice the sale. The return to creditors will change.



**Darlinghurst Theatre Limited
(Administrators Appointed)**

ACN 077 963 234

ABN 28 077 963 234

Annexure "8"
Summary of Receipts and Payments

Summarised Receipts & Payments

Darlinghurst Theatre Limited

(Administrators Appointed)

Transactions From 17 June 2024 To 11 July 2024

A/C	Account	Net	GST	Gross
74	Cash at Bank	189,605.42	0.00	189,605.42
165	Superannuation Deduction	20.00	0.00	20.00
228	Superannuation Liability	800.90	0.00	800.90
234 - 1	Withholding Tax (PAYG) - Total Tax Withheld - OTE	1,550.00	0.00	1,550.00
Total Receipts (inc GST)		\$191,976.32	\$0.00	\$191,976.32
157	Superannuation	1,216.83	0.00	1,216.83
161	Wages & Salaries	10,897.74	0.00	10,897.74
228	Superannuation Liability	(415.93)	0.00	(415.93)
234 - 1	Withholding Tax (PAYG) - Total Tax Withheld - OTE	(222.00)	0.00	(222.00)
Total Payments (inc GST)		\$11,476.64	\$0.00	\$11,476.64
Balance in Hand - By Bank Account				
212	Cheque Account			180,499.68
213	NBF Trust Account			0.00
				\$180,499.68



**Darlinghurst Theatre Limited
(Administrators Appointed)**

ACN 077 963 234

ABN 28 077 963 234

**Annexure "g"
Remuneration Approval Report**

Remuneration Approval Report

DARLINGHURST THEATRE LIMITED
ACN 077 963 234

12 July 2024

Jonathon Keenan and Peter Krejci
Joint and Several Administrators

Novabrif Pty Ltd ABN 61 643 013 610
Level 26, 25 Bligh Street, Sydney NSW 2000
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	91,291.00	1,000.00
Liquidation	45,000.00	1,000.00

Details of remuneration and disbursements can be found in sections 3 and 4 of this report.

Creditors will be asked to pass resolutions at the meeting on 22 July 2024.

Creditors have not previously approved our remuneration.

We estimate the total cost of this Voluntary Administration will be approximately \$91K. This is consistent with the previous estimate of \$75K to \$100K in the Initial Remuneration Notice.

2. DECLARATION

We, Jonathon Keenan 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	17 June 2024 to 10 July 2024	56,291.00	Provided in our Second Report to Creditors dated 12 July 2024	It will be drawn if approved by creditors
Future work to meeting date	11 July 2024 to 22 July 2024	35,000.00	Provided in our Second Report to Creditors dated 12 July 2024	It will be drawn if approved by creditors, once incurred
VA total		91,291.00		

For	Period	Amount (\$, excl. GST)	Rates to apply	When it will be drawn
Future work – Liquidation	22 July 2024 to finalisation of liquidation	45,000.00	Provided in our Second Report to Creditors dated 12 July 2024	It will be drawn when funds are available
Liquidation Total		45,000.00		

Details of the work done for the period 17 June 2024 to 10 July 2024 and future work expected for the period 11 July 2024 to 22 July 2024 are included at **Schedule A**.

Details of future work that we intend to do in Liquidation are included at **Schedule B**.

A breakdown of time spent by staff members on each major task for work completed from 17 June 2024 to 10 July 2024 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 Initial Remuneration Notice sent to you on 19 June 2024.

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

For	Period	Amount (\$, excl. GST)
Voluntary Administration	17 June 2024 to conclusion	1,000.00
If Company is liquidated - Future disbursements	22 July 2024 to conclusion	1,000.00

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 "7"** of the Second Report to Creditors 12 July 2024. 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 9 July 2024 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 17 June 2024 to the second meeting of creditors

Schedule B – Details of work from the second meeting of creditors 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 17 June 2024 to 10 July 2024

Schedule D – Resolutions

Schedule E – Disbursements

SCHEDULE A – DETAILS OF WORK FROM 17 JUNE 2024 TO THE SECOND MEETING OF CREDITORS

Company	Darlinghurst Theatre Limited (Administrators Appointed)	Period From	17 June 2024	To	22 July 2024
Practitioner	Jonathon Keenan & Peter Krejci	Firm	BRI Ferrier		
Administration Type	Administrators Appointed				
		Tasks			
		Work completed (excl. GST)	Future work (excl. GST)		
Period		17 June 2024 to 10 July 2024	11 July 2024 to 22 July 2024		
Amount (excl. GST)		\$56,291.00	\$35,000.00		
Task Area	General Description				
Assets		22.1 Hours \$13,059.00	\$7,000.00		
	Plant and Equipment ("PPE")	Liaise with valuer for valuation of PPE Liaise with valuer regarding realisation strategy for PPE Liaise with insurance broker regarding insurance requirements Negotiate with the landlord of the Company's premises regarding continued use of premises Discussions with landlord regarding ownership dispute for PPE	Finalise negotiations with interested parties Liaise with valuer in relation to finalising sale of PPE Prepare asset sale agreement and negotiate terms with interested party Execute asset sale agreement Complete sale of PPE with interested party Liaising with valuer regarding realisation strategy for residual PPE		
	Stock	Reviewing and updating stocktake listing Liaising with the Director regarding stocktake listing	N/A		

		Review PMSI claims	
	Sales of business as a Going Concern	<p>Liaising with interested parties re sales of assets</p> <p>Review position of sales of business</p> <p>Considering potential claims against assets held in Lilyfield storage</p>	N/A
	Other Asset	<p>Liaising with the valuer regarding access to the theatre and storage facility</p> <p>Prepare and issue correspondence to requesting transfer of funds held in the Company's pre-appointment bank account</p>	N/A
Creditors		55.5 Hours \$21,481.00	\$15,000.00
	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</p> <p>Responding to 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 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>Preparing Second Report to Creditors</p> <p>Preparation of necessary annexures for Second Report to Creditors</p>	<p>Preparing and issuing Second Report to Creditors detailing investigations</p> <p>Preparation of necessary annexures for Second Report to Creditors</p>
	Dealing with proofs of debt	<p>Receipting and filing POD when not related to a dividend</p> <p>Maintaining register of Proofs of Debts received</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>

		Reviewing supporting documentation from creditors	Reviewing supporting documentation from creditors
	Secured creditor reporting	<p>Notifying PPSR registered creditors of appointment</p> <p>Responding to secured creditor's queries</p> <p>Preparing and updating PPSR schedule</p> <p>Liaising with Westpac regarding consent to sale of asset subject to security</p> <p>Liaising with secured creditors regarding collection of assets</p>	<p>Following up with Westpac regarding consent to sale of asset subject to security</p> <p>Liaising with secured creditors regarding collection of assets</p> <p>Updating PPSR schedule</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 and lodgement of minutes of First Meeting of Creditors with ASIC</p> <p>Responding to stakeholder queries and questions immediately following meeting</p>	N/A
	Proposal for Deed of Company Arrangement	<p>Liaising with Directors and lawyers regarding DOCA proposal and funding requirements</p> <p>Preparing and updating schedule for interested party queries</p>	N/A

	Second Meeting of Creditors	N/A	<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 Second Meeting of Creditors</p> <p>Responding to stakeholder queries and questions immediately following meeting</p>
	Shareholder enquiries	Preparing and issuing circular to members	N/A
Investigation		17.5 Hours \$6,435.00	\$3,000.00
	Conducting Investigation	<p>Obtaining access to management accounts</p> <p>Reviewing Company's books and records</p> <p>Preparation of comparative financial statements</p> <p>Review the Company's books and records in relation to the Company's historical financial position and financial performance</p> <p>Preparation of deficiency statement</p> <p>Preparation of working capital analysis</p> <p>Preparation of investigation file</p> <p>Review ROCAP completed by Directors</p> <p>Liaising with the Directors in relation to investigations regarding recoverability of assets recorded on the Company's balance sheets</p>	<p>Review of specific transactions and liaising with Directors regarding certain transactions</p> <p>Consider recovery actions available in a Liquidation scenario</p> <p>Finalise deficiency statement</p> <p>Finalise working capital analysis and solvency analysis</p> <p>Consider recovery actions available in a Liquidation scenario</p>

		Review bank statements and general ledgers extracted from the management accounts, consider potential voidable transactions which might be available to pursue in a Liquidation scenario	
	ASIC Reporting	N/A	Preparing statutory investigation reports Liaising with ASIC regarding lodgement of
Employees		10.0 Hours \$3,602.00	\$2,000.00
	Employees enquiries	Attend to employees' queries Discussions with employees regarding outstanding entitlements	Correspondence with employees Any other tasks associated with employees
	Other employee issues	Notifying employees regarding termination of employment Preparing employee termination notices Processing final pay run	Any other tasks associated with employees
Trade On		1.5 Hours \$1,095.00	N/A
	Trade On Management	Attended premises to conduct inspection of assets and address staff with Director	N/A
Administration		31.6 Hours \$10,619.00	\$8,000.00
	ASIC Forms and lodgements	Preparing and lodging ASIC forms including 505, 205, 531, 507 etc Preparing and lodging ASIC PNW Advert	Preparing and lodging ASIC forms including 5011, 530 etc Preparing and lodging ASIC PNW Advert

	Bank account administration	Preparing correspondence opening bank account Processing internal payment and receipt forms Bank account reconciliations	Bank account reconciliations
	Correspondence	Correspondence with various parties	Correspondence with various parties
	Insurance	Liaising with the insurance broker regarding insurance policies	N/A
	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	N/A
	Planning / Review	Discussions regarding status of administration	Discussions regarding status of administration
	Books and records storage	Liaising with IT provider to back up data Liaising with the accountant to update management accounts	N/A
	Finalisation	N/A	Notifying ATO of finalisation Completing checklists Finalising WIP

SCHEDULE B – DETAILS OF WORK FROM THE SECOND MEETING OF CREDITORS TO THE CONCLUSION OF THE EXTERNAL ADMINISTRATION

Company	Darlinghurst Theatre Limited (Administrators Appointed)	Period From	22 July 2024	To	Conclusion
Practitioner	Jonathon Keenan & Peter Krejci	Firm	BRI Ferrier		
Administration Type	Administrators Appointed				
		Tasks			
		If wound up			
		Liquidation Work			
Period		22 July 2024 to conclusion			
Amount (excl. GST)		\$45,000.00			
Task Area	General Description				
Assets		\$4,000.00			
	PPE	Finalising sale of PPE Liaising with valuer regarding sale of residual PPE Conduct online auction for any residual PPE Arrange access to premises for collection of residual PPE			
	Other Assets	Tasks associated with realising other assets			
	Leasing	Liaising with landlord regarding termination of lease			
Creditors		\$15,000.00			
	Creditor Enquiries	Receive and respond to creditor enquiries Receive and follow up creditor enquiries by telephone Review and prepare initial correspondence to creditors and their representatives Considering reasonableness of creditor request			
	Creditor Reports	Prepare Circular to Creditors regarding Liquidation Prepare Statutory Report to Creditors Preparation of necessary annexures for Statutory Report to Creditors Prepare Report to Creditors if necessary			
	Dealing with proofs of debt	Receipting, processing, and filing Proofs of Debts when not related to a dividend Maintaining register of Proofs of Debts received			

		Reviewing supporting documentation from creditors
	Meeting of Creditors	Convening creditors meeting as necessary Preparation of Minutes of Meeting
Investigation		\$6,000.00
	Conducting Investigation	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
	ASIC Reporting	Preparing statutory investigation reports Liaising with ASIC
Employees		\$5,000.00
	Employees enquiries	Receive and follow up employee enquiries via telephone Maintain employee enquiry register
	FEG	Correspondence with FEG Preparing initial questionnaire Preparing FEG quotation for services Request further supporting documentation from employees to substantiate their claims Preparing verification spreadsheet of employee entitlements Completing FEG questionnaires Correspondence with FEG regarding discrepancies, if any
	Calculation of entitlements	Finalise calculation of employee entitlements Reviewing employee files and Company's books and records
	Employee dividend	Correspondence with employees regarding dividend Correspondence with ATO regarding SGC POD (if required) Preparing dividend file Advertising dividend notice Receipting and adjudicating POD Preparing distribution

Dividend		\$5,000.00
	Processing proofs of debt (POD)	Receipt of POD Maintain POD register Adjudicating POD Request further information from claimants regarding POD Preparation of correspondence to claimant advising outcome of adjudication
	Dividend procedures	Completing outstanding tax lodgements and seeking tax clearance from ATO to allow distribution Preparation of correspondence with creditors Advertisement of intention to declare dividend Correspondence to creditors advising of intention to declare dividend Calculation of dividend Preparing dividend file Preparing distribution Preparation of correspondence to creditors advising payment of dividend
Administration		\$10,000.00
	ASIC Forms and lodgements	Preparing and lodging ASIC forms
	Bank account administration	Preparing internal receipt and payment forms Bank account reconciliations Preparing correspondence closing bank account
	Books and Records/ Storage	Backup of IT data Dealing with records in storage Sending job files to archive storage
	Correspondence	Correspondence with various parties
	Document maintenance/file review/checklist	Filing of documents File reviews Updating checklists
	ATO and other statutory reporting	Notification of appointment Preparing BAS
	Planning / Review	Discussions regarding status of administration
	Finalisation	Notifying ATO of finalisation Cancelling ABN/GST/PAYG registration Completing checklists Finalising WIP

SCHEDULE C – TIME SPENT BY STAFF ON MAJOR TASKS – 17 JUNE 2024 TO 10 JULY 2024

Darlinghurst Theatre Limited (Administrators Appointed)
For the period 17 June 2024 to 10 July 2024

Staff Classification	Name	Hourly Rates	Administration	Assets	Creditors	Employees	Investigation	Trade On	Total
			Hrs \$	Hrs \$	Hrs \$	Hrs \$	Hrs \$	Hrs \$	Hrs \$
Appointee	John Keenan	750	0.50 375.00	5.00 3,750.00	2.20 1,650.00		1.20 900.00		8.90 6,675.00
Appointee	John Keenan	730	1.20 876.00	9.60 7,008.00	9.30 6,789.00	0.40 292.00	0.30 219.00	1.50 1,095.00	22.30 16,279.00
Appointee	Peter Krejci	730	1.70 1,241.00						1.70 1,241.00
Senior Manager	Katherine La	620	0.40 248.00		0.10 62.00		0.70 434.00		1.20 744.00
Senior Manager	Katherine La	590	1.50 885.00	0.40 236.00	1.60 944.00	1.20 708.00	1.20 708.00		5.90 3,481.00
Manager	Savio Monis	550		0.10 55.00					0.10 55.00
Senior 2	Nicole Feng	400			1.10 440.00				1.10 440.00
Senior 2	Nicole Feng	380				1.70 646.00	0.10 38.00		1.80 684.00
Intermediate 2	Frane Babic	300	5.70 1,710.00	2.50 750.00	10.20 3,060.00	4.00 1,200.00	11.60 3,480.00		34.00 10,200.00
Intermediate 2	Frane Babic	280	5.80 1,624.00	4.50 1,260.00	27.40 7,672.00	2.70 756.00	2.00 560.00		42.40 11,872.00
Senior Administration	Sonia Stelmach	300	0.50 150.00						0.50 150.00
Senior Administration	Sonia Stelmach	240	1.80 432.00						1.80 432.00
Senior Administration	Andrea Moulikova	300	0.20 60.00						0.20 60.00
Senior Administration	Andrea Moulikova	240	7.30 1,752.00		3.00 720.00		0.40 96.00		10.70 2,568.00
Senior Administration	Ashleigh Hartigan	300	1.10 330.00						1.10 330.00
Senior Administration	Ashleigh Hartigan	240	1.40 336.00						1.40 336.00
Senior Administration	Sarita Gurung	240	2.50 600.00		0.60 144.00				3.10 744.00
Grand Total			31.60 10,619.00	22.10 13,059.00	55.50 21,481.00	10.00 3,602.00	17.50 6,435.00	1.50 1,095.00	138.20 56,291.00
									GST 5,629.10
									Total (incl.GST) 61,920.10
Average rate per hour			336.04	590.90	387.05	360.20	367.71	730.00	407.32

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: Administrators’ Remuneration for the period 17 June 2024 to 10 July 2024

“That the remuneration of the Joint and Several Administrators, their partners and staff for the period 17 June 2024 to 10 July 2024, be calculated on a time basis in accordance with the rates of charge annexed to the Voluntary Administrators’ Second Report to Creditors dated 12 July 2024, be fixed and approved at \$56,291.00 (plus GST), and that the Joint and Several Administrators be authorised to draw that amount.”

Resolution: Administrators’ Remuneration for the period 11 July 2024 to 22 July 2024

“That the remuneration of the Joint and Several Administrators, their partners and staff for the period 11 July 2024 to 22 July 2024 be calculated on a time basis in accordance with the rates of charge annexed to the Voluntary Administrators’ Second Report to Creditors dated 12 July 2024 and approved to an interim cap of \$35,000.00 (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: Liquidators’ Remuneration for the period 22 July 2024 to Conclusion

“That the remuneration of the Joint and Several Liquidators, their partners and staff for the period 22 July 2024 to the conclusion of the Liquidation, be calculated on a time basis in accordance with the rates of charge annexed to the Voluntary Administrators’ Second Report to Creditors dated 12 July 2024, and approved to an interim cap of \$45,000.00 (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, however we have incurred the following disbursements:

Disbursement Type	Rate (\$, excl. GST)	Amount (\$, excl GST)
Searches	At cost	166.13
Travel	At cost	24.46
Total		190.59

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: Liquidators' Internal Disbursements for the period 22 July 2024 to Conclusion

“That the Liquidators be allowed internal disbursements for the period 22 July 2024 to the conclusion of the Liquidation at the rates of charge annexed to the Voluntary Administrators’ Remuneration Approval Report dated 12 July 2024, up to an amount of \$1,000.00 (plus GST) and that the Liquidators be authorised to draw that amount as accrued.”

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

Disbursement Type	Rate (excl. GST)
Externally provided professional services	At cost
Externally provided non-professional costs	At cost
Internal disbursements	
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 allowance



**Darlinghurst Theatre Limited
(Administrators Appointed)**

ACN 077 963 234

ABN 28 077 963 234

**Annexure "10"
Advice to Creditors About
Remuneration**

ADVICE TO CREDITORS ABOUT REMUNERATION

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

DARLINGHURST THEATRE LIMITED(ADMINISTRATORS APPOINTED)

ACN 077 963 234/ABN 28 077 963 234

("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

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

- ▶ It is often difficult to estimate accurately the likely cost of undertaking an appointment, as appointments differ in unforeseeable ways as to their factual or legal complexity;
- ▶ The Time Cost method reflects the opportunity cost to BRI Ferrier of the use of staff on a particular engagement;
- ▶ The Time Cost method reflects the extent of work undertaken, reflecting in turn the nature of the appointment; and

- The Time Cost method can be applied equally to all aspects of an appointment, while percentage or contingent remuneration normally only reflect parts of an appointment, such as the recovery of assets. Our duties include activities, such as reporting to creditors and ASIC, that do not directly yield asset recovery, while contributing to the overall return to creditors.

BRI Ferrier reviews its hourly rates every twelve months. The hourly rates have been increased from FY2024 to FY2025. The hourly rates quoted below remain current to 30 June 2025. 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 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) 1 July 23	Hourly Rates (ex GST) 1 July 24
Principal	Senior member of the firm. May be a Registered Liquidator and/or Registered Trustee. A senior accountant with over 10 years' experience who brings specialist skills and experience to the appointment. Leads staff carrying out appointments.	\$730	\$750
Director	An accountant with more than 10 years' experience. May be a 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	\$670
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	\$620
Manager	An accountant with at least 6 years' experience. Typically qualified with well-developed technical and commercial skills. Controls and plans all aspects of medium to larger appointments, reporting to the Team Leader.	\$550	\$580
Supervisor	An accountant with more than 4 years' experience. Typically qualified with sound knowledge of insolvency principles and developing commercial skill. Assists to plan and control specific tasks on medium to larger appointments. Often undertaking post qualification study specialising in Insolvency and Reconstruction.	\$480	\$510
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	\$450
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	\$400

Title		Description	Hourly Rates (ex GST) 1 July 23	Hourly Rates (ex GST) 1 July 24
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	\$350
Intermediate 2		An accountant with less than 1 year's experience. A trainee undertaking degree with an accountancy major. Assists in the appointment under supervision.	\$280	\$300
Senior Administration		Appropriately skilled and undertakes support activities including but not limited to treasury, word processing and other administrative, clerical and secretarial tasks.	\$240	\$300
Junior Administration		Appropriately skilled and undertakes support activities including but not limited to treasury, word processing and other administrative, clerical and secretarial tasks.	\$220	\$00

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 be charged at cost; though some expenses such as telephone calls, photocopying and printing may be charged at a rate which recoups both variable and fixed costs. The recovery of these costs must be on a reasonable commercial basis.

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 allowance

Dated: 12 July 2024.



**Darlinghurst Theatre Limited
(Administrators Appointed)**

ACN 077 963 234

ABN 28 077 963 234

**Annexure "11"
ASIC Information Sheet**



ASIC

Australian Securities & Investments Commission

Insolvency information for directors, employees, creditors and shareholders

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

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

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

List of information sheets

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

Where can I get more information?

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

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

Last updated: 01/09/2017 10:57



**Darlinghurst Theatre Limited
(Administrators Appointed)**

ACN 077 963 234

ABN 28 077 963 234

**Annexure "12"
ARITA Information Sheet**

Creditor Information Sheet

Offences, Recoverable Transactions and Insolvent Trading



Offences

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

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

Recoverable Transactions

Preferences

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

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

Uncommercial Transaction

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

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

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

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

Unfair Loan

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

Arrangements to avoid employee entitlements

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

Unreasonable payments to directors

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

Voidable charges

Certain charges over company property are voidable by a liquidator:

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

Insolvent trading

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

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

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

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

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

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

Important note: This information sheet contains a summary of basic information on the topic. It is not a substitute for legal advice. Some provisions of the law referred to may have important exceptions or qualifications. This document may not contain all of the information about the law or the exceptions and qualifications that are relevant to your circumstances.