



STATUTORY REPORT TO CREDITORS

ENE FENCING PTY LTD (IN LIQUIDATION)

ACN: 651 993 994

ABN: 89 651 993 994

18 October 2024

PETER KREJCI
LIQUIDATOR

Phone: 02 8263 2333

Email: smandira@brifnsw.com.au

Website: www.briferrier.com.au

Postal: GPO Box 7079, Sydney NSW 2001

Address: Level 26, 25 Bligh Street
Sydney NSW 2000

INTRODUCTION

I refer to my initial report to creditors dated 13 August 2024 in which my appointment as Liquidator of the Company was advised along with your rights as a creditor in the liquidation.

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

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

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

Creditors can find copies of all previous reports on this matter on our website.

- ▲ BRI Ferrier <https://briferrier.com.au/>

COMPANY DETAILS

Name	ENE Fencing Pty Ltd (In Liquidation)
Incorporated	15 July 2021
ACN	651 993 994
Registered Office	Intuitive Accountants & Associates Suite 2 Level 3 51-57 Pitt Street Sydney NSW 2000
Trading Address	55 Bourne Ridge Oran Park NSW 2570

LIQUIDATOR

Name	Peter Krejci
Date Appointed	18 July 2024

ADMINISTRATION CONTACT

Name	Sushma Mandira
Email	smandira@brifnsw.com.au
Phone	02 8263 2322

TABLE OF CONTENTS

1. Basis of Report	6
2. Disclaimer	6
3. Declaration of Independence, Relevant Relationships and Indemnities	6
4. Corporate Information	7
5. Legal Proceedings	7
6. Company Background and Events Leading to My Appointment	8
7. Reasons for Failure	8
8. Current Financial Position	9
9. Assets	9
10. Liabilities	10
11. Investigations	12
12. Findings and Recovery Actions	14
13. Voidable Transactions	14
14. Receipts and Payments	17
15. Estimated Return to Creditors	17
16. Remuneration of Liquidator	18
17. Matters Outstanding	18
18. Conclusion	18

TABLE OF ANNEXURES

A	Form 535 Formal Proof of Debt or Claim (General Form)
B	Summary of Receipts & Payments
C	Proposal Without Meeting Forms
D	ASIC Information Sheet – Proposals without a Meeting
E	ASIC Information Sheet – Insolvency Information for Directors, Employees, Creditors and Shareholders
F	ARITA Information Sheet – Offences, Recoverable Transactions, and Insolvent Trading

GLOSSARY OF COMMON ACRONYMS & ABBREVIATIONS

ABN	Australian Business Number
ACN	Australian Company Number
Act	Corporations Act 2001 (Cth)
ANZ	Australia & New Zealand Banking Group Limited
ARITA	Australian Restructuring Insolvency and Turnaround Association
ASIC	Australian Securities and Investments Commission
CBA	Commonwealth Bank of Australia
CL	Court Liquidation
Company	ENE Fencing Pty Ltd (In Liquidation)
DEWR	Department of Employment and Workplace Relations
DCoT	Deputy Commission of Taxation
Director	Patrick Soo Choon
DIRRI	Declaration of Independence, Relevant Relationships & Indemnities
FEG	Fair Entitlements Guarantee
Firm	Novabrif Pty Ltd trading as BRI Ferrier New South Wales
iCare	Workers Compensation Nominal Insurer
Initial Report	Initial Report to Creditors dated 13 August 2024
IPR	Insolvency Practice Rules (Corporations) 2016
IPS	Insolvency Practice Schedule (Corporations) 2016
NSW	New South Wales
Petitioning Creditor	iCare
POD	Proof of Debt
PPSR	Personal Properties Securities Register
RBA	Running Balance Account
RBP	Relation Back Period
ROCAP	Report on Company Activities and Property
Shareholder	Mark Soo Choon
SGC	Superannuation Guarantee Charge

EXECUTIVE SUMMARY

As you are aware, I was appointed Liquidator of the Company pursuant to an Order of the Supreme Court of NSW. The Petitioning Creditor in this matter is iCare who in their proof of debt advised of a debt of \$94,608.13.

This report has been prepared in accordance with Rule 70-40 of the Insolvency Practice Rules to provide creditors with an update on the developments of this Liquidation. I provide hereunder a summary of my preliminary investigations into the affairs of the Company to date, the potential return for creditors and the conduct of the Liquidation over the past two (2) months.

As advised in my Initial Report to Creditors, the Company was incorporated on 15 July 2021 and provided fencing services in NSW.

My investigations to date have been hindered due to non-compliance by the Company's Director, Mr Patrick Soo Choon. To date, the Director has not;

- answered multiple phone calls from my office to discuss the matter; or
- attended my office for a scheduled meeting; or
- submitted a ROCAP; or
- provided the books and records to my office pursuant to section 475(4) of the Act.

A failure to submit a ROCAP and books and records within the required time frame is a breach of the Act and I have sought the assistance of ASIC to obtain compliance from the Director.

As at the date of this report, I have identified one realisable asset owned by the Company being a Company bank account holding \$2,179.18, refer to section 9 for further details. In terms of liabilities, my investigations have identified two (2) unsecured creditors of the Company being iCare and Playsafe Fencing. I am unaware of the Company's lodgement history with the DCoT due to delays at the ATO in processing my day one paperwork and providing access to the Company's ATO portal.

As I have been unable to conduct a full investigation into the Company's affairs due to the limited books and records available to me, I have relied on Section 588E of the Act that allows a Liquidator to presume the Company was insolvent for the period in which the books and records were not maintained. Accordingly, pursuant to Section 588E of the Act, the Company was insolvent since its incorporation date, being 15 July 2021. Please refer to 12 of this report where I have detailed my findings in this regard.

I have prepared and lodged with ASIC a report pursuant to Section 533(1) of the Act. This report to ASIC is a legislative requirement in liquidations where potential offences and breaches of the Act by Directors and Officers of the Company have been identified and/or the estimated return to unsecured creditors is less than fifty (50) cents in the dollar. Subject to ASIC's response, I do not intend to prepare any further report to ASIC and Creditors.

At this stage, there have been insufficient recoveries in the Liquidation to discharge my costs in full. Whilst I have identified potential recoveries, it appears that the Director is unlikely to have sufficient means to discharge any claim brought against him, please see Findings and Recovery

Actions **for further details on the Directors asset position. Accordingly, I do not anticipate there to be any dividends available for any class of creditors in this Liquidation.**

Should a creditor have any relevant information which may assist my investigations or potential asset recoveries or wish to fund my further investigations, they should contact my office by no later than 31 October 2024. Otherwise, absent any substantive new information, the Liquidation may continue for the next two (2) to three (3) months.

1. BASIS OF REPORT

This report has been prepared primarily from information received from bank statements provided by NAB.

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

- ▲ ASIC;
- ▲ Extracts from public information databases; and
- ▲ Correspondence with creditors.

2. DISCLAIMER

An investigation of the Company's affairs has been conducted and this report and the statements made herein have been prepared based upon available books and records and from my own enquiries.

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

Neither I, 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 me, or necessary estimates and assessments made for the purposes of the report.

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

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

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

3. DECLARATION OF INDEPENDENCE, RELEVANT RELATIONSHIPS, AND INDEMNITIES

I confirm that my DIRRI as previously circularised has not been amended.

4. CORPORATE INFORMATION

The following is a summary of the Company's statutory and business details obtained from the ASIC database and the Personal Property Securities Register ("PPSR") database:

4.1 COMPANY DETAILS

Company Name	ENE Fencing Pty Ltd (In Liquidation)
Registered Address	Intuitive Accountants & Associates Suite 2 Level 3 51-57 Pitt Street Sydney NSW 2000
Principal Place of Business	55 Bourne Ridge Oran Park NSW 2570
Incorporation Date	15 July 2021
ABN	89 651 993 994
ACN	651 993 994

4.2 COMPANY OFFICE HOLDERS

Name	Position	App Date	Cease Date
Patrick Soo Choon	Director and Secretary	15/07/2021	Current

4.3 SHAREHOLDINGS

Name	Share Class	No. of Shares	Fully Paid Up	Status
Mark Barney Soo Choon	ORD	100	Yes	Current

4.4 RELATED PARTIES AND ASSOCIATES

A directorship search was undertaken in respect to the Company's Director and my investigations indicate that the Director only held one role and that was Director of the Company.

5. LEGAL PROCEEDINGS

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

Creditors cannot commence or continue proceedings against the Company without my written consent or without leave of the Court.

I am not aware that the Company is involved in any other legal proceedings.

6. COMPANY BACKGROUND AND EVENTS LEADING TO MY APPOINTMENT

The following information was obtained from enquiries with third parties and information obtained from same by me.

- ▲ The Company was registered on 15 July 2021 and appears to have provided fencing services in NSW.
- ▲ Mr Patrick Wong-Mai Soo Choon was the sole director of the Company having been appointed director since the Company's incorporation.
- ▲ The Company took out an insurance policy with iCare for the period 16 July 2021 to 30 June 2022 with the policy's premium falling due on 16 August 2021 in the amount of \$12,277.16.
- ▲ The premium remained unpaid and as such, iCare issued a letter of demand to the Company on or about 23 June 2022.
- ▲ Due to further non-payment, iCare served the Company with a Statement of Claim on 20 July 2022 which led to a Creditor Statutory Demand being served on 24 January 2024 and thereafter an application to wind the Company up in insolvency on 27 May 2024.
- ▲ Subsequently, I was appointed Liquidator of the Company by Order of the Supreme Court of NSW on 18 July 2024.

7. REASONS FOR FAILURE

As at the date of writing, the Director is yet to attend to my correspondence or requests, as such I am yet to receive his reason for the Company's failure.

Upon investigations into the Company's Bank Statements, I have identified the following reasons for the Company's failure:

- ▲ Poor financial control, including maintenance of books and records of the Company. I have observed non-payment of insurance premiums and non-lodgement of wage declarations with iCare since incorporation which appears to indicate that the Company had not maintained up-to-date books and records. The Company may have outstanding lodgements due to the DCoT however I cannot say for certain unless access to the ATO portal for the Company and/or I am advised of a debt owed to the DCoT and/or the status of the Company's lodgement compliance is provided to me by the DCoT.
- ▲ Poor strategic management of the business. Payments to related parties over statutory payments and personal withdrawals indicate that the Director has not managed the operations of the business in good faith and for a proper purpose.
- ▲ Insufficient cash flow or high cash use. Bank Statements show periodical deposits and withdrawals by the Director of the Company, both personal withdrawals and wages leading to an identifiable deficiency in the Company's cash on hand in contrast to its known current liabilities, from as early as its incorporation.

- Trading losses. The company bank statements indicate a drop in the revenue generated by the Company in the calendar year 2024 which appears to be around the time the Director, and related parties to the Director, deposited personal funds to keep the operations of the business afloat.

8. HISTORICAL FINANCIAL INFORMATION

The Director has not provided me with any Company's books and records and as such, I am unable to prepare comparative financial statements.

9. CURRENT FINANCIAL POSITION

As at the date of writing I have received no books and records from the Director and as such, I base my analysis of the current financial position of the Company with available records and my enquiries to date.

ENE Fencing Pty Ltd (In Liquidation) ACN 651 993 994 Summary of Director's Report on Company Activities and Property			
	Report Reference	Proof of Debt (as at 18.07.24) (\$)	Liquidator's ERV (\$)
Assets			
Cash and Cash Equivalents	9.1.1	Nil	2179
Motor Vehicle	9.1.2	Nil	Nil
Real Property	9.1.3	Nil	Nil
Total Assets		Nil	2,179
Liabilities			
Petitioning Creditor Costs	9.2.1	Nil	8,543
Secured Creditors	9.2.2	Nil	Nil
Priority Creditors	9.2.3	Nil	Nil
Unsecured Creditors:	9.2.4	97,731	97,731
Total Liabilities		97,731	106,274
Estimated Net Asset / (Deficiency)		(97,731)	(104,095)

9.1 ASSETS

9.1.1 CASH AT BANK / CASH ON HAND

I made enquiries with all major banks in Australia seeking details of any accounts maintained by the Company. These enquiries revealed that the Company maintained one active bank account with NAB which held a gross balance of \$51.33CR up until the date of my appointment. I note, however, that

the bank balance had increased to \$2,179.18 on account of income earned via Playsafe Fencing (the Company's main customer) approximately two months post my appointment. I have requested NAB to transfer the credit balances to my account and I can confirm funds have since been received.

I do not expect further recoveries from any other bank account.

9.1.2 MOTOR VEHICLES

A search of the Roads and Maritime Services database has not identified any vehicles registered in the Company's name in NSW. I have no information available that would suggest the Company has vehicles registered in any other state.

9.1.3 REAL PROPERTY

A search of the NSW Land Titles Office database reveals that there is no real property registered under the Company's name in NSW. I have no information available that would suggest the Company has properties registered in any other state.

9.2 LIABILITIES

9.2.1 PETITIONING CREDITOR COSTS

The Petitioning Creditor's costs in respect to this matter were determined by the Court at a fixed amount of \$8,543.37. Pursuant to Section 556(1)(b) of the Act, these costs are afforded a statutory priority over all other unsecured claims and costs incurred in the Liquidation, once expenses incurred in "preserving, realising or getting in" property of the Company are discharged.

9.2.2 SECURED CREDITORS

A search of the PPSR did not identify any security interests registered against the Company.

In any event, if you have leased property to the Company, have a retention of title claim or hold a Personal Property Security in relation to the Company, please contact this office as soon as possible.

9.2.3 PRIORITY CREDITORS

As at the date of this report, I am not aware of any outstanding employee entitlements.

As I have not received any documentation to confirm who the employees of the Company were and the Company bank statements do not record any superannuation payment to the DCoT, I am unable to confirm how many members were employed by the Company and if there were employees, if they were paid their entitlements in full during their employment with the Company.

However, to the extent that there are amounts owed to former employees, they are eligible to apply to the Federal Government, which has established a safety net scheme known as the FEG, for payment of their outstanding entitlements. FEG is administered by the Attorney General's Department ("the

Department”) for eligible employees who have been terminated as a result of their employer’s insolvency and are owed entitlements.

In order for an employee to be eligible to claim outstanding entitlements under FEG:

- 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 relatives of the Director as defined by the *Corporations Act 2001*.

To obtain further information, the Department may be contacted on 1300 135 040 or alternatively, please visit their website at: <https://www.ag.gov.au/industrial-relations/fair-entitlements-guarantee>.

9.2.4 UNSECURED CREDITORS

As previously noted, my investigations to date have identified two (2) unsecured creditors. I provide details into their claim as follows:

- iCare lodged a POD in the amount of \$94,608.13 relating to unpaid insurance premiums since July 2021. As no actual declarations have been lodged from July 2021 to June 2024, I believe that iCare’s claim will increase upon provision of these figures and lodgement of the outstanding wage declarations.
- Playsafe Fencing Pty Ltd have lodged a POD in the amount of \$3,122.53 relating to outstanding payment for 288 bags of post hole mix and hire of a core drill.

I have requested the DCoT to provide me with access to the Company's ATO portal and to lodge a POD in the Liquidation. As at the date of this report, I have not been provided access to the ATO portal for the Company and/or advised of a debt owed to the DCoT and/or the status of the Company's lodgement compliance however I note that there may be numerous outstanding lodgements due to the DCoT, lodgement of which may substantiate the DCoT's claim against the Company. It is not my intention to complete these lodgements.

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

10. INVESTIGATIONS

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

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

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

10.1 INVESTIGATIONS UNDERTAKEN

During the course of these investigations:

- ▲ No books and records of the Company have been submitted for my review;
- ▲ I carried out ASIC and other searches available to me in relation to the Company; and
- ▲ Performed a review of the available bank statements to identify potential preferences, uncommercial transactions, and unfair loans (sections 588FA, 588FB, 588FD and 588FE of the Act).

10.2 BOOKS AND RECORDS

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

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

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

Books and records required to sufficiently prepare financial statements that would correctly record and explain its transactions and financial position and performance and that would enable true and fair financial statements to be prepared and audited, at minimum, include the following:

- Financial statements including P & L's, balance sheets, depreciation schedule, tax returns;
- General Ledger;
- General Journal;
- Asset register;
- Computer Back up Discs;
- Cash records including bank statements cash receipts journal, bank deposit books, cash payments journal, cheque butts and petty cash books.

Upon my appointment, I requested the Company's Director to deliver all the books and records he currently has in his possession to enable me to investigate the affairs of the Company. To date I have not received any books and records of the Company. As a result, I am of the view that the Company has not satisfied the requirements set out in Section 286 of the Act. Thus, the Company is presumed insolvent from incorporation.

10.3 RISK OF LITIGATION ACTIONS GENERALLY

Part 5.7B of the Act gives Liquidators 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).

10.4 PROVING INSOLVENCY

Recovery actions under Part 5.7B of the Act, including unfair preferences, uncommercial transactions, and insolvent trading, require the Liquidators to demonstrate that the Company was insolvent at the time of the transaction. Proving insolvency may be a complex, lengthy and a costly exercise.

11. FINDINGS AND RECOVERY ACTIONS

11.1 INSOLVENT TRADING

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

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

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

Upon review of the Company bank statements, the Company prima facie does not appear to have generated sufficient cash flow to fund the operations of the business and or the Director drew and excess funds in priority to other creditors as evidenced by:

- ▲ Non-payment of iCare debt incurred since 2021; and
- ▲ Payments to related party creditors in Company Bank Statements.

As the Director failed to provide sufficient Company books and records, I have been unable to conduct a comprehensive investigation into the insolvency of the Company. However, failure to maintain books and records allows for a presumption of insolvency of the Company during the period of failure to maintain books and records. Accordingly, it is my view that the Company may have been insolvent since its incorporation in July 2021.

I estimate the insolvent trading claim against the Director could be at a minimum \$104K, being, the outstanding debts owed to creditors as at the date of my appointment to the Company. However, I expect the claim will increase upon lodgement of any outstanding BAS's and Tax Returns with the ATO and wages declarations lodged with iCare.

My investigations indicate that the Director does not own any registered property in NSW. He is also not an undischarged bankrupt according to a search on the National Property Insolvency Index and therefore may have some capacity to satisfy a claim either in part or in full, although this will be subject to further review.

12. VOIDABLE TRANSACTIONS

Voidable transactions include transactions such as unfair preferences, uncommercial transactions, unfair loans, unreasonable director related transactions and circulating security interests created

within six months before the relation-back day, which is the date the winding up application was filed against the Company, i.e., 27 May 2024.

These transactions usually relate to the period six (6) months prior to the date of my 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 to defraud.

12.1 UNFAIR PREFERENCES (588FA)

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 my appointment if the Company is insolvent at that time.

My investigations to date have not revealed payments that may be considered preferential in nature.

I note that pursuant to S588FE(2D) (4) of the Act clawback provisions available to the Liquidator extend to four (4) years from the RBP for transactions to related-party creditors.

I have not identified any transactions to related-party creditors where the Company and Creditor had a continuing business relationship, and the debt was owed as a result of a series of transactions.

12.2 UNCOMMERCIAL TRANSACTIONS (588FB)

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

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

As the Director failed to provide sufficient Company's books and records, I was unable to conduct any comprehensive investigations into potential voidable transactions. However, a review of the NAB bank statements indicates there to be potential voidable recovery claims against the Director for personal drawings worth \$131K and payments to individuals related to the Director of \$67K.

12.3 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.

Upon investigation of the Company's bank statements, it is my preliminary view that the Director appears to have drawn funds out of the Company's NAB account as if it were his own.

Payments made out of the Company under S588FB also meet the requirements of S588FDA.

12.4 UNFAIR LOANS (S588FD)

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

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

I have not identified any such transactions to date.

12.5 CREDITOR-DEFEATING DISPOSITIONS (S588FDB)

A disposition of company's property is a creditor-defeating disposition if the consideration payable to the company for the disposition was less than the market value of the property and if the disposition has the effect of preventing the property from becoming available for the benefit of the company's creditors in the winding-up of the company.

I have not identified any transactions that may be deemed as creditor defeating.

13. SUMMARY OF POTENTIAL OFFENCES

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

Breach	Commentary
s180—Failure to exercise due care and diligence (civil)	Personal withdrawals over statutory debts Non lodgement of the wage's declarations with iCare

Breach	Commentary
s181(1)—Absence of good faith or proper purpose (civil)	Same as above
s182 - Use of Position	Director using his position to gain an advantage for related parties and himself
s286 (civil)/ —Failure to maintain adequate financial records	As I have not been provided with the Company's books and records, my preliminary view is that the Company has failed to maintain sufficient books and records to meet the requirements of Section 286 of the Act.
S588G(2) - Trading whilst insolvent (civil)	<p>As the Director has failed to provide the Company's books and records, as per section 588E(4) of the Act, failure to maintain books and records allows for a presumption that the Company was insolvent from the date of its incorporation.</p> <p>The insolvency of the Company is further supported by the nonpayment and lodgement of wages declarations, the overdrawing of the bank account and what appear to be borrowings from a third party with no evidence of the funds being repaid.</p>
S530A/B – Officers to help Liquidator/Director obligation to provide books and records	To date, the Director has not attended my office for a scheduled meeting or submitted a ROCAP or books and records to my office pursuant to section 475(4) of the Act.

14. RECEIPTS AND PAYMENTS

There have been no receipts or payments to date in the Liquidation.

15. ESTIMATED RETURN TO CREDITORS

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

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

At this stage, there have been minimal recoveries in the Liquidation, and I have been unable to discharge my costs in full. Subject to minimal recoveries from claims being brought against the Director, there is unlikely to be a dividend paid to any class of creditor in this Liquidation.

16. REMUNERATION OF LIQUIDATOR

As there has been limited recoveries in this Liquidation I will not be seeking creditor approval for my incurred and unpaid work in progress in the amount of \$18,564.65. This will be written off by me prior to the finalisation of the Liquidation.

17. MATTERS OUTSTANDING

The outstanding matters in the administration are:

- ▲ Await ASIC response regarding Director compliance;
- ▲ Correspondence with creditors;
- ▲ Statutory lodgements and general administrative matter; and
- ▲ Finalise.

Subject to the timing of the finalisation of the above matters and any unforeseen circumstances, I currently estimate that the administration will be finalised within 2-3 months.

18. CONCLUSION

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

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

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

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

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

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

Any further reports will be issued as considered appropriate.

Yours faithfully,

ENE FENCING PTY LTD (IN LIQUIDATION)

A handwritten signature in black ink, appearing to read 'Peter Krejci', written over the printed name.

PETER KREJCI
LIQUIDATOR



ENE Fencing Pty Ltd
(In Liquidation)
ACN 651 993 994
ABN 89 651 993 994

Annexure "A"
Formal Proof of Debt

FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

To the Liquidator of:

ENE Fencing Pty Ltd (In Liquidation) ACN 651 993 994 / ABN 89 651 993 994

1. This is to state that the company was, on 18 July 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 (please attach documents to support your claim e.g. purchase orders, invoices, interest schedules):

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

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

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

Date	Drawer	Acceptor	Amount \$ c	Due Date

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

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

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

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

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

Contact Name:

Email Address:

DATED this day of 2024

NAME IN BLOCK LETTERS

Occupation

Address

Signature of Signatory

OFFICE USE ONLY

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

Proof of Debt Form Directions

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

Annexures

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

The logo for BRI Ferrier, featuring the text "BRI Ferrier" in white on a dark grey rectangular background. A green diagonal stripe is on the right side of the rectangle.

BRI Ferrier

**ENE Fencing Pty Ltd
(In Liquidation)
ACN 651 993 994
ABN 89 651 993 994**

**Annexure "B"
Summary of Receipts & Payments**

Summarised Receipts & Payments

ENE Fencing Pty Ltd
(In Liquidation)
Transactions From 18 July 2024 To 18 October 2024

A/C	Account	Net	GST	Gross
74	Cash at Bank	2,179.18	0.00	2,179.18
Total Receipts (inc GST)		\$2,179.18	\$0.00	\$2,179.18
Total Payments (inc GST)		\$0.00	\$0.00	\$0.00
Balance in Hand - By Bank Account				
212	Cheque Account			2,179.18
				\$2,179.18



ENE Fencing Pty Ltd
(In Liquidation)
ACN 651 993 994
ABN 89 651 993 994

Annexure "C"
Proposal Without Meeting Forms

NOTICE OF PROPOSAL TO CREDITORS

Dated: 18 October 2024

Voting Poll Closes: 8 November 2024

ENE FENCING PTY LTD (IN LIQUIDATION)

ACN 651 993 994

ABN 89 651 993 994

("the Company")

Proposal No. 1 for creditor approval

"That subject to the consent of the Australian Securities & Investments Commission, the Liquidator be approved to destroy the books and records of the Company at any time after the dissolution of the Company."

Reasons for the proposal and the likely impact it will have on creditors if it is passed

- A Liquidator must retain the books and records of the Company for a period of five (5) years from the end of the Liquidation.
- To minimise the costs of storage, I am able to destroy the books and records at any time after the end of the Liquidation, with the consent of Creditors and the Australian Securities and Investments Commission.

Vote on the Proposal No. 1

Please select the appropriate Yes, No or Object box referred to below with a ☒ to indicate your preferred position.

- Yes ☐ I approve the proposal
- No ☐ I do not approve the proposal
- Object ☐ I object to the proposal being resolved without a meeting of creditors

For your vote to count, your claim against the Company must have been admitted for the purposes of voting by the Liquidator. Please select the option that applies:

- ☐ I have previously submitted a proof of debt form and supporting documents
- ☐ I have **enclosed** a proof of debt form and supporting documents with this proposal form

Creditor details

Name of creditor

Address

ABN (if applicable)

Contact number

Email address

☐

I am **not** a related creditor of the Company

☐

I am a related creditor of the Company*

relationship: _____

*eg Director, relative of Director, related company, beneficiary of a related trust.

**Name of creditor
/authorised person:**

Signature:

Date:

For your vote to count, you **must complete** this document and return it together with any **supporting documents** by no later than close of business on **8 November 2024**, by email to Zachary George at zgeorge@brifnsw.com.au. Should you have any queries in relation to this matter, please contact Zachary George on (02) 8263 2362.

BRI FERRIER
Level 26
25 Bligh Street
Sydney NSW 2000

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

BRI Ferrier

ENE Fencing Pty Ltd

(In Liquidation)

ACN 651 993 994

ABN 89 651 993 994

Annexure "D"

ARITA Information Sheet

Proposals without a Meeting

Information sheet: Proposals without meetings

You may be a creditor in a liquidation, voluntary administration or deed of company arrangement (collectively referred to as an external administration).

You have been asked by the liquidator, voluntary administrator or deed administrator (collectively referred to as an external administrator) to consider passing a proposal without a meeting.

This information sheet is to assist you with understanding what a proposal without a meeting is and what your rights as a creditor are.

What is a proposal without a meeting?

Meetings of creditors were previously the only way that external administrators could obtain the views of the body of creditors. However, meetings can be very expensive to hold.

A proposal without a meeting is a cost effective way for the external administrator to obtain the consent of creditors to a particular course of action.

What types of proposals can be put to creditors?

The external administrator is able to put a range of proposals to creditors by giving notice in writing to the creditors. There is a restriction under the law that each notice can only contain a single proposal. However, the external administrator can send more than one notice at any single time.

What information must the notice contain?

The notice must:

- include a statement of the reasons for the proposal and the likely impact it will have on creditors if it is passed
- invite the creditor to either:
 - vote yes or no to the proposal, or
 - object to the proposal being resolved without a meeting, and
- specify a period of at least 15 business days for replies to be received by the external administrator.

If you wish to vote or object, you will also need to lodge a Proof of Debt (POD) to substantiate your claim in the external administration. The external administrator will provide you with a POD to complete. You should ensure that you also provide documentation to support your claim.

If you have already lodged a POD in this external administration, you do not need to lodge another one.

The external administrator must also provide you with enough information for you to be able to make an informed decision on how to cast your vote on the proposal. With some types of proposals, the law or ARITA's Code of Professional Practice sets requirements for the information that you must be provided.

For example, if the external administrator is asking you to approve remuneration, you will be provided with a Remuneration Approval Report, which will provide you with detailed information about how the external administrator's remuneration for undertaking the external administration has been calculated.

What are your options if you are asked to vote on a proposal without a meeting?

You can choose to vote yes, no or object to the proposal being resolved without a meeting.

How is a resolution passed?

A resolution will be passed if more than 50% in number and 50% in value (of those creditors who did vote) voted in favour of the proposal, but only so long as not more than 25% in value objected to the proposal being resolved without a meeting.

What happens if the proposal doesn't pass?

If the proposal doesn't pass and an objection is not received, the external administrator can choose to amend the proposal and ask creditors to consider it again or the external administrator can choose to hold a meeting of creditors to consider the proposal.

The external administrator may also be able to go to Court to seek approval.

What happens if I object to the proposal being resolved without a meeting?

If more than 25% in value of creditors responding to the proposal object to the proposal being resolved without a meeting, the proposal will not pass even if the required majority vote yes. The external administrator will also be unable to put the proposal to creditors again without a meeting.

You should be aware that if you choose to object, there will be additional costs associated with convening a meeting of creditors or the external administrator seeking the approval of the Court. This cost will normally be paid from the available assets in the external administration.

This is an important power and you should ensure that it is used appropriately.

Where can I get more information?

The Australian Restructuring Insolvency and Turnaround Association (ARITA) provides information to assist creditors with understanding external administrations and insolvency.

This information is available from ARITA's website at artia.com.au/creditors.

ASIC also provides information sheets on a range of insolvency topics. These information sheets can be accessed on ASIC's website at asic.gov.au (search for "insolvency information sheets").

**For more information, go to www.arita.com.au/creditors.
Specific queries should be directed to the external administrator's office.**



**ENE Fencing Pty Ltd
(In Liquidation)
ACN 651 993 994
ABN 89 651 993 994**

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

Insolvency information for directors, employees, creditors and shareholders

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

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

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

List of information sheets

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

Where can I get more information?

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

Important notice

Please note that this information sheet is a summary giving you basic information about a particular topic. It does not cover the whole of the relevant law regarding that topic, and it is not a substitute for professional advice. We encourage you to seek your own professional advice to find out how the applicable laws apply to you, as it is your responsibility to determine your obligations.

You should also note that because this information sheet avoids legal language wherever possible, it might include some generalisations about the application of the law. Some provisions of the law referred to have exceptions or important qualifications. In most cases, your particular circumstances must be taken into account when determining how the law applies to you.

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

This information sheet was updated on 1 September 2017.



**ENE Fencing Pty Ltd
(In Liquidation)
ACN 651 993 994
ABN 89 651 993 994**

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

Creditor Information Sheet

Offences, Recoverable Transactions and Insolvent Trading



Offences

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

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

Recoverable Transactions

Preferences

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

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

Uncommercial Transaction

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

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

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

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

Unfair Loan

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

Arrangements to avoid employee entitlements

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

Unreasonable payments to directors

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

Voidable charges

Certain charges over company property are voidable by a liquidator:

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

Insolvent trading

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

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

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

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

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

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

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