

IN THE SUPREME COURT OF NEW SOUTH WALES

DIVISION: EQUITY

No. 169447 of 2017 -008

REGISTRY: SYDNEY

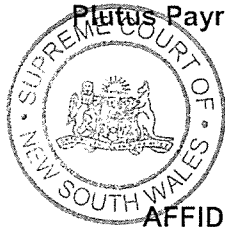
IN THE MATTER OF PLUTUS PAYROLL AUSTRALIA PTY LIMITED
(IN LIQUIDATION)
ACN 169 205 127

Deputy Commissioner of Taxation
Plaintiff

FILED

25 MAY 2018

N.A.



Plutus Payroll Australia Pty Limited (in liquidation) ACN 169 205 127
and eleven others
Defendants

AFFIDAVIT OF TIMOTHY BRYCE NORMAN
18 APRIL 2018

I, Timothy Bryce Norman, of Deloitte Financial Advisory Pty Limited ACN 611 749 841, Level 2, 8 Brindabella Circuit, Brindabella Business Park, Canberra Airport, Australian Capital Territory, Chartered Accountant and Registered Liquidator, say on oath:

1. I am a partner of the chartered accounting firm Deloitte Financial Advisory Pty Limited ACN 611 749 841 (**Deloitte**) and one of the three liquidators appointed to the first to tenth defendants and the twelfth defendant in these proceedings (**Relevant Defendants**).
2. I have previously sworn three affidavits in these proceedings:
 - (a) an affidavit sworn on 2 July 2017 in relation to the steps taken in the provisional liquidations of the first to tenth defendants as at 2 July 2017 (**First Affidavit**);

Filed on behalf of the applicants

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A handwritten signature in black ink, appearing to read "Timothy Bryce Norman".

- (b) an affidavit sworn on 28 July 2017 in relation to the steps taken in the provisional liquidations of the first to tenth defendants during the period 2 July 2017 to 28 July 2017 (**Second Affidavit**);
- (c) an affidavit sworn on 12 September 2017 in relation to the steps taken in the provisional liquidations and the solvency of the first to tenth defendants as at 11 September 2017 (**Third Affidavit**).

This Affidavit

3. I make this affidavit in support of an Interlocutory Process proposed to be filed in these proceedings by the applicants which seeks the following orders:
 - (a) under former subsection 473(2) and subsection 1581(1) of the *Corporations Act* 2001 (Cth) (**Corporations Act**) approving the provisional liquidators' remuneration as is determined by the Court; and
 - (b) under subsections 579E(1) and 579G(1) of the *Corporations Act* that the Relevant Defendants constitute a pooled group for the purposes of section 579E of the *Corporations Act* and ancillary relief.
4. The information contained in this affidavit is based on my own knowledge unless otherwise stated. I believe that the information contained in this affidavit is true.
5. Exhibited to me at the time of swearing this affidavit and marked '**TBN-2**' is a paginated folder of true copies of documents (**Exhibit TBN-2**).

My Experience

6. I have been a registered liquidator since 14 December 2005. My ASIC liquidator registration number is 296669.
7. I am a partner in the chartered accounting firm Deloitte. I have over 22 years' experience in corporate insolvency, restructuring and advisory and have been involved in all forms of corporate insolvency. Where I express an opinion in this affidavit, that opinion is based on this experience. At pages 1 to 2 of Exhibit TBN-2 is a true copy of my curriculum vitae.
8. I am a professional member of the Australian Restructuring Insolvency and Turnaround Association (**ARITA**) and as such am bound by the ARITA Code of



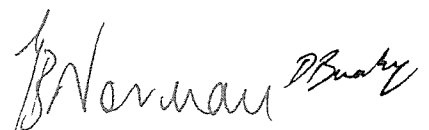
Professional Practice for Insolvency Practitioners (Third Edition, dated 1 January 2014, as amended on 18 August 2014) (**ARITA Code**).

Appointments as Provisional Liquidators then Liquidators

9. On 9 June 2017, Salvatore Algeri, and Ezio Senatore and I were appointed by this Honourable Court in these proceedings pursuant to section 472 of the Corporations Act as joint and several provisional liquidators of the first to tenth defendants, namely:

- (a) Plutus Payroll Australia Pty Limited (in liquidation) ACN 169 205 127, first defendant;
- (b) PPA Contractors Australia Pty Limited (in liquidation) ACN 605 218 273, second defendant;
- (c) PPA Services Australia Pty Limited (in liquidation) ACN 605 903 660, third defendant;
- (d) PP Aus Holdings Pty Limited (in liquidation) ACN 613 038 654, fourth defendant;
- (e) PP Australia NSW Pty Limited (in liquidation) ACN 613 037 442, fifth defendant;
- (f) PP Services (WA) Pty Limited (in liquidation) ACN 613 042 587, sixth defendant;
- (g) PPA (SA) Pty Limited (in liquidation) ACN 613 038 234, seventh defendant;
- (h) PPA NT Pty Limited (in liquidation) ACN 613 037 175, eighth defendant;
- (i) RAM Enterprises Australia Pty Limited (in liquidation) ACN 157 988 639, ninth defendant;
- (j) SAI Solutions Australia Pty Limited (in liquidation) ACN 159 529 183, tenth defendant,

(together, the **Provisional Liquidation Companies**).

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A true copy of the Court's judgment and the orders made and entered on 9 June 2017 is at pages 3 to 13 of Exhibit TBN-2.

10. On 3 July 2017, this Honourable Court ordered that Synep Pty Ltd ACN 611 299 328 and BRW Services Pty Ltd (in liquidation) ACN 613 733 430 (**BRW Services**) be joined as the eleventh and twelfth defendants, respectively, in these proceedings. A true copy of the Court's orders made and entered on 3 July 2017 is at pages 14 to 16 of Exhibit TBN-2.
11. On 9 October 2017, by further order of this Honourable Court, Messrs Algeri and Senatore and I were appointed as joint and several liquidators of the Relevant Defendants. A true copy of the Court's judgment and the orders made and entered on 9 October 2017 is at pages 17 to 50 of Exhibit TBN-2.
12. The Relevant Defendants comprise the Provisional Liquidation Companies and BRW Services, the twelfth defendant in these proceedings.
13. In this affidavit, terms such as 'we', 'us', 'the provisional liquidators' and the 'liquidators' are intended to refer to my partners and I in our capacities as provisional liquidators of the Provisional Liquidation Companies, or liquidators of the Relevant Defendants, as the case may be.
14. On 2 July 2017, we provided our first report to the Court in respect of the steps taken in the provisional liquidations of the Provisional Liquidation Companies as at 2 July 2017 (**First Report**). The First Report was annexed to my First Affidavit. At pages 51 to 65 of Exhibit TBN-2 is a true copy of the First Report.
15. On 28 July 2017, we provided our second report to the Court in respect of the steps taken in the provisional liquidations of the Provisional Liquidation Companies during the period 2 July 2017 to 28 July 2017 (**Second Report**). The Second Report was annexed to my Second Affidavit. At pages 66 to 88 of Exhibit TBN-2 is a true copy of the Second Report.
16. On 12 September 2017, we provided our third report to the Court in respect of the steps taken in the provisional liquidations of the Provisional Liquidation Companies (**Third Report**) as at 11 September 2017. The Third Report was exhibited to my Third Affidavit. At pages 89 to 126 of Exhibit TBN-2 is a true copy of the Third Report.

Handwritten signature of J. Norman in black ink.

17. On 16 March 2018, Mr Senatore ceased to act as liquidator of the Relevant Defendants.

Background

18. Exhibited at pages 127 to 176 of Exhibit TBN-2 is a true copy of the current company search of the ASIC database in connection with each of the Relevant Defendants as at 17 April 2018.
19. Prior to the appointment of the provisional liquidators, the Provisional Liquidation Companies operated as payroll service providers which were contracted to provide a number of payroll services to external clients. The business operated by the Provisional Liquidation Companies is discussed in further detail at paragraph 71 below.

Steps taken in the provisional liquidations

Assembling a Team

20. Immediately after our appointment I assembled the following team to assist me in conducting the provisional liquidations of the Provisional Liquidation Companies:

Name	Role
Forde Nicolaides	Partner
Graeme Conn	Principal
Paul Quill	Director
Stephanie Forgione	Director
Tony Nguyen	Manager
Norman Napiza	Manager
Aaron Brewin	Manager
Naty Spowart	Senior Analyst
Emily Yeh	Senior Analyst
Rosie Hassal	Senior Analyst
Dany Abouchaya	Senior Analyst
Anna Johnston	Analyst
Tom Acton	Graduate
Meagan Russell	Graduate
Sophia Dao	Graduate
Edwina Irwin	Graduate
Rahul Dhruve	Graduate

21. Work performed by core team

22. The work performed during the Provisional Liquidation Period was performed primarily by a core team of staff members from Deloitte as follows (**Core Team**):

- (a) I was the provisional liquidator primarily responsible for the general oversight of the provisional liquidations and my team of up to 22 staff. Due to the complexity and sensitivities around information on the matter (which are referred to further below in paragraphs 29 to 35), I was the primary contact for communication and liaising with the AFP and the Australian Government Solicitor's office (**AGS**) in relation to acquiring access to books and records held by these bodies. I had significant involvement in coordinating investigations including interviewing current and former employees, directors and officers of the Provisional Liquidation Companies. I was also the primary point of contact with major creditor the Australian Taxation Office (**ATO**) and managed the Deloitte team's reports to the ATO. Furthermore, particularly due to the media attention surrounding the Provisional Liquidation Companies and other matters relating to criminal proceedings (as referred to at paragraph 29 below), I was responsible for all messaging to media stakeholders and all publicly available information which was issued during the Provisional Liquidation Period. In total, I performed 237.2 hours of work at an hourly rate of \$655 amounting to \$155,366.
- (b) Paul Quill, Director, was responsible for managing the day to day conduct of the provisional liquidations. As part of this role Mr Quill was responsible for overseeing the compliance and mitigation of risks in relation to the running of the provisional liquidations. Mr Quill was also required to conduct investigations including interviewing directors and former employees of the Provisional Liquidation Companies and preparing reports to and communications with the ATO, AGS and AFP. Mr Quill also managed the more complex issues arising in the provisional liquidations including identifying potential assets of the Provisional Liquidation Companies, external parties which may hold books and records of the Provisional Liquidation Companies, dealing with various legal issues and



coordinating attempts to contact the directors of the Provisional Liquidation Companies including overseeing the responses to subpoenas issued. Mr Quill was the primary member of the team who had oversight and responsibility for the communication to pre-appointment workers, creditors, and other direct stakeholders of the Provisional Liquidation Companies. In total, Mr Quill performed 266.8 hours of work at an hourly rate of \$550 amounting to \$146,740.

- (c) Stephanie Forgione, Director, was responsible for assisting Mr Quill with the day to day conduct of the provisional liquidations and managing queries and claims from potential creditors and employees. Ms Forgione was primarily responsible for ensuring the statutory compliance of the Provisional Liquidation Companies during the Provisional Liquidation Period. In total, Ms Forgione performed 117.4 hours of work at an hourly rate of \$550 amounting to \$64,570.
- (d) Forde Nicolaides, Partner in the Deloitte Forensic team, was responsible for managing the investigations into the conduct of directors and officers of the Provisional Liquidation Companies including conducting investigations including reviewing books and records, interviewing multiple persons of interest and attending the Potts Point Premises referred to at paragraph 27(j) below. Mr Nicolaides was also involved in several discussions and briefing meetings with major creditor the ATO, AGS and AFP. Mr Nicolaides was key in the procurement of books and records relevant to the investigations and the management of cataloguing same. In total, Mr Nicolaides performed 92.5 hours of work at an hourly rate of \$655 amounting to \$60,587.50.
- (e) Anna Johnston, Analyst, was responsible for drafting and issuing correspondence including notices of appointment and correspondence to directors of the Provisional Liquidation Companies. Ms Johnston was also responsible for undertaking a detailed review of the Provisional Liquidation Companies' books and records including preparing a response to a subpoena. In total, Ms Johnston performed 148.7 hours of work at an hourly rate of \$330 and 62 hours of work at an hourly rate of \$240 (when she was in a Graduate role) amounting to \$63,951.

Handwritten signatures of P. Butler and S. Norman.

- (f) Tom Acton, Graduate, was responsible for managing enquiries from potential creditors and employees sent to the 'plutus@deloitte.com' email account, reviewing books and records and conducting investigations. Mr Acton performed 315 hours of work at an hourly rate of \$240 amounting to \$75,600.
- (g) Meagan Russell, Graduate, is a member of the Deloitte forensic team and assisted Mr Nicolaidis with conducting investigations and reviewing the Provisional Liquidation Companies' books and records including approximately 2,845 emails and attachments. Mr Russell performed 178 hours of work at an hourly rate of \$240 amounting to \$42,720.
- (h) Sophia Dao, Graduate, assisted with drafting correspondence including to ASIC, potential creditors and employees and dealing with various enquiries. Ms Dao performed 100.2 hours of work at an hourly rate of \$240 amounting to \$24,048.
23. I endeavoured to structure the Core Team in the most cost-effective manner. Where possible, I utilised less senior (and cheaper) staff to undertake particular streams of work with a view to saving costs. However, a great deal of the work that was required to be undertaken could only be undertaken by staff of a particular seniority and skill-set particularly due to factors such as:
- (a) the complexities around legal matters initiated prior to appointment;
- (b) sensitivity of information;
- (c) media interest in the provisional liquidations;
- (d) complexities with obtaining access to books and records as referred to at paragraphs 28 to 35 below;
- (e) the involvement of the ATO and the AFP; and
- (f) the significant size of parties affected and significant interest from major creditors.
24. A schedule of Deloitte's hourly rates for the provisional liquidations is at page 177 of Exhibit TBN-2. In my experience and having regard to my knowledge of the




market rates applied by other firms, the hourly rates set out at page 177 of Exhibit TBN-2 are reasonable and commensurate with market rates of firms of a similar size and speciality as Deloitte. I refer further to the firm's rates in paragraph 67 below.

Work performed during provisional liquidations

25. From 9 June 2017 and ending 9 October 2017 (**Provisional Liquidation Period**), the provisional liquidators and our staff undertook the work in relation to the provisional liquidations of the Provisional Liquidation Companies as detailed in our First, Second and Third Reports (which I refer to in paragraphs 14, 15 and 16 above). In my view, the work performed as detailed in this affidavit was necessary to ensure the orderly provisional liquidations of the companies. Each of the tasks (the subject of the work performed) are addressed in detail in the following paragraphs.

Initial steps following appointment as Provisional Liquidators

26. Upon our appointment as provisional liquidators, under my instruction and supervision, members of my team at Deloitte (**Deloitte team**) have carried out a wide range of tasks. These tasks are detailed in Section 2 of our First Report (at pages 55 to 57 of Exhibit TBN-2) and summarised below:
- (a) lodging notice of our appointment with ASIC;
 - (b) advertising our appointment as Provisional Liquidators in *The Australian* newspaper publication;
 - (c) issuing correspondence to all major financial institutions to freeze any bank accounts and requesting records and bank statements for any accounts currently or previously held by the Provisional Liquidation Companies;
 - (d) issuing notices of appointment to the ATO in respect of each of the Provisional Liquidation Companies;
 - (e) issuing circulars to the Sheriffs' Office, State Revenue Office (Land Tax and Payroll Tax departments), WorkCover authorities, and road transport authorities in the various states and territories of Australia;



- (f) issuing circulars to share registries requesting records and information held in respect of shares held by the Provisional Liquidation Companies;
- (g) issuing correspondence to all known former advisors to the Provisional Liquidation Companies (including financial and legal advisors) requesting information including financial statements and details of any proceedings on foot and any funds held in trust;
- (h) corresponding with Veritas Advisory, the former voluntary administrators of the first defendant, to request all information in their possession and reviewing the information provided;
- (i) conducting ASIC historical company searches and directorship searches;
- (j) conducting searches of the Personal Property Securities Register in respect of the Provisional Liquidation Companies and issuing correspondence to secured creditors of the Provisional Liquidation Companies;
- (k) conducting land title searches of the Provisional Liquidation Companies and the current directors in all states and territories;
- (l) conducting searches of the unclaimed monies database in all states and territories;
- (m) reviewing responses received from creditors of the Provisional Liquidation Companies to our initial circulars issued;
- (n) liaising with the Australian Taxation Office (**ATO**) and the Australian Government Solicitor (**AGS**) in order to obtain information regarding the Provisional Liquidation Companies' affairs and details of their investigations conducted to date;
- (o) attending the known former trading locations of the Provisional Liquidation Companies to confirm their current operating status and to ascertain the existence of any assets and/or books and records on the premises;
- (p) liaising with landlords of the former trading locations of the Provisional Liquidation Companies;



- (q) arranging preliminary insurance for any prospective assets of the Provisional Liquidation Companies;
- (r) liaising with the Australian Federal Police (**AFP**), the ATO and the AGS (the solicitors for the AFP and the ATO) to obtain information relating to the Provisional Liquidation Companies' affairs and reviewing the information provided;
- (s) contacting relevant parties of the AFP to request access to books and records and the Property Seizure Records (**PSR**) catalogue;
- (t) meeting with the AFP and obtaining a digital copy of all available hard copy records held by them;
- (u) inspecting the PSR catalogue and conducting a preliminary review of the hard copy records provided by the AFP to determine their volume and relevance;
- (v) preparing notices of appointment (including RATA) and arranging for those to be served personally on the directors and via registered post;
- (w) reviewing the RATAs received to date from directors of the Provisional Liquidation Companies;
- (x) preparing circulars to employees and creditors of the Provisional Liquidation Companies to inform them of our appointment;
- (y) preparing proof of claim forms;
- (z) corresponding with potential creditors and employees of the Provisional Liquidation Companies to respond to their enquiries and advise on the proof of claim process;
- (aa) setting up a separate email account (plutus@deloitte.com.au) to receive and respond to stakeholder enquiries; and
- (bb) creating a dedicated webpage in relation to the Provisional Liquidation Companies.



Day to day tasks undertaken during the Provisional Liquidation Period

27. During the Provisional Liquidation Period, the Deloitte team conducted various tasks to further the progress of the provisional liquidations. These tasks are detailed in our Second Report (at pages 70 to 71 of Exhibit TBN-2) and our Third Report (at page 93 of Exhibit TBN-2) and summarised below:
- (a) lodging the RATA and statement verifying report received from the director of the fourth defendant;
 - (b) liaising with third parties holding the Provisional Liquidation Companies' books and records to confirm the security of the books and records;
 - (c) issuing further correspondence to and/or liaising with secured creditors, the Sheriffs' Office, State Revenue Office (Land Tax and Payroll Tax departments), WorkCover authorities, and road transport authorities in the various states and territories to follow up responses to initial letters sent;
 - (d) reviewing responses received from initial circulars and correspondence issued;
 - (e) continuing to monitor media reports and web discussion forums to assist in our investigations into the Provisional Liquidation Companies' affairs and identify any additional person(s) and/or entities of interest;
 - (f) analysing the Provisional Liquidation Companies' bank accounts in order to identify transactions of interest and potential recovery actions;
 - (g) liaising with the ATO and AGS to obtain further information regarding the Provisional Liquidation Companies' affairs and details of their ongoing investigations;
 - (h) seeking the provision of further information and/or books and records from additional sources;
 - (i) liaising with the AFP and the Australian Financial Security Authority (AFSA) regarding the Provisional Liquidation Companies' property and books and records seized pursuant to warrants executed in relation to the Provisional Liquidation Companies;



- (j) liaising with the AFP regarding obtaining access to the first defendant's premises located at Level 1, 2-14 Kings Cross Road, Potts Point, Sydney (**Potts Point Premises**);
- (k) attending at the Potts Point Premises;
- (l) corresponding with the AFP to confirm which items of the Provisional Liquidation Companies' property had been seized by the AFP and any associated insurance requirements;
- (m) liaising with third parties holding the Companies' assets and ensuring the security thereof;
- (n) corresponding with the ATO, AGS and the AFP regarding access to the Provisional Liquidation Companies' information and data seized pursuant to the execution of search warrants;
- (o) cataloguing information received from the AFP;
- (p) reviewing electronic data obtained from the AFP, Clamenz Lawyers and Potts Point Premises.
- (q) preparing correspondence to be provided to Mr Adam Cranston, which included notice of our appointment, a request to complete a Report as to Affairs (**RATA**) in relation to the first defendant, and a notice pursuant to section 530B of the Corporations Act requiring that he deliver to the Provisional Liquidators any books and records in his possession;
- (r) continuing to attempt to communicate with all current and relevant former directors of the Provisional Liquidation Companies;
- (s) reviewing further RATA received from the director of the fourth defendant;
- (t) liaising with potential creditors and employees of the Companies;
- (u) preparing an additional circular to potential creditors and employees regarding the adjournment of the application to wind up the Provisional Liquidation Companies;

Handwritten signatures of D Butler and B Newman.

- (v) continuing to document enquiries received to date and responses provided; and
- (w) reviewing proof of claims received to date.

Complexities associated with the Provisional Liquidations

28. Having regard to my experience and having been involved in numerous complex external administrations, in my opinion the Provisional Liquidations involved relatively complex and extraordinary issues. These issues are explained in detail below.

Obtaining access to the Provisional Liquidation Companies' books and records

29. Prior to the date of our appointment, the AFP commenced criminal investigations in relation to certain former directors, directors, employees and associates of the Provisional Liquidation Companies. On 17 May 2017, the AFP seized various hard copy and electronic records from the Potts Point Premises.
30. Consequently, the Provisional Liquidators were required to liaise with the AFP and their solicitors, the AGS, to negotiate obtaining access to the Provisional Liquidation Companies' books and records and the Potts Point Premises.
31. On 27 June 2017, the AFP delivered to me certain hard copy financial records of the first defendant which had been seized by the AFP from the Potts Point Premises.
32. On 29 June 2017, members of the Deloitte team and I attended the Potts Point Premises in the presence of officers of AFSA to inspect any records and assets remaining on site. We located some relevant hard copy documents and computer systems which we arranged to be copied and imaged. On or around 6 July 2017, we received the copied documents retrieved from the Potts Point Premises. On 26 July 2017, we received the imaged records from the computer systems which were situated at the Potts Point Premises. Imaged records were obtained of:
- (a) four laptop hard disk drives containing approximately 986GB of data;
 - (b) one USB flash drive (16GB); and
 - (c) two iPhones.



33. Further device image files were provided by the AFP from electronic devices seized by the AFP from the Potts Point premises on 5 and 19 July 2017.
34. On 31 August 2017, my staff and I obtained access to the electronic Xero financial and accounting systems of the first, fourth, sixth, ninth and tenth defendants. Xero is an online cloud-based accounting programme. On 5 September 2017, I was able to extend the subscription to the seventh and eighth defendants and obtained access to the Xero financial systems of the seventh and eighth defendants.
35. As at the date of swearing this affidavit, the Deloitte team have still not obtained access to all of the Provisional Liquidation Companies' books and records and are continuing to liaise with the AFP and the AGS regarding obtaining access to the remainder of the Companies' books and records, however we have been advised that books and records still remaining in the control of the AFP may be subject to multiple warrants and legal and professional privilege claims and as such, we are navigating this restriction with our legal counsel. In particular, I am yet to obtain any financial statements or accounting system records relating to the second, third and fifth defendants.

Difficulties notifying directors of Provisional Liquidation Companies

36. I refer to paragraphs 11 to 19 and 26 of my Third Affidavit and paragraph 4.1 of our First Report and 4.1 of our Second Report which concern attempts by the Deloitte team to serve, both personally and by registered post, the directors of the second, fifth, sixth, seventh, eighth, ninth and tenth defendants with correspondence dated 14 June 2017 notifying them of the Provisional Liquidators' appointment and requesting that they submit a RATA (**14 June Letter**).
37. The Deloitte team and the process servers that they instructed have made extensive attempts to locate and serve the directors of the second, fifth, sixth, seventh, eighth, ninth and tenth defendants with the 14 June Letter.
38. As at the date of swearing this affidavit, I have:
- (a) received RATAs in respect of the first, third and fourth defendants; and
 - (b) not received any RATAs in respect of the second, fifth, sixth, seventh, eighth, ninth and tenth defendants.



39. The RATAs and associated correspondence in respect of the first and third defendants appear at pages 178 to 254 of Exhibit TBN-2.
40. The RATA in relation to the fourth defendant is annexed to our Second Report and appears at pages 78 to 107 of Exhibit TBN-2.
41. The Provisional Liquidators have experienced difficulties in ascertaining information concerning the Provisional Liquidation Companies' affairs and accounting and finance issues. I say this as a result of the apparent inability of the directors and former directors of the Provisional Liquidation Companies to explain the companies' accounting and financial records as shown by the scarcity of information in the RATAs received for the first, third and fourth defendants and the failure to provide RATAs for the second, fifth, sixth, seventh, eighth, ninth and tenth defendants.

Dealing with legal matters

42. The Provisional Liquidators have dealt with several legal matters concerning the Provisional Liquidation Companies including:

in relation to these Proceedings preparing reports to the Court regarding the status of the Provisional Liquidations which are annexed to my First, Second and Third Affidavits, and by way of my Third Affidavit, giving an expert opinion in relation to the solvency of the Provisional Liquidation Companies including undertaking a detailed review of books and records including financial and accounting information in relation to the Provisional Liquidation Companies;

- (a) managing the objection to the ATO's assessment of the first defendant's Pay As You Go (**PAYG**) withholding and GST liabilities lodged by the first defendant with the ATO on 28 April 2017 prior to the provisional liquidation;
- (b) managing proceedings commenced in the Federal Court of Australia (Proceeding No. NSD 665/2017) by the first defendant prior to entering into provisional liquidation against the plaintiff in these proceedings, the Deputy Commissioner of Taxation (**DCT**), seeking the review of decisions of the DCT to issue garnishee notices to certain financial institutions pursuant to



- section 260-5 of Schedule 1 of the *Taxation Administration Act 1953* (Cth) including reviewing court documents, liaising with our solicitors in relation to the proceedings and obtaining adjournments of the proceedings;
- (c) managing claims for legal professional privilege made on behalf of the first and second defendant prior to the Provisional Liquidations;
 - (d) corresponding with the solicitors acting for Mr Dev Menon in relation to whether the Provisional Liquidation Companies may be entitled to assert privilege in respect of evidence and submissions tendered in *The Commissioner of the Australian Federal Police v Adam Michael Cranston* (Supreme Court of New South Wales Proceeding No. 2017/146280);
 - (e) responding to a subpoena issued to the first defendant by Solar Australia Pty Ltd, Get Off the Grid Pty Ltd and Solar Australia Franchising Pty Ltd (**Solar Australia Subpoena**), including:
 - (i) performing electronic and manual searches of documents to determine whether or not any such documents were responsive to the Solar Australia Subpoena;
 - (ii) reviewing documents responsive to the Solar Australia Subpoena;
 - (iii) seeking legal advice in relation to complying with the Solar Australia Subpoena;
 - (iv) instructing solicitors to liaise with the issuing party's solicitors regarding the time for compliance with the Solar Australia Subpoena given that the first defendant's books and records were not able to be reviewed for some time due to their seizure by the AFP; and
 - (v) instructing our solicitors to produce documents to Court;
 - (f) responding to a subpoena issued to me by the ATO (**ATO Subpoena**);
 - (i) performing electronic and manual searches of documents;
 - (ii) reviewing documents responsive to the ATO Subpoena;



- (iii) seeking legal advice in relation to complying with the ATO Subpoena and claims for legal professional privilege;
- (iv) instructing our solicitors to liaise with the issuing party's solicitors regarding the scope of the ATO Subpoena; and
- (v) instructing our solicitors to produce documents to Court.

Investigations during the Provisional Liquidation Period

43. Following our appointment, the Provisional Liquidators commenced detailed investigations into the affairs of the Provisional Liquidation Companies. These investigations are discussed in detail below.

Interviews with relevant persons

44. As part of the Provisional Liquidators' investigations into the Provisional Liquidation Companies' affairs, the Deloitte team have conducted interviews with the following persons associated with the Provisional Liquidation Companies:

- (a) Brendon Lee Thomasen, director of the first defendant;
- (b) Timothy Munk, former General Manager of Contractor Care of the first defendant;
- (c) Timothy Fox, former General Manager of Payroll and Operations of the first defendant;
- (d) Adam Cranston, director of Synep Pty Ltd, the parent company of the first defendant;
- (e) Daniel Clarke, partner at Clamenz Lawyers, the former solicitors for the first defendant; and
- (f) Jason Crofts, partner at Essentia Partners, the former external accountants of the first defendant.

45. The interviews were focused upon ascertaining and investigating a number of matters including:

- (a) how the Provisional Liquidation Companies' business of providing payroll services operated;
- (b) the role played by the first defendant's parent company Synep and the directors of Synep in the conduct of the business of the Provisional Liquidation Companies;
- (c) the roles of former employees of the first defendant;
- (d) details of the financial and accounting systems used by the Provisional Liquidation Companies;
- (e) details of legal matters concerning the first defendant; and
- (f) other entities associated with directors and former directors of the Provisional Liquidation Companies.

46. The information obtained in the interviews was utilised for the purpose of:

- (a) understanding the operations and affairs of the Provisional Liquidation Companies;
- (b) determining key personnel, directors and officers to direct inquiries;
- (c) locating directors and officers for service of information regarding the provisional liquidations;
- (d) identifying creditors, debtors, employees of the Provisional Liquidation Companies;
- (e) identifying the location of relevant books and records;
- (f) identifying assets; and
- (g) initial inquiries to assist with conducting investigations;

Employees and other creditors

47. On 16 June 2017, the Provisional Liquidators issued a circular to potential employees of the Provisional Liquidation Companies. A true copy of this circular, excluding enclosures, appears at pages 255 to 256 of Exhibit TBN-2.

D. Bush ^{1/2} *Novman*

48. On 10 July 2017, the Provisional Liquidators issued an additional circular to potential creditors and employees of the Provisional Liquidation Companies. A true copy of this additional circular appears at page 257 of Exhibit TBN-2.
49. During the Provisional Liquidation Period, my staff and I received:
- (a) approximately 1,001 email enquiries from potential creditors and employees of the Provisional Liquidation Companies; and
 - (b) 249 claims from potential employees and/or contractors of the Provisional Liquidation Companies totalling approximately \$775,490.68.
50. Having regard to my review and the Deloitte team's review of the enquiries and claims received from potential employee and contractors of the Provisional Liquidation Companies, the employment and contracting arrangements concerning the Provisional Liquidation Companies appear to be both varied and complex.
51. Whilst the claims received from potential employees and contractors have not yet been adjudicated or admitted, my staff have undertaken preliminary investigations into many of these claims and liaised with many of the claimants in order to determine whether the Provisional Liquidation Companies are:
- (a) the employer of the claimant; or
 - (b) the payroll service provider who provided payroll services in order to pay the claimant (whether as an employee or an independent contractor).
52. A breakdown of the claims in relation to each defendant company appears at page 258 of Exhibit TBN-2.

Assets and Realisations

53. At the time of our appointment as provisional liquidators of the Provisional Liquidation Companies, the total book value of each Provisional Liquidation Company's assets and liabilities were estimated to be as follows. From my investigations to date, the figures set out below significantly understate the liability to the ATO and in my opinion are not accurate. The figures set out below have

been extracted from the Xero accounting systems operated by the Provisional Liquidation Companies prior to entering provisional liquidation.

Provisional Liquidation Company	Book Value of Assets (\$)	Estimated Value of Liabilities (\$)
1. Plutus Payroll Australia Pty Limited ACN 169 205 127	\$7,126,535	\$114,058
2. PPA Contractors Australia Pty Limited ACN 605 218 273	Nil	\$7,556
3. PPA Services Australia Pty Limited ACN 605 903 660	Nil	\$99,378
4. PP Aus Holdings Pty Limited ACN 613 038 654	Nil	\$126,138
5. PP Australia NSW Pty Limited ACN 613 037 442	Nil	\$99,378
6. PP Services (WA) Pty Limited ACN 613 042 587	Nil	\$172,544
7. PPA (SA) Pty Limited ACN 613 038 234	Nil	\$143,118
8. PPA NT Pty Limited ACN 613 037 175	Nil	\$186,339
9. RAM Enterprises Australia Pty Limited ACN 157 988 639	(\$1,628,513)	Nil
10. SAI Solutions Australia Pty Limited ACN 159 529 183	\$492,593	\$27,830

54. During the Provisional Liquidation Period, the following realisations of realisable assets of the Provisional Liquidation Companies were made:
- (a) office equipment in the amount of \$1,650.00; and
 - (b) cash the in amount of \$150,288.21.
55. Exhibited at pages 259 to 268 of TBN-2 is a summary of the receipts taken and payments made from the Provisional Liquidation Companies' funds under our control during the Provisional Liquidation Period.

Remuneration for work performed by the Provisional Liquidators

56. At page 269 of Exhibit TBN-2 is a true copy of a summary of the total remuneration claimed by reference to the category of work undertaken during the Provisional Liquidation Period. The figures in the summary have been obtained from the detailed time entries which are referred to in paragraph 63 below. The



summary details the nature of the work performed and total costs incurred in each category specified therein. The categories of work included:

- (a) **assets** – this category involved investigating potential debtors of the Provisional Liquidation Companies. The amount of \$2,172.50 is claimed in respect of the assets workstream.
- (b) **investigations** – this category involved procuring and reviewing the books and records of the Provisional Liquidation Companies, liaising with the AFP, conducting interviews of former employees, directors and advisors to the Provisional Liquidation Companies and dealing with legal matters. The amount of \$475,951 is claimed in respect of the investigations workstream.
- (c) **creditors** – this category involved issuing circulars to creditors, managing and responding to creditor enquiries, reporting to the major creditor the ATO and investigating creditors' claims. The amount of \$14,947.50 is claimed in respect of the creditors workstream.
- (d) **employees** - this category involved managing and responding to employee/contractor enquiries, liaising with the Fair Entitlements Guarantee body and investigating claims received from employee/contractors. The amount of \$78,344.50 is claimed in respect of the employees workstream.
- (e) **general appointment, statutory compliance and administration** – this category involved preparing and issuing notices of appointment, reviewing the Provisional Liquidation Companies' books and records, reviewing RATAs received from directors, corresponding with financial institutions, general bank account administration, liaising with statutory bodies, strategic planning of the Provisional Liquidations, general file administration and document management. The amount of \$164,493 is claimed in respect of the general appointment, statutory compliance and administration workstream.

57. The total time engaged by the provisional liquidators and our staff for the Provisional Liquidation Period was 1,756.9 hours, with the corresponding time charge for that period being \$809,499.35 including GST. I believe that the sum



represents a fair and reasonable amount in respect of my and my staff's remuneration during the Provisional Liquidation Period.

58. In my opinion:

- (a) the work performed by the provisional liquidators and the Deloitte team including the length of time spent performing tasks was reasonably necessary;
- (b) a large amount of work was undertaken by the Deloitte team in investigating the conduct of directors and officers and transactions with third parties in circumstances where serious allegations of criminal misconduct had been made against former directors, officers, employees and associates of the Provisional Liquidation Companies, and noting that little to no assistance was received from directors and officers of the Provisional Liquidation Companies due to circumstances that occurred prior to our appointment;
- (c) from the outset and throughout the Provisional Liquidation Period, the Provisional Liquidators regularly liaised with the plaintiff's officers and provided the plaintiff's officers with detailed reports setting out the tasks undertaken in the Provisional Liquidations;
- (d) all work performed was allocated to staff at the appropriate level and experience having regard to the nature and complexity of the work; and
- (e) all work was conducted in a timely and accurate manner.

Method of recording time on work performed by the Provisional Liquidators

59. Deloitte maintains computerised time sheets on a daily basis. Time spent on various matters is recorded by the Provisional Liquidators, their partners and staff in the computerised time system on the basis of six-minute units. These primary records are available for inspection should they be required.
60. In accordance with Deloitte's procedures, the time recording software is able to extract information for a particular matter. This includes records of the time spent and the activities undertaken by me, my partners and my staff.



61. On or shortly after the commencement of the provisional liquidations of the Provisional Liquidation Companies, I gave instructions to my staff that time entries were to be recorded to a file for the Provisional Liquidation Companies, with a written description in the narration providing sufficient detail of the work performed. I settled all time entries made in respect of the file for the Provisional Liquidation Companies.
62. When settling the time entries, I adopted the following practice:
- (a) I checked to ensure that the completed narrations were sufficiently detailed and where further detail was required I made inquiries of the fee earner;
 - (b) I checked from the narratives the time recorded was reasonable and necessary; and
 - (c) I checked that the task recorded was undertaken by the appropriate level of staff member.
63. Set out at pages 270 to 327 of Exhibit TBN-2 is a schedule of time entries of the Deloitte team for work performed during the Provisional Liquidation Period amounting to \$809,499.35 (including GST). This document has been prepared under my supervision from the computerised time sheets referred to in paragraph 51 above.
64. The schedule of time entries shown at pages 270 to 327 of Exhibit TBN-2 show the time recorded by individuals in hours and the corresponding charge in accordance with each operator's hourly charge out rate for the Provisional Liquidation Period.
65. I believe all calculations and the division of the recording of time between each of the Provisional Liquidation Companies are accurate and reasonable. The work performed is broken down into distinct categories in accordance with the recommendations for the preparation of remuneration reports in the ARITA Code.
66. During the Provisional Liquidation Period, the Deloitte team and I incurred costs for which I will not be seeking remuneration in respect of including:
- (a) time spent travelling;



- (b) time spent by administrative staff in performing tasks at the request of the Provisional Liquidators and the Deloitte team; and
 - (c) time spent by more senior staff briefing or training junior staff; and
 - (d) time spent by staff which I consider to be over and above what might be deemed reasonable to complete a task in the ordinary course of an external administration.
67. I believe that the rates and amounts that have been charged over the course of the Provisional Liquidation Period are reasonable, based on:
- (a) the experience of each staff member;
 - (b) the work actually performed in relation to the appointment;
 - (c) the complexity of the work performed by each staff member;
 - (d) the responsibility of each staff member in relation to the work performed by them;
 - (e) the costs incurred by my firm in performing the work in relation to my appointment; and
 - (f) the rates charged by comparable firms within New South Wales and the Australian Capital Territory.
68. I confirm that all provisional liquidation matters have now been substantially completed. The only matters remaining to be finalised are:
- (a) concluding this application for the approval of remuneration for the provisional liquidators and for the approval of the deed of indemnity between the plaintiff and the Provisional Liquidators; and
 - (b) finalising accounting for GST and payment of any outstanding liability or receipt of any refund.
69. I do not propose to seek approval for further amounts in relation to the provisional liquidators' fees for the provisional liquidations of the Provisional Liquidation Companies.



Pooling of the Relevant Defendants

70. Having regard to the conditions set out in subsection 579E(1) of the Corporations Act which the Court is to be satisfied of in making a pooling order, I note that:

- (a) the Relevant Defendants constitute a "group of 2 or more companies". Based on the current company searches in connection with each of the Relevant Defendants (at pages 127 to 176 of Exhibit TBN-2), I note that each is registered under the Corporations Act and is therefore within the definition of "company" in section 9 of the Corporations Act;
- (b) each of the Relevant Defendants have been wound up pursuant to the orders made by this Honourable Court on 9 October 2017 (to which I refer to at paragraph 10 above); and
- (c) the Relevant Defendants jointly operated a payroll platform and associated property that was used in connection with a scheme carried on jointly by the companies in the group. The mechanics of this scheme are discussed in more detail below.

Scheme operated by the Relevant Defendants

71. In relation to the Relevant Defendants' payroll service business, I am informed by Timothy Fox, the former general manager of payroll and operations for the first defendant that the business operated as follows:

- (a) the first defendant operated as the main entity and the trading business which dealt with customers;
- (b) the first defendant offered payroll services including calculating, processing and remitting payments either to workers either directly or through businesses engaging the workers or recruitment agencies;
- (c) whilst there were various arrangements in place, one of the common scenarios was as follows:
 - (i) a worker would submit their weekly timesheet to the first defendant and employees of the first defendant would calculate PAYG



- withholding amounts, superannuation contributions and any other applicable taxes and statutory charges;
- (ii) the total value of which would be invoiced by the first defendant to an intermediary such as the recruitment agency who on-hired the worker's services to another business or the business where the worker performed services;
 - (iii) the intermediary would pay the invoice issued by the first defendant and once payment was received by the first defendant, the first defendant would transfer funds comprising the worker's wages, PAYG withholding amount, superannuation contribution and any other applicable taxes or statutory charges to one of the second to the tenth defendants;
 - (iv) the second to the tenth defendants would subsequently transfer the wages to the worker as soon as funds were received from the first defendant and were supposed to remit the PAYG withholding amount, superannuation and any other applicable taxes or statutory charges to the relevant entities on behalf of the worker;
 - (v) in relation to the superannuation component of the worker's wages:
 - (A) up until December 2016, the worker's superannuation would be transferred from one of the second to the tenth defendants to the superannuation clearing house, Cbus;
 - (B) in and from December 2016, the process changed such that the worker's superannuation was not transferred from the first defendant to one of the second to the tenth defendants with the other funds, instead, the first defendant retained the superannuation and remitted this to the relevant superannuation fund at the end of each month; and
 - (vi) in relation to the PAYG withholding amount which had been transferred from the first defendant to one of the second to the tenth defendants, PAYG withholding was purportedly transferred by one



of the second to the tenth defendants to the ATO on a weekly basis as part of every pay run.

72. A diagram showing the organisational structure of the Relevant Defendants is at page 328 of Exhibit TBN-2.

Other relevant matters

73. My investigations to date have also established that:
- (a) the Relevant Defendants operated a payroll service business which was carried on jointly by the companies in the group and that the business activities of the Relevant Defendants were greatly intermingled;
 - (b) the second to the tenth defendants were used to trade and incur debt and did not operate as independent businesses;
 - (c) individuals were approached and paid to be appointed as directors of the second to the tenth defendants and that these directors played no active role in the management of the second to the tenth defendants;
 - (d) no property assets or other tangible material assets have been identified as being owned by the Relevant Defendants based on public searches;
 - (e) there is a lack of accounting information and an apparent inability on the part of the directors and the former directors of the Relevant Defendants to explain the companies' affairs and accounting/financial records. At the time of swearing this affidavit I am able to say that:
 - (i) my staff and I have:
 - (A) obtained access to some hard copy financial records for the first defendant as set out at paragraph 31 above;
 - (B) obtained access to electronic Xero financial and accounting systems for the first, fourth, sixth, seventh, eighth, ninth and tenth defendants as set out at paragraph 32 above; and



- (C) not obtained any financial statements or accounting system records relating to the second, third and fifth defendants as set out at paragraph 35 above;
- (ii) the directors and former directors of the Relevant Defendants have either not provided RATAs or have provided RATAs which lack information about the companies' affairs, accounting and finances. Specifically:
- (A) as set out at paragraphs 38 to 40 above, I have:
- (I) received RATAs in respect of the first, third and fourth defendants which contain a lack of accounting and financial information; and
- (II) not received RATAs in respect of the second, fifth, sixth, seventh, eighth, ninth and tenth defendants;
- (B) on 16 October 2017, under my supervision my staff sent a letter by registered post to Mr Benjamin Wallace, the director of the twelfth defendant, notifying him of the liquidators' appointment and requesting that he submit a RATA (**16 October Letter**). The 16 October Letter that I caused to be sent by registered post to Mr Wallace was returned to me marked "*return to sender*". A copy of the 16 October Letter and the envelope returned to me appears at pages 329 to 390 of Exhibit TBN-2.
- (iii) the current and former directors of the first defendant and its General Manager, Mr Joshua Kitson have not provided any information to me which explains the first defendant's financial records or statements or how the businesses operated;
- (iv) there is a material lack of information in the RATA provided by Mr Brendon Lee Thomasen, the director of the first defendant which appears at pages 178 to 189 of Exhibit TBN-2;



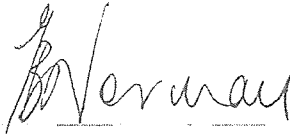
- (v) no information or explanation has been given by Mr Sven Buckner, the former director of the first defendant, as to the first defendant's affairs and accounting/financial records. In this regard I note that:
- (A) Mr Buckner, the former director of the first defendant has provided a RATA as set out at pages 207 to 216 of Exhibit TBN-2 which contains no financial information and notes "*Please see Jayson Onley + Simon Anquetil*"; and
 - (B) I am informed by Mr Buckner, as set out in his letter to me dated 5 September 2017 which appears at pages 194 to 195 of Exhibit TBN-2, that he had no access to, or any knowledge of, the financial records of the first defendant.
- (vi) no information or explanation has been given by Mr Simon Anquetil, the former director of the first defendant, as to the first defendant's affairs and accounting/financial records. In this regard, I note that:
- (A) on 31 October 2017, my solicitors sent an email to the solicitors acting for Mr Anquetil and requested that Mr Anquetil complete a RATA and attend a meeting with the liquidators to discuss the affairs of the first defendant. A copy of this email is at page 391 of Exhibit TBN-2;
 - (B) on 3 November 2017, the solicitors acting for Mr Anquetil sent a letter to my solicitors, which among other things, said that Mr Anquetil was not in possession of any books, records or monies of the first defendant and was not willing to attend a voluntary meeting with the liquidators at that time. A copy of this letter is a pages 393 to 394 of Exhibit TBN-2; and
 - (C) on 9 November 2017, the solicitors acting for Mr Anquetil sent a further letter to my solicitors enclosing a RATA completed by Mr Anquetil. This letter and the RATA are at pages 395 to 406 of Exhibit TBN-2. The RATA contains no financial information of the first defendant and on each of the relevant pages Mr Anquetil has written "*No access to this information*".



- 74. I believe that there will be considerable time and cost savings to the Provisional Liquidation and Liquidations in the event that the proposed pooling orders are made.
- 75. The majority of creditors of the Relevant Defendants (namely workers who have submitted claims for unpaid entitlements) appear to have been issued with payslips by the Relevant Defendants which arbitrarily allocate them as creditors of certain of the Relevant Defendants in respect of which the Liquidators may not be able to recover any assets. Consequently, I believe that the pooling orders will enable creditors to obtain a more equitable share of the proceeds of any recoveries.

SWORN at Canberra by
 Timothy Bryce Norman on 18
 April 2018

Signature of deponent



Name of witness

DREW BUCKLEY

Address of witness

LEVEL 3, 25 NATIONAL CIRCUIT, FORREST, ACT, 2603

Capacity of witness

SOLICITOR

And as a witness, I certify the following matters concerning the person who made this affidavit (**deponent**):

- 1. I saw the face of the deponent.
- 2. I have confirmed the deponent's identity using the following identification document:

DRIVER LICENCE (VIC) NO. 055305419
 Identification document relied on (may be original or certified copy)

Signature of witness:

