

Our Ref: GBW:APN:769287

4 October 2019

To whom it may concern

Dear Sir /Madam

In the matter of Force Corp Pty Limited (In Liquidation) ("Force Corp")

1. We act for Mr David John Frank Lombe and Mr Vaughan Neil Strawbridge in their capacities as the joint and several liquidators of Force Corp (**Liquidators**). The Liquidators were appointed on 23 November 2015. Prior to their appointment as Liquidators, the Liquidators were appointed as the joint and several Administrators of Force Corp on 13 July 2015.
2. As a result of successful recovery actions taken by the Liquidators for the insolvent trading and voidable transaction claims (as those claims were identified in the Liquidators' report to creditors dated 15 January 2018), there are estimated funds available for distribution in the amount of approximately \$2,578,221 (**Current Distribution Amount**). The Current Distribution Amount will be reduced by the costs and expenses of the Liquidators in obtaining directions from the Court (as set out below) in relation to the manner in which these funds should be distributed in light of possible disputes as to whether certain creditors have priority to some of these funds. The balance of the Current Distribution Amount, after these costs and expenses, is referred to as the **Estimated Distribution Amount**.¹
3. From the Estimated Distributed Amount, it is expected that the Liquidators will declare a first and final dividend and that such dividend will only be paid to eligible unsecured priority creditors of Force Corp (and that there will be no distribution to non-priority creditors).

Competing unsecured priority creditors of Force Corp

4. The Liquidators have been notified of and are currently aware of claims of three (3) potential groups of unsecured priority creditors of Force Corp as follows (as at 30 September 2019):

Adelaide
Brisbane
Canberra
Darwin
Hobart
Melbourne
Norwest
Perth
Sydney

¹ See Circular to Unsecured Priority Employee Creditors dated 25 September 2019.

Creditor Groups	Nature of Claim	Amount
Lease Collateral Pty Ltd (Lease Collateral) (a subsidiary of Challenger Ltd)	<ul style="list-style-type: none"> • Monies advanced to the Administrators of Force Corp for their remuneration and disbursements during the voluntary administration of Force Corp (Indemnity for the Administrators' Remuneration and Disbursements) • Monies paid by the Receivers and Managers of Force Corp (appointed by Recfin Nominees Pty Ltd) (Receivers) to employees for pre-appointment wages from circulating assets (Wages paid from Circulating Assets) • Monies advanced to the Receivers for trading at appointment (Challenger Trading Payment) • Monies paid on behalf of employees for pre-appointment lease payments that had been withheld from pre-appointment wages (Challenger Lease Payment) 	<p style="text-align: right;">\$338,416.85</p> <p style="text-align: right;">\$682,799.58</p> <p style="text-align: right;">\$173,716.39</p> <p style="text-align: right;">\$51,142.62</p> <p style="text-align: right;">\$1,246,075.44</p>
Attorney General's Department (AGD)	<p>Amounts paid to employees of Force Corp pursuant to the Fair Entitlements Guarantee scheme (FEG) for the following:</p> <ul style="list-style-type: none"> • Pre-appointment wages • Annual Leave • Leave loading • Long service leave • Payment in Lieu • Redundancy 	<p style="text-align: right;">\$40,138.42</p> <p style="text-align: right;">\$959,672.81</p> <p style="text-align: right;">\$57,180.01</p> <p style="text-align: right;">\$656,350.22</p> <p style="text-align: right;">\$1,448,954.83</p> <p style="text-align: right;">\$2,305,185.47</p> <p style="text-align: right;">\$5,467,481.76</p>
Employees	<p>Outstanding employee entitlements as at the date of appointment:²</p> <ul style="list-style-type: none"> • Pre-appointment wages 	<p style="text-align: right;">\$8,004.11</p>

² The figures exclude amounts advanced to employees under the FEG Scheme.

Creditor Groups	Nature of Claim	Amount
	• Superannuation	\$835,525.33
	• Annual Leave	\$155,568.99
	• Leave loading	\$3,168.80
	• Long service leave	\$100,402.46
	• Payment in Lieu	\$721,448.90
	• Redundancy	\$73,668.39
		\$1,897,786.99

The Liquidators' position - distribution to unsecured priority creditors

5. Based on the information currently available, the Liquidators' position concerning the above claims and the order of any distribution to the above unsecured priority creditors pursuant to the priority provisions of section 556 of the *Corporations Act 2001* (Cth) (**Act**) is as follows (in order of priority):³

Priority pursuant to section 556 of the Act	Creditor	Claim	Liquidators' position
s 556(1)(c)	Lease Collateral	Indemnity for the Administrators' Remuneration and Disbursements - \$338,416.85	<ul style="list-style-type: none"> The Liquidators consider that the Indemnity for the Administrators remuneration and disbursements was a debt incurred in the administration of Force Corp that the Administrators are entitled to be indemnified pursuant to either sections 443A (General debts incurred as Administrators) and / or section 443D(aa) (other debts, liabilities, damages or losses incurred as Administrators in good faith and without negligence in the performance of the Administrators' functions) and therefore subject to the statutory indemnity pursuant to section 443D of the Act.

³ The table represents the Liquidators' position with regards to the order of priority of the unsecured priority claim amounts only and is not indicative of the quantum of the proposed dividend to unsecured priority creditors.

Priority pursuant to section 556 of the Act	Creditor	Claim	Liquidators' position
			<ul style="list-style-type: none"> The Liquidators propose to treat the Indemnity for the Administrators' remuneration and disbursements as a debt falling within section 556(1)(c) of the Act in the amount of \$307,651.68 (on the basis of the Liquidators' understanding that Lease Collateral has claimed and received an input GST credit in the amount of \$30,765.17 in relation to the Indemnity for the Administrators' Remuneration and Disbursements).
s 556(1)(e)	Lease Collateral	Wages paid from Circulating Assets - \$682,799.58	<ul style="list-style-type: none"> It is the Liquidators' understanding that the amount of \$682,799.58 was paid by the Receivers to employees for pre-appointment wages pursuant to section 433 of the Act from circulating assets recovered by the Receivers that would have otherwise been payable to Lease Collateral pursuant to its securities. Based on the decision in <i>Re Divitkos (as liquidator of EXDVD Pty Ltd (in liq))</i> [2014] FCA 696, the Liquidators consider that Lease Collateral is entitled to be subrogated to the rights of those employee priority creditors to whom the Receivers made payment of pre-appointment wages pursuant to section 433 of the Act. The Liquidators propose to treat the Wages paid from Circulating Assets in the amount of \$682,799.58 as a debt falling within section 556(1)(e) of the Act.

Priority pursuant to section 556 of the Act	Creditor	Claim	Liquidators' position
	AGD	Pre-appointment wages - \$40,138.42	<ul style="list-style-type: none"> The Liquidators consider that the AGD is subrogated to the rights of those employee priority creditors to whom pre-appointment wages in the amount of \$40,138.42 were paid pursuant to the FEG Scheme. The Liquidators propose to treat the amount of \$40,138.42 as a debt falling within section 556(1)(e) of the Act.
	Employees	Pre-appointment wages - \$8,004.11 Superannuation - \$835,525.33	<ul style="list-style-type: none"> The Liquidators propose to treat the amount of \$8,004.11 as a debt falling within section 556(1)(e) of the Act. The Liquidators propose to treat the amount of \$835,525.33 as a debt falling within section 556(1)(e) of the Act.
s 556(1)(g)	AGD	Annual Leave - \$959,672.81 Leave Loading - \$57,180.01 Long service leave - \$656,350.22	<ul style="list-style-type: none"> The Liquidators consider that the AGD is subrogated to the rights of those employee priority creditors to whom annual leave, leave loading and long service leave entitlements were paid pursuant to the FEG Scheme. The Liquidators propose to treat the amounts of \$959,672.81, \$57,180.01 and \$656,350.22 as debts falling within section 556(1)(g) of the Act.

Priority pursuant to section 556 of the Act	Creditor	Claim	Liquidators' position
	Employees	Annual Leave - \$155,568.99 Leave Loading - \$3,168.80 Long service leave - \$100,402.46	<ul style="list-style-type: none"> The Liquidators propose to treat the amounts of \$155,568.99, \$3,168.80 and \$100,402.46 as debts falling within section 556(1)(g) of the Act.
s 556(1)(h)	AGD	Payment in Lieu - \$1,448,954.83 Redundancy - \$2,305,185.47	<ul style="list-style-type: none"> The Liquidators consider that the AGD is subrogated to the rights of those employee priority creditors to whom payment in lieu and redundancy entitlements were paid pursuant to the FEG Scheme. The Liquidators propose to treat the amounts of \$1,448,954.83 and \$2,305,185.47 as debts falling within section 556(1)(h) of the Act.
	Employees	Payment in Lieu - \$721,448.90 Redundancy - \$73,668.39	<ul style="list-style-type: none"> The Liquidators propose to treat the amounts of \$721,448.90 and \$73,668.39 as debts falling within section 556(1)(h) of the Act.
Ordinary (non-priority)	Lease Collateral	Challenger Trading Payment - \$173,716.39	<ul style="list-style-type: none"> The Liquidators do not consider that the Challenger Trading Payment is caught by section 560 of the Act in that it was not advanced by Lease Collateral to the Receivers or Force Corp for the specific purpose of Force Corp making payments of wages, superannuation contributions, leave entitlements and termination entitlements to employees but, rather, was advanced for the purpose of the Receivers' trading the business of Force Corp on appointment.

Priority pursuant to section 556 of the Act	Creditor	Claim	Liquidators' position
		Challenger Lease Payment - \$51,142.62	<ul style="list-style-type: none"> • The Liquidators propose to treat this debt as having no priority under sections 556 and 560 of the Act. • The Liquidators do not consider that the Challenger Lease Payment is caught by section 560 of the Act in that it was not advanced by Lease Collateral to the Receivers or Force Corp for the specific purpose of Force Corp making payments of wages, superannuation contributions, leave entitlements and termination entitlements to employees. There is also a doubt about whether the payments were made by Force Corp, which is a requirement of section 560. • The Liquidators propose to treat this debt as having no priority under sections 556 and 560 of the Act.

Application to the Supreme Court of NSW (Court)

6. As there is uncertainty regarding the priority of the debts with respect to the Indemnity for the Administrators' Remuneration and Disbursements, Wages paid from Circulating Assets, the Challenger Trading Payment and the Challenger Lease Payment, the Liquidators propose to seek directions from the Court that they would be justified in treating these debts in accordance with the manner set out in the table above (**Application**).
7. Other than the debts set out at paragraph 6 above, the Liquidators do not propose at this time to seek directions from the Court in relation to the payment of any other debts of unsecured priority creditors that are to be paid pursuant to section 556 of the Act. This is because, among other things, the entitlement to priority in those instances is not controversial.
8. To that end the proposed directions sought by the Liquidators in the Application will likely be as follows:
 - (a) The Liquidators would be justified in treating the Indemnity for the Administrators' Remuneration and Disbursements in the amount of \$307,651.68 as a debt falling within section 556(1)(c) of the Act;
 - (b) The Liquidators would be justified in treating the Wages paid from Circulating Assets in the amount of \$682,799.58 as a debt falling within section 556(1)(e) of the Act; and

- (c) The Liquidators would be justified in treating the Challenger Trading Payment and the Challenger Lease Payment as a debt not having any priority pursuant to section 556 of the Act.
9. To assist the Liquidators to ascertain the position of creditors in advance of the Application, we are instructed to request that each of the unsecured priority creditors provide us with any further information and documentation in relation to their respective claims (including but not limited to whether there is any reason why any creditor is no longer entitled to maintain such a claim). Please provide us with any such information and documentation that you seek to rely upon by no later than **5.00pm on Friday 25 October 2019**.
10. We anticipate that the Court may also wish to have an understanding of the views of each of the unsecured priority creditors in response to the Liquidators' position as to the order of priorities. In that regard, we invite the parties to form a view as to the order of distribution to unsecured priority creditors and to express that view to us by no later than **5.00pm on Friday 25 October 2019**. Of course if agreement can be reached by all interested parties as to the directions proposed by the Liquidators then it will likely reduce the time and costs expended in relation to the Application.
11. Once the Liquidators have received the above requested information, the Liquidators will circulate a draft form of the proposed Application before the Application is filed with the Court.

Please contact the writers if you have any questions in relation to the above.

Yours sincerely



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