



## **Report to Creditors pursuant to Section 70-40 of the Insolvency Practice Rules (Corporations)**

Cadwell Construction & Interiors Pty Ltd  
(In Liquidation)  
ACN 140 887 636

11 September 2019

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# Glossary

\$	Australian Dollar
Administrators or Liquidators	Jason Tracy and Kathryn Evans
ALL PAAP	All present and after acquired property
ANZ	Australia and New Zealand Banking Group Limited
ARITA	Australian Restructuring and Insolvency Turnaround Association
ASIC	The Australian Securities & Investments Commission
ATO	Australian Taxation Office
Company or Cadwell	Cadwell Construction & Interiors Pty Ltd (In Liquidation)
Deloitte	Deloitte Financial Advisory Pty Ltd
Directors	Soren Jensen and Hans Thomsen
First Creditor Report	Report to creditors pursuant to IPR 75-225 dated 4 June 2019
FEG	Fair Entitlements Guarantee
FYXX	Financial Year Ended 30 June 20XX
Grays	Grays (NSW) Pty Ltd
IPR	Insolvency Practice Regulations of the Corporations Act 2001
IPS	Insolvency Practice Rules of the Corporations Act 2001
k	Thousand
M	Million
NAB	National Australia Bank Limited
PILN	Payment in lieu of notice
Reefbreak	Reefbreak Holdings Pty Ltd (Administrators Appointed)
ROCAP	Report as to Company Activities and Property
The Act	Corporations Act 2001
The Court	The Federal Court of Australia or any of the state Supreme Courts
The Regulations	Corporations Regulations 2001
V	Versus
YTD19	Ten months ending 30 April 2019

# 1 Executive summary

As a result of our enquiries and analysis of the assets and liabilities of the Company, we have concluded the likely dividend creditors may receive in the liquidation is as follows:

Class of creditor	Low dividend	High dividend
Secured	2c/\$	2c/\$
Preferential (employees)	0c/\$	0c/\$
Unsecured	0c/\$	0c/\$

The likelihood of these outcomes is contingent upon the many variables explained in this report, particularly the success (or otherwise) of possible recovery actions the Liquidators may be able to bring. Possible legal recovery actions are discussed in this report and the level of recoveries from these actions may alter this outcome. Please read this report for full details.

## 2 Introduction

### 2.1 Details of appointment

On 7 May 2019 we, Kathryn Evans and Jason Tracy were appointed Joint and Several Voluntary Administrators (**Administrators**) of Cadwell Construction & Interiors Pty Ltd (In Liquidation) pursuant to Section 436A of the Corporations Act 2001 (**the Act**). We were subsequently appointed Joint and Several Liquidators (**Liquidators**) of the Company by a resolution of creditors at a meeting held on 12 June 2019.

### 2.2 Purpose of this report

Section 70-40 of the Insolvency Practice Regulations of the Corporations Act 2001 (**IPR**) requires a liquidator to report to creditors within three months after the commencement of the winding up. This report provides details of the progress of the winding up, information about the Company's assets and liabilities and whether creditors will receive a distribution. This report should be read in conjunction with our report to creditors pursuant to Section 75-225 of the IPR dated 4 June 2019 (**First Creditor Report**).

A copy of the First Creditor Report is available on our website and can be downloaded from the following link: [www.deloitte.com/au/cadwell-reefbreak](http://www.deloitte.com/au/cadwell-reefbreak).

## 3 Enquiries undertaken to date

In addition to the enquiries outlined in our First Creditor Report we have progressed the following:

- discussions with the Directors;
- obtained information from the Australian Taxation Office regarding the tax liabilities of the Company;

- discussions with relevant stakeholders of existing projects to determine the commerciality of completing these projects and the likelihood of any return to creditors from these;
- requested information from financiers regarding funds held, liabilities and security held;
- requested information from holders of bank guarantees against the Company; and
- requested information from equipment and property lessors regarding their dealings with the Company.

The outcome of these enquiries are detailed within this report.

### 3.1 Receipts and payments

The Liquidators' receipts and payments for the period 12 June 2019 to 5 September 2019 is attached as **Appendix A**.

### 3.2 Background

#### 3.2.1 Summary of business operations

The Company operated as head contractor providing commercial fit-outs and refurbishment services. The Company specialised in the healthcare, education and commercial office industries. At the time of appointment, the Company employed over 20 permanent staff.

The Company experienced strong revenue growth from \$15 million in FY17 to over \$30m in FY18. At the time of our appointment as Administrators there were approximately 20 projects at various stages of completion.

#### 3.2.2 Statutory information

The Company was incorporated in NSW on 2 December 2009, with the registered office shown as 57 St Johns Road, Glebe NSW 2037. There are two directors, Soren Jensen and Hans Thomsen.

The Company is limited by shares. The ASIC database records the shareholders as:

Shareholder	Class	Number	%
Cadwell Group Pty Ltd	Ordinary	12,000	3.16%
Reefbreak Holdings Pty Ltd	Ordinary	368,090	96.84%

#### 3.2.3 Related entities

Details of related entities and any inter-company indebtedness (where the related entity is a creditor of this Company) as per the Company's books and records are as follows:

Name	Relationship	Debt \$	Date debt incurred	How debt was incurred
Reefbreak Holdings Pty Ltd	Shareholder and common directors	97,873	Prior to FY14	Fund working capital of the Company
Harp Street Pty Ltd	Common directors	197,679	FY16	Fund working capital of the Company
Soren Jensen	Director	118,405	FY14	Fund working capital of the Company
Hans Thomsen	Director	60,560	FY14	Fund working capital of the Company
<b>Total</b>		<b>474,517</b>		

Our analysis of the Company's books and records has revealed that the related entity loans were mostly used to fund working capital requirements of the Company.

Given the uncertainty surrounding the potential return to unsecured creditors we have not yet adjudicated on any of the above claims by related entities. Should a dividend to unsecured creditors become likely, we would adjudicate on these claims accordingly.

### 3.2.4 Security Interests

A summary of the Personal Property Securities Register (**PPSR**) following the appointment of the Liquidators is below.

Secured Party	Collateral	On appointment of Liquidator
ANZ	All PAAP	2
NAB	All PAAP	1
ANZ	Motor Vehicle	3
Macquarie Leasing Pty Ltd	Motor Vehicle	1
Nissan Financial Services Australia Pty Ltd	Motor Vehicle	2
Toyota Finance Australia Ltd	Motor Vehicle	1
Volkswagen Financial Services Australia Pty Limited	Motor Vehicle	1
CBOX Containers Australia Pty Limited	Other Goods	1
Druin Pty Ltd	Other Goods	1
Finance@work Pty. Ltd.	Other Goods	1
Siemens Ltd.	Other Goods	1
Walmay Architectural Products Pty Ltd	Other Goods	1
<b>Total</b>		<b>17</b>

On our appointment as Voluntary Administrators, a search of the PPSR identified two all present and after acquired property (**ALL PAAP**) security interests in the Company in favour of Australia and New Zealand Banking Group Limited (**ANZ**).

Creditors are advised that while National Australia Bank Limited (**NAB**) provided the refinance to the Company, NAB did not register their security interest on the PPSR until 5 June 2019, nor was ANZ's security interest transferred to NAB by way of a deed of subrogation.

On our appointment, NAB advised that they would be relying on ANZ's registration and its security position. Ultimately, NAB would be required to approach the court to maintain this position (to the value of the former ANZ facility limit) and based on the information available to us, we would expect that the court would confirm NAB's subrogated rights.

Accordingly, and given that realisations to date do not exceed the ANZ's facility limit, we see no further merit in challenging NAB's security position.

## 4 Estimated assets and liabilities

The Directors provided their Report on Activities and Property (**ROCAP**) on 15 May 2019, and it was lodged with ASIC on 20 May 2019.

The ROCAP, together with the respective accompanying schedules may be inspected at our offices.

Below is a summary of the book value of assets and liabilities of the Company, including the realisations (including GST) from the voluntary administration period along with the Liquidators' estimated values based on investigations to date. Assets of the Company that were realised during the voluntary administration period are further detailed in our First Creditor Report.

\$'000	Note	Book value	Amount realised during voluntary administration	Estimated amount to be realised during liquidation	Estimated total realisations
<b>Assets</b>					
Sundry debtors	4.1.1	2,427	149	17	166
Work in progress	4.1.1	4,168	-	-	-
Plant & equipment	4.1.2	466	13	84	97
Other assets	4.1.3	1	9	2	11
<b>Sub total</b>		<b>7,062</b>	<b>171</b>	<b>103</b>	<b>274</b>
Less amounts subject to specific charges	4.1.4	(15)	-	(15)	(15)
<b>Total assets</b>		<b>7,047</b>	<b>171</b>	<b>88</b>	<b>259</b>
<b>Liabilities</b>					
Priority creditors (employee entitlements)	4.2.1	(442)	-	-	-
Creditors with non-circulating security interests	4.2.2	(1,214)	-	-	-
Unsecured creditors	4.2.3	(11,675)	-	-	-
<b>Total liabilities</b>		<b>(13,331)</b>	<b>-</b>	<b>-</b>	<b>-</b>

\*These figures are subject to rounding

## 4.1 Assets

### 4.1.1 Sundry debtors and work in progress

The ROCAP discloses a value for sundry debtors of \$2.4m and a value for work in progress of \$4.2m at the date of our appointment as Administrators.

We have realised \$166k from sundry debtors as at the date of this report (including \$149k during the voluntary administration period).

The First Creditor Report detailed the potential for recoveries from debtors and work in progress across the Company's 20 projects that were in progress as at the date of our appointment as Administrators. We have made inquiries of former Cadwell employees and relevant stakeholders in our determination of the collectability of these amounts. However, any future recoveries are currently uncertain due to commercial aspects in finalising any claims as the Company is in liquidation and not trading.

### 4.1.2 Plant and equipment

The ROCAP discloses plant and equipment owned by the Company totalling \$466k. This is made up of motor vehicles and office fixtures and fittings.

Grays (NSW) Pty Ltd (**Grays**) were engaged by the Liquidators to realise a majority of the plant and equipment of the Company via an auction process.

To date, we have realised \$87k (including GST) since our appointment as Administrators. This includes the sale of four (4) motor vehicles totalling \$61k (including GST) and fixture and fittings of the business for \$26k (including GST).

### 4.1.3 Other assets

The ROCAP discloses "Formation Expenses" as an intangible asset. We do not consider there to be any realisable value for intangible assets or from this item.

We have realised \$11k as at the date of this report made up of a refund from a leased premises and the cancellation of pre-appointment insurance policies.

#### 4.1.4 Assets subject to specific charges

The assets subject to specific charges namely, nine (9) motor vehicles, have either been sold or disclaimed. Approximately \$14k has been paid to the respective secured parties on the sale of these motor vehicles to date.

We note that one (1) of the disclaimed motor vehicles remains to be sold by ANZ, which after paying out the lease and costs, may return minimal funds to the Company.

## 4.2 Liabilities

### 4.2.1 Employee entitlements

The Directors did not list any value for employee entitlements.

We have made an estimate of outstanding employee entitlements as follows:

Type of entitlement	\$'000
Wages	-
Holiday pay (annual leave)	111
Long service leave	16
Payment in lieu of notice	109
Redundancy	179
Superannuation	23
Employee expense claims	5
<b>Total priority claim</b>	<b>442</b>
Unsecured claim – Directors' excluded claim	201
<b>Total</b>	<b>643</b>

*\*These figures are subject to rounding*

The claims of employees represent a priority claim pursuant to Section 556 of the Act. This means employees have the right to be paid their outstanding entitlements in priority to unsecured creditors.

Pursuant to Sections 556(1) and 556(1B) of the Act, the priority for a director and related individuals is limited to \$2k for unpaid wages and superannuation, and \$1.5k for leave of absence, respectively. The Directors amounts above these limits total \$201k and represent an unsecured claim against the Company.

### 4.2.2 Creditors with non-circulating security interests

The ROCAP indicates there are creditors with non-circulating security interests in the amount of \$1.2m, which consists of the NAB security interest over the Company's assets and undertakings. This is discussed further in **Section 3.2.4**.

### 4.2.3 Unsecured creditors

At this stage, unsecured creditor claims total \$11.68m. This is based on the books and records of the Company and creditor claims received to date.

Unless requested by creditors, we will not be adjudicating on creditor claims unless a dividend is declared.



## 5 What happened to the business of the Company

### 5.1 Causes of failure

The Directors have attributed the failure of the Company on the following reasons:

- significant losses from two projects due to a combination of estimating errors, contractual complexities and performance of the Company's delivery teams;
- cash flow constraints stemming from one customer placing a large contract on hold during a time where there was minimal activity that could offset this loss;
- delays on two projects leading to staff turnover and further cash flow constraints; and
- inconsistencies in the profitability reporting of projects further amplifying liquidity concerns in the period prior to the appointment of the Administrators.

The Directors have advised the above factors led them to explore increasing the Company's overdraft facility to mitigate the working capital constraints, but ultimately they concluded that further cash injections were unviable in the long run and elected to appoint Voluntary Administrators on 7 May 2019.

Based on our investigations, we agree with the above comments, noting that during March 2019, it became known to Cadwell management that the Browne Street Mental Health Community Centre project, which was previously showing a profitable return, reported a significant loss.

## 6 Possible recovery actions

### 6.1 Investigations

#### 6.1.1 Introduction

There is a general duty by a liquidator to investigate the Company's business, property, affairs and financial circumstances. There are a number of possible recovery actions that may be brought by a liquidator under Part 5.7B of the Act which may result in more funds available for distribution to creditors.

Liquidators have an obligation to report to ASIC possible breaches of director duties or likely misconduct that comes to our attention. ASIC may, as a consequence of such a report, prosecute a director and a successful prosecution may result in a director being fined or imprisoned. However, any action undertaken in this regard will have no impact on likely dividends to creditors.

An explanation of the possible recoveries that may arise because of offences by a director and insolvent and voidable transactions is attached at **Appendix B**. This information sheet has been prepared by the Australian Restructuring Insolvency & Turnaround Association (**ARITA**) and is intended to reduce the amount of generic information included as part of the body of this report. Creditors who are not familiar with the nature of offences and liquidator actions should refer to the appendix for explanations. If further explanation is required of the material contained in **Appendix B** or of our investigations, creditors should contact us.

#### 6.1.2 Voidable transactions

Voidable transactions include:

- unfair preferences (Section 588FA);
- uncommercial transactions (Section 588FB);
- unfair loans to a Company (Section 588FD);
- arrangements to avoid employee entitlements (Section 596AB);
- unreasonable director-related transactions (Section 588FDA);
- transactions with the purpose of defeating creditors (Section 588FE(5)); and
- voidable security interests (Section 588FJ).

During the voluntary administration, the Administrators' commenced investigations into the above voidable transactions and reported the findings in the First Creditor Report. The only voidable transaction that the Administrators identified were unfair preference payments. We have continued our investigations into the unfair preference payments identified and provide an update below.

#### **6.1.2.1 Unfair preferences payments (Section 588FA)**

An unfair preference is a payment made to an unsecured creditor of the company in the six months preceding the date of the winding up, at a time when the Company is insolvent. This results in the creditor receiving more than they would have if they were to prove for their debt in the liquidation. Such transactions are void as against a Liquidator.

We previously advised that our investigations had identified potential unfair preference payments to 11 creditors. We have undertaken further investigations into these payments and the supporting documentation available. We are now of the view that 15 creditors had likely received unfair preference payments.

The Liquidators' are continuing investigations into these payments and the supporting documentation available. The Liquidators are also assessing whether the relevant creditors received a benefit and whether any of those creditors could reasonably conclude the Company was insolvent at the time.

The Liquidators' have issued demand letters of these 15 creditors. If payment is not forthcoming, the Liquidators will consider the possibility of obtaining a legal opinion and commencing legal proceedings to pursue recovery.

#### **6.1.3 Offences by the Directors**

Liquidators are required to complete and lodge a report pursuant to Section 533 of the Act with ASIC where it appears:

- a past or present officer of the Company may have been guilty of an offence or misconduct in relation to the Company; and/or
- the Company may be unable to pay more than 50 cents in the dollar to unsecured creditors.

Reports lodged pursuant to Section 533 of the Act are not available to the public.

We have undertaken investigations into the affairs of the Company in relation to suspected contraventions of Section 180 to Section 184 of the Act regarding the general duties of directors and officers. From our investigations we have not found that the Directors have acted dishonestly and/or fraudulently in the exercise of their powers and discharge of their duties.

#### **6.1.4 Insolvent trading (Section 588G)**

Directors have a positive duty to prevent the Company from trading whilst it is insolvent (S.588G). If a director is found to have contravened Section 588G of the Act he/she may be ordered to pay an amount of

compensation to the Company equal to the amount of loss or damage suffered by creditors as a result of the contravention.

From preliminary investigations, it appears the Company may have traded whilst insolvent from on or around January 2019. A detailed assessment of the solvency position of the Company was provided in our First Report to Creditors. A summary of our findings is as follows:

- **Continuing losses:** the Company's management accounts disclose a YTD19 loss of \$279k. Further, the Company incurred a net monthly operating loss in 6 out of the 10 months for the period July 2018 to April 2019.
- **Working capital:** the Company was experiencing working capital issues throughout late 2018 and early 2019. This was as a result of a reduction in the cash and accounts receivable position from \$4m in July 2018 to \$1.4m in March 2019.
- **Ageing of creditors:** the Company's management accounts recognise the Company was having difficulties making payments to suppliers from February 2019 onwards.
- **Overdue Commonwealth and State taxes:** the ATO have lodged a proof of debt claiming \$151,371 in overdue tax liabilities.
- **Suppliers demanding payment:** we are aware that on occasion suppliers had stopped work unless paid.
- **Access to further funds:** prior to our appointment the NAB had provided a letter of offer to increase the overdraft facility by \$1m. However, as the shortfall in the Company's cash and debtor vs creditor position exceeded this amount, the Company would likely have required further access to funds.

Ultimately, the issue of insolvency would need to be determined based on available evidence presented to a Court.

If it can be established that a Director has breached his or her duties to prevent the Company from incurring debts whilst it was insolvent, a liquidator could recover from those Directors an amount equal to the loss that has been suffered by the creditors whose debts remain unpaid. However any claim for insolvent trading against the Directors needs to be assessed on commercial grounds, taking into consideration:

- the costs to prosecute such a claim and whether there is any benefit to creditors; and
- the Directors capacity to meet a claim (refer to **Section 6.1.5**).

Due to the number of professional hours involved in investigating and preparing an insolvent trading claim, and the need to engage legal professionals, the costs to pursue these claims are significant. Unless assets of substantial equity are identified (which is unlikely), pursuing an insolvent trading claim is unlikely to be commercially viable. Creditor funding may also be required. Creditors who may wish to provide funding are encouraged to contact this office.

A creditor may wish to have the right to sue assigned to them. Before we can assign the right to sue, we must first notify all creditors. Accordingly, if there are any further developments in this regard you will receive further information.

#### **6.1.5 Directors' Personal Financial Positions**

The financial position of a director and their ability to compensate for any damages awarded against them in the event legal proceedings were taken by a liquidator is relevant to the consideration of the commerciality of further action.

As outlined in **Section 6.1.4** from preliminary investigations, it appears the Company may have traded whilst insolvent from on or around January 2019. However, before pursuing any claim against a director, consideration must be given to their capacity to meet such a claim.

From our investigations to date, we can conclude the Directors do not own any assets with significant equity to warrant taking further action against the Directors. We have based this opinion on the following:

- property searches reveal that the Directors each own property with their spouses however, both are mortgaged to NAB;
- the properties are also used as security for the NAB loans to the Company;
- the Directors drove leased vehicles in the Company name and do not own any other assets in their names; and
- potential completing claims or other creditors who have personal guarantees.

If you have any information that may assist the Liquidators to establish the asset position of any of the parties, we would appreciate receiving same.

## 7 Further actions to be undertaken

We anticipate this liquidation will continue for another 12 months, during this time the Liquidators will:

- liaise with the bank, customers and trade creditors regarding outstanding bank guarantees and recovery of potential retention monies;
- continue to investigate and pursue the unfair preference payments identified;
- liaise with the Fair Entitlements Guarantee (**FEG**) scheme in relation to the verification and distribution of funds to priority (employee) creditors; and
- prepare and maintain ASIC lodgements.

We do not anticipate on issuing any further reports to creditors, unless there are material changes to the details in this report. Creditors may contact this office for updates at any time.

## 8 Likelihood of creditors receiving a dividend

### 8.1 Introduction

We have prepared an analysis of the likely realisations under liquidation on two bases, high and low, which are outlined below.

Under either scenario it is highly unlikely that a return will be made to unsecured creditors.

\$'000	(exc. GST)	
	Low	High
<b>Gross non-circulating asset realisations</b>		
Plant and equipment	89	89
Less: amounts paid to discharge secured parties	(15)	(15)
	<b>74</b>	<b>74</b>
<b>Costs of realising non-circulating assets</b>	<b>(48)</b>	<b>(48)</b>
<b>Net non-circulating amount available to secured creditor</b>	<b>26</b>	<b>26</b>
<b>Secured creditor (NAB)</b>	<b>(1,214)</b>	<b>(1,214)</b>
<b>Secured creditor deficiency</b>	<b>(1,188)</b>	<b>(1,188)</b>
<b>Gross circulating asset realisations</b>	<b>177</b>	<b>177</b>
<b>Administration income</b>	<b>8</b>	<b>8</b>
<b>Costs of the administration</b>	<b>(198)</b>	<b>(198)</b>
<b>Liquidators' potential recovery actions available</b>		
Unfair preference payments	-	Withheld
Other recoverable actions	-	Unknown
Less: legal fees to be incurred to realise	-	(Unknown)
	<b>-</b>	<b>Unknown</b>
<b>Net circulating amount available to priority creditors</b>	<b>(14)</b>	<b>(14)</b>
<b>Priority (employee) entitlements</b>	<b>(442)</b>	<b>(442)</b>
<b>Priority creditor deficiency</b>	<b>(442)</b>	<b>(442)</b>
<b>Amounts available for unsecured creditors</b>	<b>-</b>	<b>-</b>
<b>Unsecured creditors</b>		
Trade, other creditors and accruals (non-related)	(11,000)	(8,500)
Related entity unsecured creditors	(475)	(475)
Directors' unsecured employee entitlements	(201)	(201)
	<b>(11,675)</b>	<b>(9,175)</b>
<b>Return to creditors (cents / \$)</b>		
Secured creditor	<b>2</b>	<b>2</b>
Priority creditors	-	-
Unsecured creditors	-	-

\*These figures are subject to rounding

The high scenario provides for potential recoveries from actions brought by the Liquidators on behalf of creditors. These actions are ongoing and accordingly we have not disclosed potential values. We have withheld an estimated value for unfair preference claims as to not prejudice the outcome of any of these proceedings. We have disclosed an unknown value for other recoverable actions including a potential claim against the Company's insurance policies. Insolvent transaction recoveries are not available to the secured creditor under its charge and will benefit priority and unsecured creditors. Details of our investigations regarding these actions are discussed further in **Section 7**.

The low scenario does not provide for any potential recovery actions.

We have estimated total trade, other creditors and accruals from non-related parties of \$11m. Given the number of claims received and the uncertainty surrounding the potential of a return to creditors we have not finalised our adjudications on these claims and consider it probable that this figure will be reduced by duplicate claims that have been received by both customers and sub-contractors. Accordingly, we have included an estimate of \$8.5m on a high scenario that provides for these potential duplicate claims.

Under both scenarios, it is anticipated that there will be insufficient realisations to cover the full extent of fees and expenses that have been incurred and approved and that no further fee approval will be sought.

## 8.2 Likely dividend scenarios

Both scenarios provide an estimated return to the secured creditor of approximately 2 cents in the dollar and no return for either priority creditors or unsecured creditors.

The change from our prior estimate from our First Creditor Report is as a result of the status of NAB as a secured creditor. This is discussed further in **Section 3.2.4**.

A secured creditor has priority rights to non-circulating assets in an administration. However employee creditors will receive priority out of circulating assets. Circulating assets are defined as assets such as debtors that a company is usually able to use, dispose, and deal with in the ordinary course of business without the need to obtain the secured creditor's consent. A non-circulating asset is defined as assets that the company may not dispose of without the consent of the secured creditor. Under these circumstances, NAB as the secured creditor would receive the proceeds from the sale of plant and equipment.

Prior to the payment of the secured creditor and priority creditors, the reasonable costs of the liquidation will be deducted.

### **8.3 Effect on employees**

In relation to employee entitlements, a priority exists over the secured creditor in relation to circulating assets.

As there is inadequate funds in the liquidation for the payment of employee entitlements, employees are entitled to apply to the federally funded FEG scheme. FEG may cover successful applicants for outstanding wages, annual leave and termination payments (being redundancy entitlements and pay in lieu of proper notice). However, FEG does not cover outstanding superannuation entitlements, nor do they pay excluded employees, including the Directors of the Company.

Employees have previously received separate advice from my office regarding the FEG scheme and the Liquidators have assisted employees in applying to FEG. It is our understanding that FEG have made a distribution to eligible employees that have submitted the appropriate documentation on or around 5 September 2019.

Eligible employees that have not yet claimed through FEG and are entitled under the relevant legislation should do so, noting that assistance under the FEG scheme expires 12 months following the appointment of the Liquidators.

### **8.4 Conclusion**

In conclusion, we estimate that the secured creditor may receive a dividend in the value of two (2) cents in the dollar. We estimate that there will be no return to either priority or unsecured creditors. This may change and is dependent on recoveries from the Liquidators' recoverable actions. We do not anticipate issuing any further reports to creditors, unless there are material changes to the details in this report.

We trust creditors find this report informative and useful. In the event you have any queries regarding the contents of this report, or the liquidation in general, please do not hesitate to contact Jack McGrath of this office on (02) 8260 4867 or by email to [jackmcgrath@deloitte.com.au](mailto:jackmcgrath@deloitte.com.au).

Yours faithfully



**Jason Tracy**  
Joint and Several Liquidator

## Appendix A – Receipts and payments

**Cadwell Construction & Interiors Pty Ltd (In Liquidation)****Summary of receipts and payments****For the period 12 June 2019 to 5 September 2019****\$  
(Inc. GST)**

Receipts	
Opening cash at bank form Voluntary Administration period	166,258
Miscellaneous income	1,909
Plant & equipment	73,724
Pre-appointment debtors	16,989
Withholding tax (PAYG)	999
Bank interest	126
<b>Total receipts</b>	<b>260,005</b>
Payments	
Superannuation	302
Wages & salaries	3,177
Secured Creditors	15,303
Agents/valuers fees	9,353
Commission paid	5,303
Hire of meeting room	1,386
Insurance of assets	1,009
Legal fees	6,413
Postage	5,862
Stamp duty	49
Search fees	22
Administrator's remuneration	178,182
<b>Total payments</b>	<b>226,362</b>
<b>Net GST receivable / (payable)</b>	<b>8,333</b>
<b>Balances in hand as at 5 September 2019</b>	<b>41,976</b>



## Appendix B - Information Sheet - Offences, Recoverable Transactions, etc.

# 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.



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