



REPORT TO CREDITORS

NOVO PTY LTD (IN LIQUIDATION)

("THE COMPANY")

ACN: 618 659 377

19 May 2023

PETER KREJCI
LIQUIDATOR

Phone: 02 8263 2300

Facsimile: 02 8263 2399

Email: info@brifnsw.com.au

Website: www.briferrier.com.au

Postal: GPO Box 7079, Sydney NSW 2001

Address: Level 30, Australia Square
264 George Street, Sydney NSW 2000

INTRODUCTION

I refer to my previous reports to creditors in which my appointment as Liquidator 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:

- To provide an update to the creditors about the progress of the liquidation since the last report dated 10 July 2019;
- To seek approval from creditors for additional remuneration incurred during the Liquidation; and
- To seek approval from creditors for estimated future remuneration to be incurred.

Please note that this report should be read in conjunction with the previous reports detailed above. 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.

TABLE OF CONTENTS

| | | |
|-----------|---|-----------|
| 1 | Basis of the Report | 1 |
| 2 | Disclaimer | 1 |
| 3 | Executive summary | 1 |
| 4 | Previous Reports to Creditors | 2 |
| 5 | Declaration of independence relEvant relations and indemnities | 2 |
| 6 | Assets and liabilities | 2 |
| 7 | Insolvent trading | 6 |
| 8 | Voidable transactions | 7 |
| 9 | Receipts and Payments | 8 |
| 10 | Estimated return to creditors | 9 |
| 11 | Liquidator's Remuneration | 9 |
| 12 | Matters outstanding | 10 |
| 13 | Queries | 11 |

TABLE OF ANNEXURES

- A.** Form 535 Formal Proof of Debt or Claim
- B.** Summary of Receipts & Payments
- C.** Remuneration Approval Report
- D.** Proposal Without Meeting Forms
- E.** ASIC Information Sheet – Insolvency Information for Directors, Employees, Creditors and Shareholders
- F.** ARITA Information Sheet – Offences, Recoverable Transactions, and Insolvent Trading
- G.** ARITA Information Sheet – Proposal Without a Meeting

GLOSSARY OF COMMON ACRONYMS & ABBREVIATIONS

| | |
|-----------------|---|
| ABN | Australian Business Number |
| ACN | Australian Company Number |
| Act | Corporations Act 2001 (Cth) |
| ARITA | Australian Restructuring Insolvency and Turnaround Association |
| ASIC | Australian Securities and Investments Commission |
| ATO | Australian Taxation Office |
| Company | Novo Pty Ltd (In Liquidation) ACN 618 659 377 |
| Director | Robert Anthony Kell |
| DIRRI | Declaration of Independence, Relevant Relationships & Indemnities |
| FC | Fresh Collective |
| FEG | Fair Entitlement Guarantee Scheme |
| Firm | BRI Ferrier NSW |
| Grays | Grays (NSW) Pty Ltd |
| GST | Goods and Services Tax |
| IPR | Insolvency Practice Rules (Corporations) 2016 |
| IPS | Insolvency Practice Schedule (Corporations) |
| Keypoint | Keypoint Law |
| Liquidator | Peter Krejci |
| POD | Proof of Debt |
| PPSR | Personal Properties Securities Register |
| Three Directors | Robert Anthony Kell, Stephen Paul Chapman, Tony Pierro |
| UDRT | Unreasonable Director Related Transaction |
| WTP | WTP Australia Pty Ltd |

1 BASIS OF THE REPORT

In order to complete this report and conduct my investigations, I have primarily utilised information obtained from the books and records of the Company and the information received from the following sources:

- The books and records of the Company;
- Management accounts maintained electronically via Xero;
- Documents provided by third parties;
- Extracts from public information database;
- ASIC searches; and
- Correspondence with creditors.

2 DISCLAIMER

An investigation of the Company's affairs has been conducted. As stated at section 1 above, this report, and the statements made herein, have been prepared based upon available books and records, evidence obtained from public examination, information gathered from third-party documents provided.

Whilst I have no reason to doubt the accuracy and veracity of the information provided or contained herein, I reserve the right to alter my opinion or conclusion 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, accept 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 this 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 EXECUTIVE SUMMARY

As you are aware, I was appointed Liquidator of Novo Pty Ltd ("the Company") by a special resolution passed at a duly convened meeting of members held on 10 April 2019 pursuant to Section 491 of the Corporations Act 2001 ("the Act").

I provide this Report as an update to creditors on key matters in respect of the Liquidation since the issuance of the Statutory Report.

In regard to the realisation of Company's assets, a further recovery of trade debtors was achieved in the sum of circa \$178K leading to total debtor recoveries of circa \$270K since my appointment. The

remaining outstanding debts as at appointment total \$47K which after further review are uncommercial to pursue or not recoverable.

I advise amended claims have been received from statutory creditors. The ATO has submitted an updated POD dated 30 September 2022 in the sum of \$969,344.29 which increases the ATO's claim by circa \$129K from \$840,342.08 as per the ATO's previous POD dated 12 April 2019. I have also received further claims from Revenue QLD and Revenue NSW for circa \$19k in relation to outstanding payroll tax.

Further investigations have been conducted and steps have been taken in regard to the potential causes of action identified and discussed in the Statutory Report to creditors. I have successfully recovered circa \$100K from the ATO in relation to an unfair preference claim. My solicitors have issued an insolvent trading claim and an UDRT claim against the current director in the amount of \$1,197,859.08 and \$32,347.91 respectively and an insolvent trading claim against both former directors in the amount \$321,268.16.

Any return to creditors is largely dependent on the outcome of an insolvent trading claim and UDRT claim against the Company directors. Given limited information has been obtained in relation to the Director's financial capacity to satisfy an insolvent trading claim, and limited correspondence received from the Director's in relation to Insolvent Trading Demands served on them, I am unable to provide an estimated return to creditors at the current stage. I anticipate conducting a public examination of the Directors and others to obtain evidence to support an insolvent trading claim and insight of the Directors personal asset position to satisfy such claims.

4 PREVIOUS REPORTS TO CREDITORS

I previously issued my Initial Report to Creditors dated 29 April 2019 and Statutory Report to Creditors dated 10 July 2019 ("the Statutory Report"), both of which should be read in conjunction to this report.

5 DECLARATION OF INDEPENDENCE RELEVANT RELATIONS AND INDEMNITIES

I confirm that there have been no changes to the DIRRI dated 29 April 2019, which was previously circularised.

6 ASSETS AND LIABILITIES

I provide an update below with respect to actions that have been taken in relation to asset recovery and further investigations in relation to the Company's liabilities.

6.1 Assets

6.1.1 Trade Debtors

I provide an update on debtor recoveries as follows:

| Debtors | Position Disclosed in Statutory Report Amount (\$) | Current Position Amount (\$) |
|-------------------------------|--|---------------------------------|
| Recovered to Date | 92,086 | 262,885 |
| Bad Debt / Write-off | 23,228 | 47,850 |
| Disputed | 41,333 | 7,575 |
| Recoverable / To be Recovered | 161,663 | - |
| Total | 318,310 | 318,310 |

Telstra Debt

The majority of the previous recoverable balance as disclosed in the Statutory Report relates to Telstra for a sum of circa of \$111K. After the issuance of the Statutory Report, further payments for a sum of circa \$38K were received from Telstra. However, Telstra disputed the balance of \$74,112 (“the Telstra Debts”) being owed to the Company and refused to make payment of same. A debt collecting agent was subsequently engaged to recover of the Telstra Debts but with no success.

I sought legal advice and engaged solicitors to recover the Telstra Debts. After a lengthy negotiation with Telstra, on 25 March 2022, a settlement (“the Telstra Settlement”) was entered into with respect to the Telstra Debts and subsequently, on 7 April 2022, Telstra remitted the settlement sum of \$74,112 to my solicitors pursuant to the Telstra Settlement which has been deposited to the Company bank account.

The Telstra Debts have been recovered in full.

Disputed Debtors

The disputed debtors balance of \$41,333 as disclosed in the Statutory Report represents amounts owed by two debtors, being WTP Australia Pty Ltd (“WTP”) with an outstanding balance as \$33,758 and Fresh Collective (“FC”) with an outstanding balance as \$7,575. I have since engaged solicitors in relation to the recovery of the disputed debtors.

WTP

Debts owed by WTP are in relation to four outstanding invoices recorded in the Company’s management accounts. WTP, through their solicitors, disputed the debts being outstanding and denying the outstanding invoices as recorded in the Company’s management accounts as payable.

After negotiation with WTP’s solicitors, a commercial settlement was entered into with WTP paying \$16,500 as final settlement of the debts owing.

On 9 January 2023, the full settlement sum of \$16,500 was received from WTP into the Company’s liquidation account.

FC

Debts owed by FC are in relation to two outstanding invoices ("the FC Invoices") recorded in the Company's management accounts ("the FC Debts"). FC claimed the periods which the FC invoices issued against had been billed by Virtual IT Group Pty Ltd ("VIG"), the purchaser of the Company's business. Therefore, FC refused to attend to payment of the FC Invoices.

The Company's records indicate debts during the periods which the FC invoices issued against are debtors of the Company as at the date of my appointment thus the Company is entitled to collection of same pursuant to the Sale of Business Agreement with VIG.

With the assistance of my solicitor's payment was received from FC on 22 February 2023.

Bad Debt/Write-off

I have reviewed the balance of the outstanding debtors recorded in the Company's management accounts and do not expect any further trade debts to be recoverable.

6.1.2 Plant and Equipment

As discussed in the Statutory Report, I instructed Grays to collect a Company's vehicle and proceed to sell this vehicle via online auction.

The vehicle was subsequently sold for the sum of \$4,109.00. Net proceeds of \$3,157.50 after realisation costs has since been received from Grays.

6.2 Liabilities

6.2.1 Priority Creditors

A summary of an updated assessment for the outstanding employee entitlements is provided in the table below:

| Entitlements | Liquidator's ERV Amount | | | Total (\$) |
|--------------------------|-------------------------|-----------------------|-------------------------|-------------------|
| | Unrelated (\$) | Director-related (\$) | Residual Unsecured (\$) | |
| Wages | 382.35 | - | - | 382.35 |
| Superannuation | 162,571.51 | 6,000.00 | 42,346.42 | 210,917.93 |
| Annual Leave ("AL") | 41,961.07 | 729.10 | 3,312.75 | 46,002.92 |
| Long Service Leave (LSL) | 12,065.50 | 770.90 | 3,502.63 | 16,339.03 |
| PILN | 37,675.61 | - | 5,384.66 | 43,060.27 |
| Redundancy | - | - | - | - |
| Total | 254,656.04 | 7,500.00 | 54,546.46 | 316,702.50 |

I provide my commentary as follows:

Entitlements other than Superannuation

Four former employees of the Company have lodged a claim under the Fair Entitlement Guarantee Scheme ("FEG") for their outstanding entitlements.

FEG has accessed the four employees' claims and made a determination in relation to their outstanding entitlements. A summary of FEG's determination is provided in the table below:

| Entitlements | Total (\$) |
|--------------|-----------------|
| Wages | 382.35 |
| AL | 37757.27 |
| LSL | 12065.50 |
| PILN | 32483.31 |
| Redundancy | - |
| Total | 82688.43 |

FEG has also determined that the employees are not entitled for redundancy entitlements on the basis that immediately before the time of the termination of the employees, the employer was a small business employer that employed less than 15 employees.

FEG has since remitted payments to the respective employees and lodged a POD for the sum of \$82,688.43.

The balance of the outstanding entitlements are calculated according to the Company's records for the employees who did not submit a FEG claim.

Superannuation

A further review of the Company's records indicate that the total outstanding Superannuation appears to be \$210,917.93, of which \$162,571.51 was owed to unrelated employees and \$48,346.42 was owed to the Director and two former directors.

In accordance with Section 556(1A) of the Act, the priority amount owed to the Director in respect of wages and superannuation entitlements is capped to \$2K. Accordingly, the residual balance remains as an unsecured creditor claim.

I note that the ATO has submitted an amended POD dated 30 September 2022 for a sum of \$969,344.29, of which \$819,057.30 is in relation to Running Balance Account deficit debt and \$150,286.99 is in relation to Superannuation guarantee charge ("SGC"). It is my understanding that the outstanding SGC claimed by the ATO is based on the ATO's default assessment of the Company's outstanding superannuation liabilities. Therefore, I will liaise with the ATO to reconcile the Company's outstanding SGC position.

For the purpose of this report, I have provided my estimate of the Company's outstanding superannuation liabilities based on the Company's records.

6.2.2 Unsecured Creditors

A summary of an estimate for unsecured creditors claim is provided in the table below:

| Unsecured Creditors | Liquidator's ERV (\$) |
|-------------------------|-----------------------|
| Statutory Creditors | 838,131 |
| Trade Creditors | 365,331 |
| Related Party Creditors | 290,250 |
| Total | 1,493,711 |

I provide my commentary as follows:

- As discussed in Section 6.2.1, the ATO has submitted an amended POD dated 30 September 2022 for a sum of \$969,344.29, of which \$819,057.30 is in relation to Running Balance Account deficit debt; and
- I have further received PODs from Revenue QLD dated 21 February 2020 and Revenue NSW dated 16 August 2022 for the sum of \$7,989.83 and \$11,083.39 respectively. The debts owed to the state revenue offices are in relation to outstanding payroll tax liabilities and penalties for non-payment of same.

7 INSOLVENT TRADING

7.1 Potential Quantum of Insolvent Trading Claim

I refer to the Statutory Report with respect to my preliminary investigations of the solvency position of the Company and a potential insolvent trading claim.

As detailed in my Statutory Report to Creditors dated 10 July 2019, I had determined that the Company may have been insolvent from as early as November 2017. Investigations indicated that debts incurred after the date of insolvency totalled a sum of \$1,197,859.08, detailed below:

| Creditors | Amount (\$) |
|--|------------------|
| Statutory Creditors | 728,774 |
| Trade Creditors | 359,138 |
| Employee Entitlements - Superannuation | 109,947 |
| Total | 1,197,859 |

I refer to the Statutory Report in relation to the directorship history of the Company and have further calculated insolvent trading claims against the former directors and the current director ("the Three Directors") as follows:

| Director | Appointment Date | Cessation Date | Potential Claim |
|----------------------|------------------|----------------|-----------------|
| Tony Pierro | 12 April 2017 | 10 March 2018 | \$321,268.16 |
| Stephen Paul Chapman | 12 April 2017 | 10 March 2018 | \$321,268.16 |
| Robert Kell | 12 April 2017 | N/A | \$1,197,859.08 |

7.2 Financial Position of the Directors

I have conducted an updated property searches in NSW on the Three Directors and a summary of the searches are provided in the table below:

| Director | Suburb | Current Owner/ Former Owner | Ownership | Mortgage |
|----------------------|---------------------------------|--------------------------------|--|---|
| Robert Anthony Kell | Mangerton NSW 2500 | Current | As joint tenants with one other party | Community Alliance Credit Union Limited |
| Stephen Paul Chapman | Farmborough Heights NSW 2526 | Current | As joint tenants with one other party | CBA |
| Tony Pierro | Mount Pleasant NSW 2519 | Former | | |

I refer to the Statutory Report in relation my investigations on the property owned by Mr Pierro at the time as provided in the above table. My investigations indicate that the property was sold to a related party of Mr Pierro on 18 November 2021 for a consideration of \$1. It appears that the sale is an under-value sale with the aim of defeating creditor claims. Given the sale is not considered to be an arms-length transaction, the sale appears to be an uncommercial transaction.

With respect to the properties owned by Mr Kell and Mr Chapman, given they are mortgaged, the respective equity positions are unknown.

7.3 Recovery of Claim

I have sought legal advice with respect to the merit of pursuing the potential insolvent trading claims and subsequently engaged solicitors for recovery of the same.

On 8 December 2022, demands were issued to the Three Directors respectively requesting for payment of respective insolvent trading claimed amounts as referred in Section 7.1 by 22 December 2022 ("the Insolvent Trading Demands").

On 21 December 2022, correspondence was received from Keypoint Lawyers advising they were approached to act for the Three Directors of the Company. Keypoint also advised in the correspondence that they intended to formalise their retainer, take instructions from the Three Directors, and formally respond to the Insolvent Trading Demands.

My lawyers received a request for further information from Keypoint on the 3 April 2023, which is currently being collated with a view to this information being provided to Keypoint during the week commencing 22 May 2023.

8 VOIDABLE TRANSACTIONS

I refer to the Statutory Report with respect to my preliminary investigations of voidable transactions noting the following transactions required further investigations:

| Reference | Voidable Transaction | Description | Amount \$ |
|-----------|---|--------------------------------------|-------------------|
| 8.1 | Unfair Preference | Payments to ATO | 133,397.00 |
| 8.2 | Unreasonable Director Related Transaction | Payments to the Director | 32,347.91 |
| | Unreasonable Director Related Transaction | Payments to SBMS (Australia) Pty Ltd | 40,337.34 |
| | | Total | 206,082.25 |

8.1 Unfair Preference

As discussed in the Statutory Report, I identified a number of payments to the ATO totalling \$183K during the Relation Back Period. A further review confirmed that \$50K of the total payments were made in respect of outstanding SGC and was not recoverable as an unfair preference claim given the priority ranking of a SGC claim.

On 28 April 2020, I lodged a preference claim with the ATO for the sum of \$133,397 ("the ATO Claim").

On 2 June 2020, correspondence was issued by the ATO in response to the Preference Claim. The ATO claimed that an amount of \$106,497 of the ATO Preference Claim was applied to Pay As You Go Withholding liabilities such that the ATO is entitled to an indemnity from the Directors pursuant to section 588FGA of the Act. Payment of indemnifiable amounts would require legal proceedings to be commenced, and the Director would be entitled to oppose the claim. With a view to reaching an early resolution of the matter and on a purely commercial basis, the ATO offered to pay \$100,000 to the Company to settle the Preference Claim ("the ATO's Offer").

I considered the ATO's offer and determined it was commercial to accept same. On 12 June 2020, I accepted the ATO's offer as full and final settlement.

On 18 June 2020, \$100,000 was received from the ATO in the Company's liquidation account.

8.2 Unreasonable Director Related Transaction ("UDRT")

I have sought legal advice in relation to the merit of pursuing the potential unreasonable director related transactions identified.

A search conducted on ASIC Connect revealed that SBMS (Australia) Pty Ltd ("SBMS") was deregistered on 11 April 2020. Therefore, the potential UDRT claim against SBMS is not able to be pursued.

With respect to the UDRT claim against the Director, a demand requesting payment of \$32,347.91 was issued along with the insolvent trading demand issued to him on 8 December 2022 as discussed in Section 7.3.

As at the date of this report being dispatched, I have not received further correspondence from Keypoint nor a response from the Director. I am currently liaising with my solicitors to consider the next course of action in relation to the recovery of the UDRT claim against the Director.

9 RECEIPTS AND PAYMENTS

Enclosed in **Annexure "B"** is a summary receipts and payments report from the date of my appointment to the date of this Report.

Pursuant to section 70-5 of the Insolvency Practice Schedule, set out at Schedule 2 of the Act, I am required to lodge a statement of account annually during the Liquidation. In this regard, I have lodged a statement of account up to 9 April 2022 with ASIC. Creditors may request a copy of the lodged accounts by contacting this office.

10 ESTIMATED RETURN TO CREDITORS

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

- ▲ 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.

Any return to creditors is largely dependent on the outcome of the recovery on insolvent trading claims as discussed in Section 7. Given limited information has been obtained in relation to the Three Directors' financial capacity to satisfy an insolvent trading claim should one be brought against them, and limited correspondence has been received in relation to the Three Directors' position in relation to the insolvent trading claims detailed in Section 7 of this report, I am unable to provide an estimated return to creditors at the current stage.

11 LIQUIDATOR'S REMUNERATION

At the creditors meeting held on 14 May 2019, I sought creditors' approval for my remuneration. Please find a summary of my remunerations approved by creditors together with what I have drawn to date:

| Period | Remuneration Approved (\$ (excl. GST)) | Remuneration Drawn (\$ (excl. GST)) |
|---|---|--|
| 10 April 2019 to 26 April 2019 | 43,209.00 | 43,209.00 |
| 27 April 2019 to conclusion of the Liquidation | 56,791.00 | 56,791.00 |
| Total | 100,000.00 | 100,000.00 |

During the course of the Liquidation, significant time-costs have been incurred. It is my intention to seek creditors' approval for my remuneration accrued to the date of this report together with approval for future work required as detailed in Section 12 below.

The additional time-costs that have been incurred for the period from 7 July 2019 to 14 May 2023 are summarised as follows:

- ▲ Further investigations relating to the Company's affairs;
- ▲ Considerable work required with respect to attempts to recover trade debtors as discussed in Section 6.1.1 of this Report;

- Significant work required with respect to calculation of the insolvent trading claims as discussed in Section 7 of this Report, including reviewing claims received from creditors to quantify the claimed amount and liaising with solicitors regarding actions to be taken to recover the claim;
- Substantial work required with respect to recover the ATO Preference Claim as discussed in Section 8.1 of this Report;
- Lodge and await response from ASIC to my confidential report pursuant to Section 533(1) of the Act;
- Prepare and lodge supplementary report with ASIC as requested under section 533(2) in relation to the possible misconduct;
- Prepare and issue the general report to creditors; and
- Change of hourly rates for each person working on the matter.

Creditors are referred to the following items set out at the Remuneration Approval Report attached as **Annexure “C”**:

- The hourly rates which also includes a guide showing the qualifications and experience of staff engaged in the liquidation and the role they take in the liquidation.
- The spreadsheet which sets out the calculation of remuneration by appointee, employee and position for the work undertaken by myself and my staff for the period 7 July 2019 to 14 May 2023.
- A summary sets out a general description of additional necessary work carried out for the period 7 July 2019 to 14 May 2023.
- A summary sets out a general description of necessary work to be carried out for the period 15 May 2023 to conclusion.

It is my intention to seek approval from creditors with respect to my remuneration incurred for the sum of \$193,958.50 for the period from 7 July 2019 to 14 May 2023, and \$50,000 for the period from 15 May 2023 to conclusion.

I advise that considering the size of the matter, I am not convening a creditors’ meeting at this time. Instead, I enclose Proposals without Meeting Forms, attached as **Annexure “D”**, for creditors’ consideration in lieu of convening a Meeting of Creditors, in accordance with Insolvency Practice Schedule 75-40 and Insolvency Practice Rule 75-130.

If I receive a request for a meeting that complies with the guidelines set out in the creditor rights information sheet, I will hold a meeting of creditors.

12 MATTERS OUTSTANDING

The outstanding matters in the liquidation are:

- Failing a settlement of the various claims against the Directors, undertake a Public Examination of the Company Directors and others;
- Liaise with solicitors to conduct recovery actions against the Three Director in relation to insolvent trading claims as discussed in Section 7;
- Subject to the outcome of the claims to be brought against the Directors, payment of a dividend to priority creditors;
- Statutory Lodgements; and
- Finalisation.

Subject to the above, I anticipate that this Liquidation could be finalised within 1 year. ASIC will deregister the Company three (3) month after lodgement of the final return.

13 QUERIES

If creditors have any information which may assist me in my investigations, please contact my office as a matter of urgency.

Please note that Liquidators are not required to publish notices in the print media. ASIC maintains an online notices page for external administrators to publish notices in respect of companies. Creditors are encouraged to visit <http://insolvencynotices.asic.gov.au> throughout the liquidation to view any notices which may be published in respect of the Company.

ARITA provides information to assist creditors with understanding liquidations and insolvency. This information is available from ARITA's website at <http://arita.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 <http://asic.gov.au> (search for "insolvency information sheets").

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

- BRI Contacts: Joshua Coorey
- Phone: (02) 8263 2300
- Email: jcoorey@brifnsw.com.au
- Mailing: GPO Box 7079, Sydney NSW 2001

Yours faithfully

NOVO PTY LTD (IN LIQUIDATION)



PETER KREJCI
Liquidator

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

**Novo Pty Limited
(In Liquidation)
ACN 618 659 377**

**Annexure "A"
Formal Proof of Debt**

FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

To the Liquidator of Novo Pty Limited (In Liquidation) ACN 618 659 377

1. This is to state that the company was, on 10 April 2019, ⁽¹⁾ and still is, justly and truly indebted to⁽²⁾ (full name):

.....
(‘Creditor’)

.....
of (full address)

for \$ dollars and cents.

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

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

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

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

| Date | Drawer | Acceptor | Amount \$ c | Due Date |
|------|--------|----------|-------------|----------|
| | | | | |

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

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

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

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

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

Contact Name:

Email Address:

DATED this day of 2023

NAME IN BLOCK LETTERS

Occupation

Address

Signature of Signatory

OFFICE USE ONLY

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

Proof of Debt Form Directions

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

Annexures

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

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

BRI Ferrier

**Novo Pty Limited
(In Liquidation)
ACN 618 659 377**

Annexure "B"
Summary of Receipts and Payments

Summarised Receipts & Payments

Novo Pty Limited

(In Liquidation)

Transactions From 10 April 2019 To 19 May 2023

| A/C | Account | Net | GST | Gross |
|--|-------------------------------------|---------------------|--------------------|---------------------|
| 74 | Cash at Bank | 11,214.82 | 0.00 | 11,214.82 |
| 77 | Plant & Equipment | 5,333.38 | 533.34 | 5,866.72 |
| 79 | Debtor Recoveries | 248,061.49 | 22,398.67 | 270,460.16 |
| 83 | Bank Interest | 27.01 | 0.00 | 27.01 |
| 89 | FEG Service Fee | 3,120.00 | 312.00 | 3,432.00 |
| 90 | Unfair Preference Recovery | 100,000.00 | 0.00 | 100,000.00 |
| 233 | GST Clearing Account | 1,799.00 | 0.00 | 1,799.00 |
| Total Receipts (inc GST) | | \$369,555.70 | \$23,244.01 | \$392,799.71 |
| 29 | Bank Charges | 159.93 | 0.00 | 159.93 |
| 41 | Professional Fees | 898.50 | 89.85 | 988.35 |
| 47 | Superannuation | 1,042.56 | 0.00 | 1,042.56 |
| 51 | Wages & Salaries | 10,974.39 | 0.00 | 10,974.39 |
| 130 | Auctioneer's Expenses | 515.00 | 51.50 | 566.50 |
| 132 | Bank Charges | 3.60 | 0.00 | 3.60 |
| 133 | Commission Paid | 350.00 | 35.00 | 385.00 |
| 139 | Legal Fees (1) | 23,191.10 | 2,319.12 | 25,510.22 |
| 140 | Legal Fees (2) | 9.00 | 0.00 | 9.00 |
| 141 | Debt Collection Costs | 4,894.75 | 489.48 | 5,384.23 |
| 152 | Liquidators Remuneration | 100,000.00 | 10,000.00 | 110,000.00 |
| 153 | Liquidators Expenses | 1,712.59 | 171.26 | 1,883.85 |
| 227 | Superannuation Liability | 0.00 | 0.00 | 0.00 |
| 234 - 10 | Withholding Tax (PAYG) - Lump Sum A | (2,347.00) | 0.00 | (2,347.00) |
| Total Payments (inc GST) | | \$141,404.42 | \$13,156.21 | \$154,560.63 |
| Balance in Hand - By Bank Account | | | | |
| 212 | Cheque Account | | | 238,239.08 |
| | | | | \$238,239.08 |



**Novo Pty Limited
(In Liquidation)
ACN 618 659 377**

**Annexure "C"
Remuneration Approval Report**

Remuneration Approval Report

**Novo Pty Limited
(In Liquidation)**

Formerly Known As “Novo IT Australia Pty Ltd”

**ACN 618 659 377
 (“The Company”)**

19 May 2023

Peter Krejci

Novabrif Pty Ltd ABN 61 643 013 610
Level 30, Australia Square, 264 George Street, Sydney NSW 2000
GPO Box 7079, Sydney NSW 2001
Phone (02) 8263 2300
Facsimile (02) 8263 2399
Email: info@brifnsw.com.au
Website: www.briferrier.com.au



TABLE OF CONTENTS

| | | |
|---|---|----|
| 1 | EXECUTIVE SUMMARY | 3 |
| 2 | DECLARATION | 3 |
| 3 | REMUNERATION SOUGHT | 4 |
| 4 | DISBURSEMENT SOUGHT | 4 |
| 5 | PREVIOUS REMUNERATION APPROVALS..... | 5 |
| 6 | LIKELY IMPACT ON DIVIDENDS..... | 5 |
| 7 | SUMMARY OF RECEIPTS AND PAYMENTS | 5 |
| 8 | QUERIES & INFORMATION SHEET | 6 |
| 9 | ATTACHMENTS | 6 |
| | SCHEDULE A – DETAILS OF WORK..... | 7 |
| | SCHEDULE B – TIME SPENT BY STAFF ON MAJOR TASKS (COMPLETED WORK)..... | 13 |
| | SCHEDULE C – RESOLUTIONS | 14 |
| | SCHEDULE D – DISBURSEMENTS..... | 15 |
| | SCHEDULE E – EXPLANATION WHERE REMUNERATION ALREADY APPROVED | 17 |
| | SCHEDULE F – SCHEDULE OF HOURLY RATES | 19 |

1 EXECUTIVE SUMMARY

I am asking creditors to approve my remuneration of \$243,958.50 (excl. GST) and disbursements of \$2,500.00 (excl. GST).

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

I am asking creditors to approve my remuneration via a proposal without a meeting.

Creditors have previously approved my remuneration of \$100,000.00 (excl. GST) and disbursements of \$2,500.00 (excl. GST).

I estimate that the total cost of this Liquidation will be \$343,958.50 (excl. GST). This has increased from my previous estimate of \$56,791.00 (excl. GST) for the following reasons:

- Further investigations relating to the Company's affairs;
- Liaising with the Debt collector in relation to other debtor recoveries;
- Extended time required to pursue the debtor recoveries;
- Liaising and obtaining legal advice from the lawyers in relation to disputed debtors;
- Extended time required to pursue unfair preference claim from the ATO;
- Obtaining legal advice in relation to the insolvent trading and voidable transaction claim against the Directors and related entities;
- Lodge and await response from ASIC to my confidential report pursuant to Section 533(1) of the Act;
- Prepare and lodge supplementary report with ASIC as requested under section 533(2) in relation to the possible misconduct;
- Prepare and issue the general report to creditors; and
- Change of hourly rates for each person working on the matter. An explanation of the new hourly rates is attached as Schedule E in this report.

I anticipate that this is my final remuneration approval request. If further information is provided by creditors and additional work is required, then I will seek further remuneration approval from creditors as necessary in due course.

2 DECLARATION

I have undertaken an assessment of this remuneration and disbursement claim in accordance with the law and applicable professional standards. I am satisfied that the remuneration and disbursements claimed are necessary and proper.

I have reviewed the work in progress report for the Liquidation to ensure that remuneration is only being claimed for necessary and proper work performed and have made no adjustments.

3 REMUNERATION SOUGHT

The remuneration I am asking creditors to approve is as follows:

| For | Period | Amount \$ (excl. GST) | Rates | When it will be drawn |
|----------------|----------------------------|--------------------------|--|---------------------------------|
| Completed Work | 7 July 2019 to 14 May 2023 | \$193,958.50 | Provided in my Initial Remuneration Notice dated 29 April 2019 and this Remuneration Approval Report dated 19 May 2023 | When approved by Creditors |
| Future Work | 15 May 2023 to conclusion | \$50,000.00 | Provided in this Remuneration Approval Report dated 19 May 2023 | It will be drawn when incurred. |
| TOTAL | | \$243,958.50 (excl. GST) | | |

Details of the work done for the period 7 July 2019 to 14 May 2023 and future work to be done for the period 15 May 2023 to conclusion are included at Schedule A.

Schedule B includes a breakdown of time spent by staff members on each major task for work I have already completed.

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

4 DISBURSEMENT SOUGHT

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

I am required to obtain creditor's consent for the payment of an internal disbursement where I, or a related entity of myself, may directly or indirectly obtain a profit.

For more information about internal disbursements, please refer to Schedule D of this report.

The internal disbursements I would like creditors to approve is as follows:

| For | Period | Amount \$ (excl. GST) |
|---|---------------------------|--------------------------|
| Future disbursements to a capped amount | 31 May 2019 to conclusion | \$2,500.00 |
| | TOTAL | \$2,500.00 |

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

5 PREVIOUS REMUNERATION APPROVALS

The following remuneration approvals have previously been approved by creditors.

| Period | For | Amount Approved (excl. GST) (\$) | Amount Paid (excl. GST) (\$) |
|--------------------------------|----------------|-------------------------------------|---------------------------------|
| 10 April 2019 to 26 April 2019 | Work completed | \$43,209.00 | \$43,209.00 |
| 27 April 2019 to Conclusion | Future work | \$56,791.00 | \$56,791.00 |
| TOTAL | | \$100,000.00 | \$100,000.00 |

The previous remuneration approvals I have sought only applies to the hourly rates attached as “**Annexure 10**” in my Initial Report to Creditors dated 29 April 2019. The previous remuneration approvals are not applicable for work completed after 30 June 2022 due to increase of hourly rate rates for each person working on the matter. For work completed till 15 May 2023 and up to conclusion, new hourly rates attached as **Schedule E** to this report will apply.

I am now seeking approval for a further \$243,958.50 (excl. GST) in remuneration which will bring the total remuneration claimed in the Liquidation to \$343,958.50 (excl. GST).

A full explanation is at Schedule E of this report.

6 LIKELY IMPACT ON DIVIDENDS

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

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

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

7 SUMMARY OF RECEIPTS AND PAYMENTS

A summary of the receipts and payments for the Liquidation as of 19 May 2023 is attached as **Annexure “B”** to the General Report to Creditors.

8 QUERIES & INFORMATION SHEET

If you have any queries in relation to the information in this report, please contact my 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 my remuneration claim can be provided to creditors on request.

9 ATTACHMENTS

Schedule A – Details of work

Schedule B – Time spent by staff on each major task

Schedule C – Resolutions

Schedule D – Disbursements

Schedule E – Explanation where Remuneration already Approved

Schedule F – Schedule of Hourly Rates

SCHEDULE A – DETAILS OF WORK

| | | | | | |
|---------------------|---------------------------------|-------------|-------------|----|------------|
| Company | Novo Pty Ltd (In Liquidation) | Period From | 7 July 2019 | To | Conclusion |
| Practitioner | Peter Krejci | Firm | BRI Ferrier | | |
| Administration Type | Creditors Voluntary Liquidation | | | | |

| | Tasks | |
|---------------------------|------------------------------------|----------------------------------|
| | Work already completed (excl. GST) | Future work (excl. GST) |
| Period | 7 July 2019 to 14 May 2023 | 15 May 2023 to Conclusion |
| Amount (excl. GST) | \$193,958.50 | \$50,000.00 |

| Task Area | General Description | | |
|------------------|---------------------|---|--------------------|
| Assets | | 63 hours \$29,530.50 | \$0 |
| | Debtors | Correspondence with debtors Internal discussions regarding the prospects of recoverability Reviewing and assessing debtor claims Liaising with debt collectors and solicitors Review of Telstra contract and obtaining legal advice from solicitors in relation to Telstra Debt Updated debtor ledger Reviewing disputed debtors and engaging lawyers to recover same | N/A |
| | Plant and Equipment | Engaging Pickles to sell the Company's motor vehicle | N/A |
| | Other Assets | Corresponding with Westpac regarding the accounts held. Conduct search for unclaimed monies. | N/A |
| Creditors | | 78 hours \$33,288.00 | \$11,000.00 |

| Task Area | General Description | | |
|-----------|-----------------------------|---|---|
| | Creditor Reports | Issue initial report to creditors Finalising and issuing Statutory Report to Creditors detailing investigations Finalising annexures in support of Statutory Report Prepare further report to creditors Preparing relevant annexures in support of Report to Creditors | Finalise and issue further Report to Creditors Preparing relevant annexures in support of Report to Creditors |
| | Dealing with proofs of debt | Receipting and filing Proofs of Debt when not related to a dividend | Receipting and filing Proof of Debts when not related to a dividend |
| | Meeting of Creditors | Preparation of meeting notices, proxies and advertisements Forward notice of meeting to all known creditors Preparation of meeting file, including agenda, attendance register, list of creditors, reports to creditors, advertisement of meeting and draft minutes of meeting Preparation and lodgement of minutes of meetings with ASIC Responding to stakeholder queries and questions immediately following meeting | |
| | Creditor Enquiries | Receive and follow up creditor enquiries by telephone Review and prepare correspondence to creditors and their representatives by facsimile, email and post | Receive and follow up creditor enquiries by telephone Review and prepare correspondence to creditors and their representatives by email and post |
| | Shareholder Enquiries | Reviewing appointment docs and ASIC records regarding shareholders Initial day one letters ITAA Section 104-145(1) declarations | |

| Task Area | General Description | | |
|---------------|--------------------------|---|---|
| | | <p>Receive and follow up shareholders enquiries by telephone</p> <p>Review and prepare correspondence to shareholders and their representatives by email and post</p> | |
| Investigation | | 154.8 hours \$78,017.50 | \$11,500.00 |
| | Conducting Investigation | <p>Review available books and records.</p> <p>Conducting and summarising statutory searches.</p> <p>Analyse financial statements and prepare comparatives financials.</p> <p>Liaising with Director's Solicitor regarding Company's records and specific queries.</p> <p>Conduct Bank Statement Analysis to identify specific transactions.</p> <p>Preparation of deficiency statement</p> <p>Review and preparation of narrative of business nature and history</p> <p>Investigating reasons for company's failure</p> <p>Correspondence with external parties to receive assistance in obtaining documents relating to the company</p> <p>Investigations in relation to uncommercial transactions, insolvent transactions and director related transactions</p> <p>Determining the value of the insolvent trading claim and breach of duties claims against the Director and the former Director</p> <p>Internal meetings regarding above matters</p> | |
| | Litigation/ Recoveries | Preparing brief to solicitors | Corresponding with lawyers regarding the claims against directors |

| Task Area | General Description | | |
|------------------|-----------------------------|--|--|
| | | <p>Liaising with solicitors regarding potential claims against Director</p> <p>Consider any claims to be made in respect of insolvent trading</p> <p>Issuing demand to Directors regarding potential insolvent trading and/or breach of duty claims</p> <p>Conducting searches regarding Director's personal financial position</p> <p>Internal meetings to discuss status of litigation</p> <p>Liaising with lawyers and the Director's legal representative to get to a settlement</p> | <p>Meetings with lawyers to discuss Public Examinations</p> <p>Conducting Public Examinations</p> <p>Internal meetings to discuss status of litigation</p> |
| Employees | | 37.1 hours \$12,559.50 | \$7,000.00 |
| | Employees enquiries | <p>Receive and follow up employee enquiries via telephone</p> <p>Maintain employee enquiry register</p> <p>Review and prepare correspondence to employees and their representatives via facsimile, email and post</p> <p>Letters to employees advising of their entitlements and options available</p> <p>Receive and prepare correspondence in response to employee's objections to leave entitlements</p> <p>Receiving employee proof of debts and acknowledging receipt of the same</p> | <p>Receive and follow up employee enquiries via telephone</p> <p>Maintain employee enquiry register</p> <p>Review and prepare correspondence to employees and their representatives via email and post</p> |
| | FEG | <p>Correspondence with FEG</p> <p>Preparing verification spreadsheet</p> <p>Preparing FEG quotations</p> <p>Completing FEG questionnaires</p> | <p>Review and prepare correspondence to FEG via email and post</p> |
| | Calculation of Entitlements | <p>Reviewing employee files and Company's books and records</p> | |

| Task Area | General Description | | |
|-----------|---------------------------|---|--|
| Dividend | | Reviewing outstanding employee wages and superannuation Calculating employee entitlements Reconciling superannuation accounts Advising ATO of unpaid superannuation Reviewed employee award letters | |
| | | N/A | \$12,500.00 |
| | Processing proofs of debt | N/A | Preparation of correspondence to potential creditors inviting lodgement of Proofs Receipt of Proofs Maintain Proof of Debt register Adjudicating Proofs of Debt Request further information from claimants regarding Proofs of Debt Preparation of correspondence to claimant advising outcome of adjudication |
| | Dividend procedures | N/A | Preparation of correspondence to creditors advising of intention to declare dividend Advertisement of intention to declare dividend Preparation of dividend calculation Preparation of correspondence to creditors announcing declaration of dividend Advertise announcement of dividend Preparation of distribution Preparation of dividend file Preparation of payment vouchers to pay dividend Preparation of correspondence to creditors enclosing payment of dividend |

| Task Area | General Description | | |
|----------------|--|--|---|
| Administration | | 123.3 hours \$40,563.00 | \$8,000.00 |
| | ASIC Forms and lodgements | Prepare and submit form EX01 regarding liquidators findings Correspondence with ASIC regarding statutory forms Preparing and lodging annual returns (5602) with ASIC Preparing and lodging ASIC funding request | Preparing and lodging annual returns (5602) with ASIC and (5603) final return Correspondence with ASIC regarding statutory forms |
| | Correspondence | Correspondence regarding the Company not detailed above | Correspondence regarding the Company not detailed above |
| | Document maintenance/file review/checklist | File review Filing of documents Updating checklists Periodic administration review | File review Filing of documents Updating checklists Periodic administration review |
| | Bank account administration | Preparing receipt and payment vouchers Bank account reconciliations | Preparing correspondence closing accounts Bank reconciliations Preparing correspondence closing bank account. |
| | ATO and other statutory reporting | Preparing and reviewing BAS and IAS. | Preparing BAS Completing outstanding lodgements to date of appointment |
| | Planning / Review | Discussion regarding status of liquidation, procedural requirements, priority milestones and future direction | Discussion regarding status of liquidation, procedural requirements, priority milestones and future direction |
| | Finalisation | N/A | Notifying ATO of finalisation Cancelling ABN/GST/PAYG registration Completing checklists Finalising WIP |

SCHEDULE B – TIME SPENT BY STAFF ON MAJOR TASKS (COMPLETED WORK)

Novo Pty Limited (In Liquidation)

ACN 618 659 377

For the Period 7 July 2019 to 14 May 2023

| Staff Classification | Name | Hourly Rate \$ | Administration Hrs \$ | Assets Hrs \$ | Creditors Hrs \$ | Employees Hrs \$ | Investigations Hrs \$ | Total Hrs | Sum of Net_WIP \$ |
|------------------------------|-----------------------|-------------------|--------------------------|-----------------------|-----------------------|-----------------------|--------------------------|--------------|------------------------------|
| Appointee | Peter Krejci | 680.00 | 6.5 4,420.00 | 5.0 3,400.00 | 8.0 5,440.00 | - - | 51.9 35,292.00 | 71.4 | 48,552.0 |
| Principal | David Cocker | 680.00 | 2.9 1,972.00 | 2.6 1,768.00 | 2.7 1,836.00 | 0.4 272.00 | 8.3 5,644.00 | 16.9 | 11,492.0 |
| Principal | John Keenan | 680.00 | 0.3 204.00 | 1.9 1,292.00 | - - | - - | 2.9 1,972.00 | 5.1 | 3,468.0 |
| Principal | John Keenan | 650.00 | 1.2 780.00 | 0.7 455.00 | 2.3 1,495.00 | - - | 2.6 1,690.00 | 6.8 | 4,420.0 |
| Director | David Cocker | 590.00 | 2.5 1,475.00 | 3.0 1,770.00 | 1.7 1,003.00 | - - | 4.1 2,419.00 | 11.3 | 6,667.0 |
| Director | David Cocker | 570.00 | 3.1 1,767.00 | 3.2 1,824.00 | 1.3 741.00 | - - | 6.0 3,420.00 | 13.6 | 7,752.0 |
| Director | Paul Croft | 570.00 | 5.1 2,907.00 | - - | - - | - - | - - | 5.1 | 2,907.0 |
| Senior Manager | Katherine La | 545.00 | 0.5 272.50 | 0.8 436.00 | - - | 0.8 436.00 | 0.5 272.50 | 2.6 | 1,417.0 |
| Senior Manager | Katherine La | 525.00 | 4.4 2,310.00 | 1.4 735.00 | 2.5 1,312.50 | 0.2 105.00 | - - | 8.5 | 4,462.5 |
| Manager | Katherine La | 505.00 | 8.6 4,343.00 | 12.4 6,262.00 | 11.5 5,052.50 | 9.8 4,949.00 | 17.0 8,585.00 | 59.3 | 29,191.5 |
| Supervisor | Kristine Hu | 435.00 | 0.6 261.00 | 18.2 7,917.00 | 22.2 9,657.00 | - - | 6.5 2,827.50 | 47.5 | 20,662.5 |
| Supervisor | Kira Yu | 420.00 | 0.4 168.00 | - - | 0.8 336.00 | 0.1 42.00 | 9.5 3,990.00 | 10.8 | 4,536.0 |
| Senior 1 | Chris Garvey | 360.00 | 0.6 216.00 | - - | - - | - - | - - | 0.6 | 216.0 |
| Senior 2 | Jenny Kwok | 310.00 | 1.2 372.00 | - - | - - | - - | - - | 1.2 | 372.0 |
| Senior 2 | Chris Garvey | 290.00 | 3.0 870.00 | 2.3 667.00 | 0.1 29.00 | - - | 8.1 2,349.00 | 13.5 | 3,915.0 |
| Intermediate 1 | Joshua Coorey | 270.00 | 3.7 999.00 | 3.1 837.00 | - - | 18.2 4,914.00 | 0.3 81.00 | 25.3 | 6,831.0 |
| Intermediate 1 | Mamata Giri | 270.00 | 1.3 351.00 | 1.6 432.00 | - - | - - | 12.8 3,456.00 | 15.7 | 4,239.0 |
| Intermediate 1 | Mamata Giri | 260.00 | 11.1 2,886.00 | 5.8 1,508.00 | 20.7 5,382.00 | 2.4 624.00 | 11.0 2,860.00 | 51.0 | 13,260.0 |
| Intermediate 2 | Sushma Mandira | 245.00 | 7.7 1,886.50 | - - | 2.0 490.00 | - - | 3.4 833.00 | 13.1 | 3,209.5 |
| Intermediate 2 | Clair Daher | 235.00 | 3.4 799.00 | - - | 1.4 329.00 | 0.4 94.00 | 9.1 2,138.50 | 14.3 | 3,360.5 |
| Intermediate 2 | Jenny Kwok | 235.00 | 2.7 634.50 | - - | - - | - - | - - | 2.7 | 634.5 |
| Intermediate 2 | Jordan Gueli-Quaresma | 235.00 | 3.0 705.00 | 0.4 94.00 | 0.6 141.00 | 4.5 1,057.50 | - - | 8.5 | 1,997.5 |
| Intermediate 2 | Mamata Giri | 235.00 | 1.2 282.00 | - - | - - | - - | - - | 1.2 | 282.0 |
| Intermediate 2 | Max Florian | 235.00 | 0.1 23.50 | 0.1 23.50 | - - | - - | 0.8 188.00 | 1.0 | 235.0 |
| Intermediate 2 | Patrick Mao | 235.00 | 5.6 1,316.00 | - - | - - | - - | - - | 5.6 | 1,316.0 |
| Senior Administration | Ashleigh Hartigan | 220.00 | 5.0 1,100.00 | - - | - - | - - | - - | 5.0 | 1,100.0 |
| Senior Administration | Jessica Mula | 220.00 | 2.9 638.00 | 0.5 110.00 | 0.2 44.00 | 0.3 66.00 | - - | 3.9 | 858.0 |
| Senior Administration | Liam Moran | 220.00 | 3.5 770.00 | - - | - - | - - | - - | 3.5 | 770.0 |
| Senior Administration | Renee Rosier | 220.00 | 2.6 572.00 | - - | - - | - - | - - | 2.6 | 572.0 |
| Senior Administration | Sarita Gurung | 220.00 | 3.1 682.00 | - - | - - | - - | - - | 3.1 | 682.0 |
| Senior Administration | Sonia Stelmach | 220.00 | 6.7 1,474.00 | - - | - - | - - | - - | 6.7 | 1,474.0 |
| Senior Administration | Vivienne McCarthy | 220.00 | 4.1 902.00 | - - | - - | - - | - - | 4.1 | 902.0 |
| Junior Administration | Patrick Mao | 150.00 | 1.5 225.00 | - - | - - | - - | - - | 1.5 | 225.0 |
| Junior Administration | Sarita Gurung | 150.00 | 13.2 1,980.00 | - - | - - | - - | - - | 13.2 | 1,980.0 |
| Grand Total | | | 123.3 40,563.00 | 63.0 29,530.50 | 78.0 33,288.00 | 37.1 12,559.50 | 154.8 78,017.50 | 456.2 | 193,958.50 |
| | | | | | | | | | GST 19,395.85 |
| | | | | | | | | | Total (incl. GST) 213,354.35 |
| Average rate per hour | | | 328.98 | 468.74 | 426.77 | 338.53 | 503.99 | | 425.16 |

SCHEDULE C – RESOLUTIONS

I will be seeking approval of the following resolutions to approve my remuneration. Details to support these resolutions are included in section 3 and in the attached Schedules.

Resolution 1: Liquidator's Remuneration for the period 7 July 2019 to 14 May 2023

"That the remuneration of the Liquidator, his partner and staff for the period 7 July 2019 to 14 May 2023, be calculated on a time basis in accordance with the rates of charge annexed to the Report to the Creditors dated 19 May 2023, be fixed and approved at \$193,958.50 (excl. GST), and that the Liquidator be authorised to draw that amount as required."

Resolution 2: Liquidator's Remuneration for the period 15 May 2023 to Conclusion

"That the remuneration of the Liquidator, his partners and staff for the period 15 May 2023 to the conclusion of the Liquidation, be calculated on a time basis in accordance with the rates of charge annexed to the Report to Creditors dated 19 May 2023 and approved to an interim cap of \$50,000.00 (excl. GST) and that the Liquidator be authorised to draw that amount as and when incurred."

[This area is intentionally left blank]

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

I advise that to date, I have not paid any disbursements incurred during this Liquidation by my Firm.

I am 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. I have incurred the following disbursements paid to third parties:

| Disbursement Type | Rate | Amount (\$, excl GST) |
|--|--------------|--------------------------|
| Externally provided non-professional costs | | |
| Subscriptions | At cost | \$2,470.89 |
| | TOTAL | \$2,470.89 |

I am required to seek creditor approval for internal disbursements where there could be a profit or advantage. I have incurred the following internal disbursements to date:

| Disbursement Type | Rate | Amount (\$, excl GST) |
|------------------------|-----------------------------|--------------------------|
| Internal disbursements | | |
| Faxes and Photocopying | 153 pages @ \$0.25 per page | \$38.25 |
| | TOTAL | \$38.25 |

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

Resolution 3: Liquidator's Internal Disbursements for the period 31 May 2019 to Conclusion

"That the Liquidator be allowed internal disbursements for the period 31 May 2019 to the conclusion of the Liquidation at the rates of charge annexed to the Liquidator's Remuneration Approval Report dated 19 May 2023, up to an amount of \$2,500.00 (excl. GST) and that the Liquidator be authorised to draw that amount as accrued."

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

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

[This area is intentionally left blank]

SCHEDULE E – EXPLANATION WHERE REMUNERATION ALREADY APPROVED

On 14 May 2019, creditors approved our retrospective and prospective remuneration totalling \$100,000.00 (excl. GST) via Meeting of Creditors annexed to our Initial Report to creditors dated 29 April 2019. To date, we have drawn all the approved fees as remuneration.

During the course of the Liquidation, our remuneration has exceeded this cap, and, in this report, we are now seeking approval of a further capped amount of \$243,958.50 (excl. GST) for additional remuneration incurred/to be incurred for the period from 7 July 2019 to conclusion.

To assist creditors with understanding how the total remuneration has incurred, this table shows remuneration to date, including the current claim(s), divided by task categories.

| Task | Fees already approved as at 14 May 2019 (excl. GST) \$ | Approval sought for work already completed (excl. GST) \$ | Approval sought for future work (excl. GST) \$ | Total per task (excl. GST) \$ |
|--|---|--|---|----------------------------------|
| Assets | 40,717.00 | 29,530.50 | - | 70,247.50 |
| Creditors | 13,224.00 | 33,288.00 | 11,000.00 | 57,512.00 |
| Employees | 11,381.00 | 12,559.50 | 7,000.00 | 30,940.50 |
| Investigation | 16,078.00 | 78,017.50 | 11,500.00 | 105,595.50 |
| Trade On | 420.00 | - | - | 420.00 |
| Dividend | 6,000.00 | - | 12,500.00 | 18,500.00 |
| Administration | 12,180.00 | 40,563.00 | 8,000.00 | 60,743.00 |
| TOTAL | 100,000.00 | 193,958.50 | 50,000.00 | 343,958.50 |
| Total remuneration previously approved | | | | 100,000.00 |
| Difference (see table below for further explanation) | | | | 243,958.50 |
| Payment Reconciliation: | | | | |
| TOTAL (incl. amount claimed now) | | | | 343,958.50 |
| Amount paid to date | | | | 100,000.00 |
| Amount outstanding (incl. amount claimed now) | | | | 243,958.50 |

In the table below we compare, on a task basis, the difference between our previous remuneration report and this report, together with explanations for the difference.

| Task | Fees already approved as at 14 May 2019 (excl. GST) \$ | Total task (from previous table) (excl. GST) \$ | Difference \$ | Reason for differences |
|------|---|--|------------------|------------------------|
| | | | | |

| | | | | |
|-----------------------|-------------------|-------------------|-------------------|--|
| Assets | 40,717.00 | 70,247.50 | 29,530.50 | Additional time has been incurred in relation to the following: - Realising the Company's plant and equipment - Tasks associated with the recovery of trade debtors - Correspondence with banks |
| Creditors | 13,224.00 | 57,512.00 | 44,288.00 | Additional time has been incurred in relation to the following: - Preparing and reviewing the Report to Creditors - Receive and respond to creditor enquiries |
| Employees | 11,381.00 | 30,940.50 | 19,559.50 | Additional time has been incurred in relation to the following: - Correspondence with employees regarding their entitlements - Correspondence with FEG - Receive and respond to creditor enquiries |
| Investigation | 16,078.00 | 105,595.50 | 89,517.50 | Additional time has been incurred in relation to the following: - Investigating the company Books and Records to determine the value of the insolvent trading claim and breach of duties claims against the Director and former Director - Time incurred in issuing demand letters to the directors, liaising with lawyers |
| Trade On | 420.00 | 420.00 | - | The difference is immaterial |
| Dividend | 6,000.00 | 18,500.00 | 12,500.00 | |
| Administration | 12,180.00 | 60,743.00 | 48,563.00 | Additional time has been incurred in relation to the followings: - Dealing with books and records - Preparing and lodging ASIC forms - Preparing and lodgin ATO BAS and IAS Increase in Administration costs correlates highly with the length of time for which the Liquidation runs. Therefore, some more additional time is expected to be incurred leading up to the finalisation of the Liquidation |
| TOTAL | 100,000.00 | 343,958.50 | 243,958.50 | |

SCHEDULE F – SCHEDULE OF HOURLY RATES

There are four methods for calculation of remuneration that can be used to calculate the remuneration of an Insolvency Practitioner. BRI Ferrier normally charges to use a Time Cost basis.

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

| Title | Description | Hourly Rates (ex GST) |
|-----------------------|---|--------------------------|
| Principal/Appointee | A Liquidator and/or Registered Trustee. A senior accountant with over 10 years' experience who brings specialist skills and experience to the appointment. Leads the team carrying out the appointment. | \$680 |
| Director | An accountant with more than 10 years' experience. May be a Registered Liquidator. Fully qualified and able to control all aspects of an appointment. May have specialist industry knowledge or skills. Assists with all facets of appointment. | \$590 |
| 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. | \$545 |
| Manager | An accountant with at least 6 years' experience. Qualified with well-developed technical and commercial skills. Controls and plans all aspects of medium to larger appointments, reporting to the Team Leader. | \$505 |
| Assistant Manager | An accountant with more than 5 years' experience. Typically qualified with sound technical and commercial skills. Plans and controls smaller matters independently. Assists with management of staff and medium to large appointments. | \$470 |
| Supervisor | An accountant with more than 3 years' experience. Typically qualified with sound knowledge of insolvency principles and developing commercial skill. Assists to plan and control specific tasks on medium to larger appointments. Often undertaking post qualification study specialising in Insolvency and Reconstruction. | \$435 |
| 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. | \$370 |
| 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. | \$310 |
| 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. | \$270 |
| Intermediate 2 | An accountant with less than 1 years' experience. A trainee undertaking degree with an accountancy major. Assists in the appointment under supervision. | \$245 |
| Senior Administration | Appropriately skilled and undertakes support activities including but not limited to treasury, word processing and other administrative, clerical and secretarial tasks. | \$220 |
| Junior Administration | Appropriately skilled and undertakes support activities including but not limited to treasury, word processing and other administrative, clerical and secretarial tasks. | \$150 |

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

**Novo Pty Limited
(In Liquidation)
ACN 618 659 377**

**Annexure "D"
Proposal without Meeting Forms**

NOTICE OF PROPOSAL TO CREDITORS

Dated: 19 May 2023

Voting Poll Closes: 8 June 2023

NOVO PTY LIMITED (IN LIQUIDATION) ACN 618 659 377 ("the Company")

Proposal No. 1 for creditor approval

"That the additional remuneration of the Liquidator, his partner and staff for the period 7 July 2019 to 14 May 2023, be calculated on a time basis in accordance with the rates of charge annexed to the Liquidator's Report to the Creditors dated 19 May 2023, be fixed and approved at \$193,958.50 (excl. GST), and that the Liquidator be authorised to draw that amount as required."

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

- A Liquidator is entitled to be fairly remunerated for undertaking statutory and other duties, including reporting obligations in acting as a liquidator.
- I am unable to pay my remuneration without the approval of the Committee of Inspection (if one has been appointed), Creditors, or the Court.
- Approval by Creditors is efficient and timely and is less costly than an application to the Court.
- Approval of my remuneration will allow me to progress further investigations in a timely manner to ensure the prospect of any dividends can be maximised.

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 June 2023**, by email to Joshua Coorey at jcoorey@brifnsw.com.au. Should you have any queries in relation to this matter, please contact Joshua Coorey on (02) 8263 2300.

BRI FERRIER
Level 30
Australia Square
264 George Street
Sydney NSW 2000

NOTICE OF PROPOSAL TO CREDITORS

Dated: 19 May 2023

Voting Poll Closes: 8 June 2023

NOVO PTY LIMITED (IN LIQUIDATION) ACN 618 659 377 ("the Company")

Proposal No. 2 for creditor approval

"That the remuneration of the Liquidator, his partners and staff for the period 15 May 2023 to the conclusion of the Liquidation, be calculated on a time basis in accordance with the rates of charge annexed to the Liquidator's Report to Creditors dated 19 May 2023 and approved to an interim cap of \$50,000.00 (plus GST) and that the Liquidator be authorised to draw that amount as and when incurred."

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

- A Liquidator is entitled to be fairly remunerated for undertaking statutory and other duties, including reporting obligations in acting as a liquidator.
- I am unable to pay my remuneration without the approval of the Committee of Inspection (if one has been appointed), Creditors, or the Court.
- Approval by Creditors is efficient and timely and is less costly than an application to the Court.
- Approval of my remuneration will allow me to progress further investigations in a timely manner to ensure the prospect of any dividends can be maximised.

Vote on the Proposal No. 2

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 June 2023**, by email to Joshua Coorey at jcoorey@brifnsw.com.au. Should you have any queries in relation to this matter, please contact Joshua Coorey on (02) 8263 2300.

BRI FERRIER
Level 30
Australia Square
264 George Street
Sydney NSW 2000

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

BRI Ferrier

**Novo Pty Limited
(In Liquidation)
ACN 618 659 377**

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



ASIC

Australian Securities & Investments Commission

Insolvency information for directors, employees, creditors and shareholders

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

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

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

List of information sheets

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

Where can I get more information?

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

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

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

BRI Ferrier

**Novo Pty Limited
(In Liquidation)
ACN 618 659 377**

**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.

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

BRI Ferrier

**Novo Pty Limited
(In Liquidation)
ACN 618 659 377**

**Annexure "G"
ARITA Information Sheet
Proposal 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").