

**Tasman Civil Pty Ltd  
(In Liquidation)  
ACN 113 204 461  
Annual Report to Creditors  
14 November 2017**

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Appendix A. Creditor’s rights in a liquidation

## Glossary

All PAAP	All present and after acquired property
ASIC	The Australian Securities & Investments Commission
ATO	Australian Taxation Office
BOQ	BOQ Equipment Finance Ltd
Company/TC	Tasman Civil Pty Ltd (In Liquidation)
c.	Approximately
Capital Finance	Capital Finance Australia Ltd
CAT	Caterpillar Financial Australia Ltd
CBA	Commonwealth Bank of Australia Ltd
Deloitte	Deloitte Financial Advisory Pty Ltd
Directors	Tony Smolenski and Gordon McCabe
ERV	Estimated Realisable Value
FEG	Fair Entitlements Guarantee
FY	Financial Year Ended XX.
Grays	graysonline.com – auctioneers and valuers
GSA	General Security Agreement
GST	Goods and Services Tax
k.	Thousand
Liquidators	Jason Tracy & Vaughan Strawbridge
m.	Million
March Report	Report to creditors dated 1 March 2017
N/A	Not applicable
NAB	National Australia Bank Ltd
PAYG	Pay as you go
PPE	Property, plant and equipment
PPSR	Personal Property Securities Register
Property Borrowers	Smolenski Family Trust, McCabe Family Trust, Sarginson Trust and Thurston Trust
Pt X	An arrangement with personal creditors under Part X of the Bankruptcy Act
RATA	Report as to Affairs
Rivergreen	Rivergreen Pty Ltd
the Act	Corporations Act 2001
the Court	The Federal Court of Australia
the Regulations	Corporations Regulations 2001
TI	Tasman Investments Pty Ltd
TUG	Tasman Civil Underground Pty Ltd (In Liquidation)
Westpac	Westpac Banking Corporation Ltd
WIP	Work in progress (being primarily the Kerosene Lane, Coast Rd and Frasers contracts)

## **1. Introduction**

### **1.1. Appointment**

We refer to the appointment of Jason Tracy and Vaughan Strawbridge as Joint and Several Liquidators of Tasman Civil Pty Ltd (In Liquidation) (TC) and Tasman Civil Underground Pty Ltd (In Liquidation) (TUG) on 24 August 2016. We also refer to our previous correspondence and in particular our most recent update to creditors of 1 March 2017 (**March Report**).

The purpose of this report is to provide creditors with details of the conduct of the liquidation of TC since the March Report and to comply with our obligations under Section 508 of the Act.

Creditors with an interest in TUG should refer to a separate report to the creditors of that company that has been issued.

### **1.2. Conduct of Liquidation**

Since the March Report our work as liquidators has included selling the remaining items of PPE, collecting trade debtors and retentions, conducting investigations, and taking action to recover related party loans, unfair preferences and damages for insolvent trading.

### **1.3. Investigation, Offences, Voidable Transactions**

Our investigations to date have revealed possible offences/voidable transactions and we have commenced recovery action, which is discussed at section 3.

### **1.4. Dividend**

We anticipate that at this stage of the liquidation, there will be a full dividend to priority employee creditors (this includes the Department of Employment under the Fair Entitlements Guarantee Scheme (FEG) where monies have already been advanced to eligible employees), and a return to ordinary unsecured creditors of TC in the range of 16c to 22c in the dollar on admitted claims. This is discussed further at section 5.

### **1.5. Liquidators' independence, relationships and indemnities**

A Declaration of Independence, Relevant Relationships and Indemnities (DIRRI) was provided to creditors in our first circular to creditors dated 31 August 2016. There are no changes to the DIRRI to report.

### **1.6. Meeting of the Committees of Inspection**

A meeting of the Committees of Inspection for TC and TUG, was held on 25 October 2017. At this meeting the conduct of the liquidation was discussed and further Liquidators' fees were approved as per section 6 of this report

### **1.7. Electronic Communication**

Section 600G of the Act allows for a creditor to receive communications and notifications electronically provided the creditor has consented to receive correspondence in this manner.

Electronic communication is speedy and cost effective and reduces the expenses incurred in a liquidation.

If you wish to receive future correspondence electronically, please send an email to Michael Buzzo on [mbuzzo@deloitte.com.au](mailto:mbuzzo@deloitte.com.au) detailing the email address to which you would like future communications from me to be sent.

## **2. Liquidators' actions to date and key assets**

### **2.1. Property, plant and equipment**

Since our March Report we have sold all remaining items of unencumbered PPE and collected equity in encumbered assets. Overall, we achieved \$799k for the sale of unencumbered assets after costs (March Report estimate was \$752k to \$777k) and \$180k in equity on encumbered assets (March Report estimate was \$109k to \$153k). In line with past sales we continued to achieve above valuation for the sale of PPE.

### **2.2. WIP**

At the date of the liquidation, TC had three key contracts comprising work in progress (**WIP**). There were other contracts on hand but these were at a very early stage of commencement, consequently we have not

shown our analysis of those projects. As stated in the March Report we were unable to commit to completing these contracts due to the lack of working capital in the business and significant concern regarding the profitability of the WIP contracts and the capability of one of the principals to meet progress claims.

Since our March Report we have been working with our appointed quantity surveyor and a former TC employee, engaged on a consultancy basis, to assess the cost to complete and assist in the recovery of any amounts that may be payable to TC. At this stage the potential amounts payable to TC based our assessment are as follows:

<b>Project \$'000</b>	<b>Claims and retentions owed</b>	<b>Increased cost to complete*</b>	<b>Potential return to TC - before liquidated damages</b>
Kerosene Lane	351	99	252
Coast Road	611	201	410
Frasers	<u>733</u>	<u>TBA</u>	<u>TBA</u>
<b>Total</b>	<b><u>1,696</u></b>	<b><u>300</u></b>	<b><u>662</u></b>

\*Quantity surveyor's estimated increased cost to complete due to termination of the contract

At the time of writing this report we are waiting upon the principals for the Coast Road contract to confirm their cost to complete so that we can compare this to the estimates provided by our appointed quantity surveyor.

At the time of writing we had just received details of the final cost to complete the Kerosene Lane contract. The final cost to complete was above our estimate and included substantial liquidated damages leading to no amount due to TC. Based upon the principal's calculations TC would be left owing the principal c.\$70k. We are in the process of assessing the reasonableness of the principal's costs and claims.

Our assessment of the Frasers' contract is close to completion. This contract is the most problematic of all, involving substantial defects allegedly caused by TC, which may substantially increase the final cost to complete.

The amounts potentially payable to TC will likely be lower once liquidated damages are factored in. It is also likely that the principals for each contract will have differing costs to complete and that further analysis negotiation and/or potential legal action may be required to recover amounts outstanding. We have seen this with the Kerosene Lane contract. Therefore, recovery of any WIP amounts is highly uncertain and has not been factored into any return to creditors at this stage. Any return would however represent potential upside to creditors.

WIP recovery amounts are factored in as either the recovery of debtors or retentions owed on such contracts and are included below at sections 2.3.1 and 2.3.2.

## **2.3. Debtors and retentions**

### **2.3.1 Debtors**

Trade debtors comprise amounts owed on 9 completed contracts and the three WIP contracts discussed above. Debtors at the date of appointment totalled c. \$2.6m. We have been successful in collecting \$1.3m to date.

<b>Debtors \$'000</b>	<b>Opening</b>	<b>Recovered</b>	<b>Outstanding</b>
Likely recoverable	1,162	1,162	-
No issues identified as yet*	76	62	13
Unrecoverable - other	12	11	1
WIP debtors	<u>1,320</u>	<u>74</u>	<u>1,245</u>
	<b><u>2,569</u></b>	<b><u>1,310</u></b>	<b><u>1,259</u></b>

\* The balance outstanding is not recoverable as it was an error in TC's accounting system

The collection of further amounts will depend on the final costs to complete WIP contracts and as per our earlier comments we have not at this stage factored in any further recovery for creditors.

### 2.3.2 Retentions

Retentions comprise a mix of 42 completed contracts and the three WIP contracts discussed above. Of the 42 completed contracts 9 retentions were held in the form of cash backed NAB bank guarantees and insurance bonds and the balance comprised of cash withheld. Retentions at the date of appointment total c. \$2.6m and so far we have recovered \$1.2m.

<b>Retentions</b>	<b>Opening</b>	<b>Recovered</b>	<b>Outstanding</b>
<b>\$'000</b>			
Likely recoverable	1,006	992	13
No issues identified as yet	708	115	594
Possible issues	355	125	229
Unrecoverable - other	118	-	118
WIP debtors	<u>451</u>	<u>-</u>	<u>451</u>
	<u>2,637</u>	<u>1,232</u>	<u>1,405</u>

Where retentions have expired we are following up their return. In some cases to date we have engaged contractors to remedy identified defects where the cost to rectify is relatively minor when compared to the size of the retention. This work is being conducted with the assistance of a former TC employee that we have engaged on a contract basis. The final retentions, in particular retentions on WIP contracts may not expire until July/August 2018, being 12 months after practical completion. Excluding WIP contracts the final retentions do not expire until October/November 2017. Our experience has been that it can then take up to a further 2 to 3 months to receive the retentions held.

### 2.4. 19 & 21 Clayton St Bellevue

As detailed in our March Report, a partnership of trusts (Smolenski Family Trust, McCabe Family Trust, Sarginson Trust and Thurston Trust) (**Property Borrowers**) being parties related to the Directors and shareholders of the Company, borrowed funds from NAB to purchase and develop the Company's former premises at 21 Clayton St, Bellevue, W.A.

NAB secured its funding via a mortgage over 21 Clayton St, 19 Clayton St and by a guarantee from TC. The guarantee from TC was secured by a GSA over TC's assets.

In February 2017, NAB exercised its rights pursuant to the guarantee and GSA, requiring TC to pay to NAB the net proceeds from the sale of unencumbered assets and the equity in encumbered assets. Following advice from our solicitors we made the payment of \$795,000 from TC to NAB on 28 February 2017. To protect TC's position we formalised TC's right of subrogation (i.e. to step into the position of NAB) by entering into an agreement with NAB, whereby following the sale of 21 Clayton St, TC would be assigned NAB's mortgage over 19 Clayton St thus securing the guarantee payment (i.e. the \$795k paid) made by TC.

On or around 3 April 2017, 21 Clayton St was sold by the Property Borrowers. The proceeds from the sale of this property together with the \$795k payment by TC meant that NAB received payment in full of the debts owed by the Property Borrowers and TC received payment of c.\$501k, as there were surplus proceeds available to NAB. TC is still owed c. \$294k (i.e. \$795k - \$501k) and has security over 19 Clayton St for this amount plus costs.

The mortgage of 19 Clayton St has been assigned to TC and we have taken possession of this property so that we can sell it. We are in the process of commissioning a valuation of this property. We are confident, that the value of the property will be sufficient to repay TC the remaining \$294k owed plus costs.

### 2.5. Related party loans

#### 2.5.1 Property Borrowers - Forrestdale Loan \$399,000

Loan was made by TC for a property development that was never completed and the property was sold undeveloped. The loan appears to have been made to the Property Borrowers. The documentation we have received to date concerning this loan does not appear complete and we have sought further particulars in order to complete our investigations.

#### 2.5.2 Property Borrowers – 21 Clayton St, Bellevue, W.A. \$353,475

As detailed in the March Report, TC lent the Property Borrowers \$353k to help fund the purchase and construction of the Company's former premises at 21 Clayton St. NAB provided the balance of funding to

purchase and develop this property, as discussed at Section 2.4 above and in the March Report. Given that 21 Clayton St has been sold, we are currently assessing legal options for recovering this amount.

### **2.5.3 Tasman Investments - \$640,554**

TC loaned Tasman Investments Pty Ltd (**TI**) \$641k to help TI purchase a 54.5% shareholding in Rivergreen Pty Ltd (**Rivergreen**). Rivergreen used those funds and funds from other unrelated parties to purchase a property at 22 Old Mandurah Rd, Greenfields, W.A. The intention was that this property would be developed. The relevant loan documentation between TC and TI stated that the loan was not repayable until the development of the property was complete. TI and TC have the same directors and shareholders.

We sought legal advice on the recovery of the loan and issued demands against TI for repayment of the loan. A caveat was also lodged on the Greenfields property to help protect TC's position.

On 28 June 2017 David Spencer of Business & Insolvency Solutions was appointed as Voluntary Administrator of Rivergreen as a result of the directors of Rivergreen forming the view that Rivergreen was insolvent or about to become insolvent. On or around 2 August 2017 the creditors of Rivergreen agreed to a Deed of Company Arrangement, that will result in a change of control of the Greenfields property without any return to Rivergreen's shareholders.

As TI's only asset was its shares in Rivergreen, and given the Deed of Company Arrangement provides for no return to Rivergreen shareholders, it is most likely that the loan made by TC to TI is unrecoverable.

### **2.5.4 Smolenski Family Trust - \$119,308.73**

The Company's records indicate that Tony Smolenski and Karen Smolenski as trustees for the Smolenski Family Trust owe TC \$119,308.73. This loan appears to have come about due to various personal expenses being paid by the Company on behalf of the Smolenski Family Trust such as insurance, cash drawings and interest thereon.

We issued demands against Tony Smolenski and Karen Smolenski as trustees but our requests for repayment have been ignored.

Tony Smolenski declared himself bankrupt on 19 April 2017. We have lodged a claim with Mr Smolenski's trustee in bankruptcy. Indications are that a return to creditors from Mr Smolenski's bankrupt estate is unlikely. We are continuing to pursue Mrs Smolenski for this loan and considering action against Tarchlo Pty Ltd, an entity that replaced Mr and Mrs Smolenski as trustee of the Smolenski Family Trust.

### **2.5.5 Thurston Trust - \$22,604.89**

The Company's records indicate that Roger Thurston and Julie Thurston as trustees for the Thurston Trust owe TC \$23k. This loan relates to the payment by TC of various expenses on behalf of the Thurston Trust. Roger Thurston and Julie Thurston are shareholders of TC and Roger was an employee of TC. We have issued demands to the Thurston Trust and received responses. We are currently considering those responses and investigating the nature of the accounting that took place that led to the amount being owed.

### **2.5.6 Sarginson Trust - \$20,496.98**

The Company's records indicate that Warren Sarginson and Debra Sarginson as trustees for the Sarginson Trust owe TC \$20k. This loan relates to the payment by TC of various expenses on behalf of the Sarginson Trust. Warren Sarginson and Debra Sarginson are shareholders and former employees of the Company. We have issued demands to the Sarginson Trust and received responses. We are currently considering the responses and investigating the nature of the accounting that took place that led to the amount being owed.

## **3. Liquidators' Investigations**

### **3.1. Introduction**

In our March Report we identified the following areas as being the main subject of our investigations:

- Breaches of Directors' duties
- Unfair preferences
- Insolvent trading.

We have continued our investigations into these matters as well as other matters and comment upon each in the following sections.



We reported the findings from our investigations to ASIC on 18 May 2017 pursuant to Section 533 of the Act. On 19 May 2017 ASIC requested that we prepare a supplementary report to provide further detailed investigations into the Company's affairs. This report was sent to ASIC on 5 July 2017. Our reports to ASIC are not available to the public. ASIC have yet to advise whether they will be taking further action.

### **3.2. Breaches of Directors' duties**

#### **3.2.1 Tasman Investments loan**

We are of the view that the Directors may have breached Section 182 of the Act (Use of Position – gaining advantage for themselves or cause detriment to the company) by making the loan to Tasman Investments Pty Ltd (refer section 2.5.3 of this report). The loan to TI involved an interest rate of only 5.5% (with interest being capitalised) for a loan that was unsecured and for a speculative purpose. There was no certainty that TC would be repaid, as repayment was dependent on the completion of the development. TC had no recourse to any security. The loan was also made at a time when TC had made a net loss of \$0.8m in the preceding 2 months and had made a net loss after tax of \$2.3m for that financial year. Therefore, the loan was made at a time when TC was likely suffering some financial distress.

The loan was disproportionately beneficial to TI and cannot be explained by any normal commercial practice and lacks commercial quality other than to benefit the Directors and shareholders of TI.

We also consider this loan to be an unreasonable director related transaction and voidable under Sections 588FDA and 588FE of the Act.

As mentioned at section 2.5.3, TI does not appear to have the financial means to repay the loan and therefore our only avenue of recovery would be from the Directors. In this regard please refer to section 3.5 of this report as to recovery against the Directors personally.

#### **3.2.2 Property Borrowers' loan – 21 Clayton St, Bellevue, W.A.**

For reasons similar to those at 3.2.1 we consider that the loan made to the Property Borrowers to fund the acquisition and development of 21 Clayton St (refer section 2.5.2) and guaranteeing the loan from NAB to the Property Borrowers, to be a breach of Section 182 of the Act. The loan was unsecured and no interest appears to have been charged.

The loan began being drawn down in June 2014. Significant amounts were drawn down from January 2015 through to April 2016. TC had lost \$2.3m in the months of December 2014 and January 2015 and made a net loss of \$4.1m for the period January 2015 to April 2016. TC eventually collapsed in August 2016. The loan was therefore made at a time when TC was likely suffering some financial distress with deteriorating liquidity and the loan funds would have been better used for TC's own operations.

The transaction was disproportionately beneficial to the Property Borrowers, as it enabled the Trusts to obtain an unsecured loan with no apparent obligation to make any payment of interest, at a time when TC was likely suffering financial distress.

The loan and guarantee to NAB cannot be explained by normal commercial practice and lacks commercial quality other than to benefit the Directors and shareholders of TC. Although it is not unusual for related parties to own premises that are leased to a company and for that company to loan funds for the purpose of acquiring the premises. It is unusual for this to be done without the loan being documented on commercial terms and at a time when the company cannot afford to make the loan.

As mentioned at section 2.5.2 of this report we are considering our legal options on recovery of this loan. Refer also section 3.5 of this report as to recovery against the Directors personally.

### **3.3. Unfair preferences**

Based on the records available and our investigations into the Company's affairs to date, we have identified \$1m to \$6m across at least 16 creditors in potential unfair preference payments. We have provided a broad range (of potential preferential payments) in our report as our recovery action has only recently commenced and we have yet to receive responses from all the affected creditors, detailing any defences that they may have to the claim that they potentially received unfair preferential payments.

Creditors often raise defences to claims that they received unfair preferences and taking recovery action can involve litigation. Therefore any recovery from such actions is rather uncertain and at this stage we cannot estimate what return, if any, the Company may receive.

### **3.4. Insolvent Trading (section 588G)**

As discussed in our March Report a director may be personally liable to the company under the Act if the director fails to prevent a company from incurring a debt when, at the time of incurring that debt, the company is insolvent, or becomes insolvent by incurring that debt. A company is insolvent when it cannot pay its debts as and when they fall due.

We have determined that TC and TUG were insolvent from at least 24 February 2016 and most likely earlier and that the damages claimable from the Directors to be \$8.17m and \$1.63m for TC and TUG respectively. Recovery of these amounts is, however dependent upon the defences available to the Directors and their capacity to pay.

As detailed in our March Report, Gordon McCabe has entered into a Pt X arrangement with his personal creditors. Mr McCabe's creditors have agreed to accept c.\$263k in full and final acceptance of their claims. Total claims against Mr McCabe's estate including TC's \$8.17m claim for insolvent trading, amount to c.\$10.8m. Tony Smolenski has declared himself bankrupt and early indications from his Trustee in Bankruptcy are that there will be no return to Mr Smolenski's personal creditors.

Mr McCabe and the Trustee of his Estate (Trustee) have raised the defence to our claim for insolvent trading, that Mr McCabe was ill at all times from the date of insolvency (i.e. 24 February 2016) to the date of liquidation and did not take part in the management of the Company. A defence has also been raised that Mr McCabe was relying upon TC's other Director, Mr Smolenski, to provide him (i.e. Mr McCabe) with information as to the Company's solvency.

Both of the defences put forward by Mr McCabe are provided for in the Act. We have also been provided with evidence that Mr McCabe was receiving payments under an income protection insurance policy due to his inability to work. We have not sought legal advice as to the validity of Mr McCabe's defence, but at first instance the defences appear reasonable.

Mr McCabe's Trustee in Bankruptcy has however offered to settle the insolvent trading claim by payment of an amount out of his Pt X arrangement to TC. A separate amount has been offered to settle TUG's insolvent trading claim. The settlement of this matter was discussed with the Committee of Inspection and discussions are being held with the Trustee.

## **4. Receipts and Payments**

Pursuant to Section 473(4) of the Act, when a liquidator convenes a meeting of creditors and is seeking approval of his/her remuneration, they are required to provide creditors with a statement of receipts and payments.

The following table provides a summary of the receipts and payments during the period 24 August 2016 to 21 September 2017:

<b>Receipts</b>	<b>\$'000</b>
Cash at bank	135
Debtor and retention receipts	2,312
Insurance refunds	25
Interest	7
Rental income	6
Petty cash	0
Other receipts	16
GST receipts	57
Return of NAB term deposit security	77
Surplus funds from guarantee payment for Property Borrowers' loans	501
Sale of property, plant and equipment	<u>1,402</u>
Total receipts	<u>4,539</u>

<b>Payments</b>	<b>\$'000</b>
Bank charges and guarantee fees	(6)
Employee wages and superannuation	(29)
NAB set-off hire purchase	(36)
NAB set-off credit card	(17)
NAB set-off bank guarantee	(73)
NAB payment pursuant to guarantee of Property Borrowers' loans	(795)
Locksmith	(0)
Meeting expense	(0)
Liquidators' fees	(597)
Liquidators' disbursements	(34)
Rent	(25)
Subcontractors - rectification works	(64)
Storage	(0)
Contractor - project management	(23)
IT services	(17)
Legal fees	(39)
Insurance	(76)
Electricity	(1)
Other costs	(1)
Property, plant and equipment selling costs	(94)
Security	(2)
Quantity Surveyor	(16)
Transfer of property, plant and equipment proceeds to TUG	(50)
GST payments	<u>(97)</u>
Total payments	<u>(2,093)</u>
Balance at 21 September 2017	<u><u>2,446</u></u>

## 5. Distribution

At this stage of the liquidation, a distribution can be made in full to priority employee creditors. This payment will be made direct to FEG for payments that they have made to employees, as well as to eligible employees that did not receive payments via FEG. Amounts for superannuation will be paid direct to the ATO, who will then distribute amounts to employee superannuation funds.

We also estimate that a partial return to ordinary unsecured creditors of between 16c and 22c on the dollar will be possible. A large proportion of the return to creditors is now dependent on recoveries from retentions and related party debtors. The return to creditors is also dependent upon the quantum of valid creditor claims.

As all future recoveries have an element of risk and uncertainty as to quantum and timing, and given the size of creditor claims will impact ultimate returns, creditors should be careful in relying upon the estimates contained herein. We will continue to keep creditors updated as to this position.

It is our intention to make an interim distribution to creditors in the coming months. In this regard we are completing tax returns for the Company so that we can then seek ATO clearance to make the distribution. Once ATO clearance is received we can then begin the interim distribution process. We had indicated previously that we would only pay a first and final distribution to creditors rather than an interim distribution followed by a final distribution. This was driven by an estimated completion for the recovery of assets of around December 2017. However, it now appears that the completion of the liquidation will take longer and therefore it is now appropriate to provide creditors with an interim return, rather than wait until the end of the liquidation. The increase in the timing of the liquidation is being driven predominantly by:

- the recovery of potential unfair preferences
- potential negotiations/litigation to recover WIP debtors/retentions
- the extension of expiry periods on WIP retentions, as the relevant projects did not complete until later than expected
- waiting for potential return from the bankruptcy of Tony Smolenski
- the requirement to take possession, market and sell 19 Clayton St.

Our March Report provided an estimated return of 15c to 30c on the dollar to unsecured creditors. Our latest estimate is for an improved Low estimate of 16c, but a lower High scenario estimate of 22c.

The High Scenario estimated dividend has fallen due principally to higher than previously expected creditors' claims now being forecast. In particular, CAT's loss on the sale of its security was in fact higher than our previously reported High scenario estimate, as well as other creditor claims that have increased. We have managed to reduce the impact that this may have on creditors by predominantly improved recoveries of retentions and debtors.

The Low scenario has improved due to greater than estimated recoveries on debtors, retentions and unencumbered and encumbered PPE.

In the following table we provide our updated estimate of possible returns to creditors.

Tasman Civil Pty Ltd - Statement of Position October 2017 \$'000	Notes	Realisation High	Realisation Low
<b>Non circulating assets</b>			
<b>Unencumbered</b>			
Sold assets		1,060	1,060
<b>Less: selling costs</b>			
Liquidators' fees		(67)	(67)
Other selling costs (transport, valuation, rent, commissions and marketing)		(193)	(193)
Total unencumbered non-circulating assets		<u>799</u>	<u>799</u>
<b>Encumbered</b>			
CAT Finance assets		2,087	2,087
CAT Finance loans		(2,837)	(2,837)
Equity/(Deficiency) Cat	5.1	(750)	(750)
BOQ assets		323	323
BOQ loans		(221)	(221)
Equity/(Deficiency) BOQ	5.1	102	102
Capital Finance assets		138	138
Capital Finance loans		(70)	(70)
Equity/(Deficiency) Capital Finance	5.1	68	68
Westpac assets		121	121
Westpac loan		(227)	(227)
Equity/(Deficiency)Westpac	5.1	(106)	(106)
CBA assets		223	223
CBA loans		(213)	(213)
Equity/(Deficiency) CBA	5.1	10	10
Total equity in encumbered assets		180	180
Total non-circulating assets available to NAB		799	799
Less: NAB issued guarantees by bank		(123)	(123)
Add: Term deposit security		193	193
Cash in pre-appointment account		15	10
<b>Total unencumbered non-circulating assets available to unsecured creditors and NAB for guaranteed loans</b>	5.2	<b><u>1,064</u></b>	<b><u>1,059</u></b>
<b>Circulating assets</b>			
Cash	5.3	2,078	2,078
Trade debtors	5.4	-	-
Retentions receivable	5.5	627	188
Insolvent trading recovery	5.6	-	-
Unfair preference recovery	5.7	-	-
Related party loans	5.8	-	-
Sub total		2,773	2,334
Liquidators' Fees and Disbursements to 31/8/2017	5.9	(507)	(507)
Liquidators' fees and disbursements future	5.9	(332)	(332)
Total recovery from circulating assets		<b>1,934</b>	<b>1,495</b>
Less: Priority Creditors	5.10	(914)	(944)
<b>Surplus circulating assets</b>		<b>1,020</b>	<b>551</b>
<b>Total unencumbered non-circulating assets available to unsecured creditors</b>		<b><u>1,064</u></b>	<b><u>1,059</u></b>
<b>Total assets available for unsecured creditors</b>		<b>2,084</b>	<b>1,610</b>
Unsecured creditors	5.11	(9,362)	(10,145)
<b>Shortfall to unsecured creditors</b>		<b><u>(7,277)</u></b>	<b><u>(8,534)</u></b>
<b>c/\$</b>		<b><u>22</u></b>	<b><u>16</u></b>

### 5.1 Equity on encumbered assets

Since our March Report we have received details of the surplus or shortfall to all financiers of encumbered assets. In total c.\$180k was paid to TC in surplus funds. This is an improvement of \$27k (High) and \$71k (Low) on the March Report estimates.

### 5.2 NAB position

As mentioned at section 2.4 of this report and at section 7.2 of our March Report TC guaranteed the borrowings of the Property Borrowers from NAB, and this guarantee was supported by first ranking security over TC's assets. NAB also held first ranking mortgage security over 19 and 21 Clayton St.

NAB has been paid \$795k out of this amount pursuant to the guarantee and we have since received c.\$501k of this amount back from the settlement of 21 Clayton St. TC now has a subrogated claim for the balance of

c.294k plus costs that should be recoverable from the sale proceeds of 19 Clayton St. We have not adjusted the figures in the table (i.e. \$1,064k and \$1,059k) for these transactions as we expect the net result to be neutral to creditors

### 5.3 Cash

Represents the current balance of the Liquidators' bank account allowing for amounts paid in liquidators' fees and amounts received for asset sales and estimated GST payable, as included elsewhere in the table.

### 5.4 Trade debtors

There is currently \$1.25m is outstanding debtors. The majority of outstanding debtors relate to WIP debtors. These debts are subject to potentially substantial counter claims for increased costs to complete and liquidated damages and therefore there is at present significant uncertainty as to recovery. Therefore, we have not estimated any further recovery in either scenario.

We are however, continuing to pursue potential recoveries by liaising with the relevant principals and our own consultants to establish the final actual cost to complete.

### 5.5 Retentions

There is currently \$1.4m in outstanding retentions and of this \$451k relates to WIP debtors. For the same reasons as expressed at section 5.4 above, retentions on WIP debtors are uncertain.

Our High scenario provides a recovery of 75% of those retentions categorised at section 2.3.2 as 'Likely recoverable', 'No issues identified as yet' and 'Possible issues'. The 25% discount applied allows for minor costs of rectification. The Low scenario provides for recovery of 30% of the High Scenario.

### 5.6 Insolvent trading recovery

We comment upon this at section 3.4 of this report.

### 5.7 Unfair preference recovery

Our recovery actions are at an early stage and therefore for the sake of prudence no return has been factored in.

### 5.8 Related party loans

As discussed at section 2.5 our investigations and recovery actions are continuing and any return to creditors is quite uncertain at this stage, accordingly no recovery has been factored in at present.

### 5.9 Liquidators' fees and disbursements

Includes c.\$300k future fees plus \$15k disbursements and \$17k for costs of preparing outstanding tax returns. Refer section 6.

### 5.10 Priority claims

The claims of employees are detailed below. The Low scenario factors in an allowance for an additional \$30k of claims that may be made of which we are not already aware.

<b>Claim \$000</b>	<b>High</b>	<b>Low</b>
Wages	(29)	(29)
Annual leave, notice and redundancy	(852)	(882)
Superannuation	<u>(33)</u>	<u>(33)</u>
Total	<u>(914)</u>	<u>(944)</u>

Employee creditors are most likely to be paid in full when the first interim distribution to creditors is made.

### 5.11 Unsecured creditors

The ultimate return to unsecured creditors is also dependent upon the quantum of creditor claims that are received and validated. At this stage we have not had any need to validate creditor claims and we have yet to receive Proofs of Debt from all creditors.

Since our March Report we have conducted further analysis of creditors' claims and received further Proofs of Debt. In light of this information we have chosen to include in our High scenario for each creditor the greater of the amount included in the Company's records or the creditor's Proof of Debt amount. In the Low scenario we have increased the quantum of unsecured creditor claims in the High scenario by 10% as an allowance for any further claims not accurately included in the Company's records. Our analysis is summarised below:

<b>\$'000</b>	<b>High</b>	<b>Low</b>
Shortfall on encumbered asset creditors	(856)	(856)
Trade creditors	(7,967)	(8,763)
Taxes	<u>(539)</u>	<u>(525)</u>
Total	<u><u>(9,362)</u></u>	<u><u>(10,145)</u></u>

### 6. Liquidators' Remuneration

At the meeting of the Committee of Inspection, we obtained approval for our remuneration as Liquidators, our partners and our staff for the period 21 January 2017 to 21 September 2017 in the amount of \$986.60 excluding GST. In addition we received approval for our future remuneration as Liquidators for the period 22 September 2017 to the finalisation of the Liquidation in the amounts of \$299,995.00 excluding GST and \$3,252.50 excluding GST to complete the outstanding taxation returns. This amount has been calculated at the hourly rates applicable to the grades or classifications set out in accordance with Deloitte Financial Advisory Pty Ltd and Deloitte Private schedules of hourly rates, plus GST.

The reason for the increase in our fees to complete the liquidation is due to matters outside of our control and which we could not have predicted when providing earlier estimates. We note however that although further fees will be incurred this is likely to result in an improved return for creditors. Matters leading to increased Liquidators' fees are due principally to:

- ASIC required that we provide a detailed supplementary report into the affairs of the Company pursuant to Section 533 of the Act
- NAB's demand for payment pursuant to its guarantee led to extensive and protracted discussions and the preparation of documentation to protect the Company's position.
- We will now also be required to take possession of 19 Clayton St and sell this property
- Preparing a solvency report to support the claim for insolvent trading in Mr McCabe's Part X arrangement and negotiations and discussions with Mr McCabe's trustee. This will lead to a net benefit for creditors
- Additional work required to collect debtors and retentions, leading to better than forecast returns for creditors
- It is now likely that it is in creditors' interest that more than one distribution will need to be made to creditors that was not initially foreseen.

### 7. Tasks and timing to complete the Liquidation

Tasks required to complete the liquidation include:

- Recovery of outstanding WIP debtors and retentions noting that these may not expire until July/August 2018
- Recovery of other outstanding debtors and retentions
- Recovery of related party debtors
- Market and sell 19 Clayton St
- Attend to recovery of unfair preferences
- Recovery of claims for insolvent trading in McCabe's Pt X arrangement and Smolenski's bankrupt estate
- Pay an interim and final distribution to creditors.

The timing for the completion of the liquidation depends largely on the recovery of WIP retentions that may not expire until July/August 2018 and establishing whether there is distribution from Smolenski's bankrupt

estate. At this stage we forecast that the Liquidation may be completed by September 2018. This is our best estimate on the present information to hand.

**8. Further Information**

Should you have any queries concerning the above matters, please contact Michael Buzzo of this office on (08) 9365 8027.

A handwritten signature in black ink, appearing to read 'Jason Tracy', written in a cursive style.

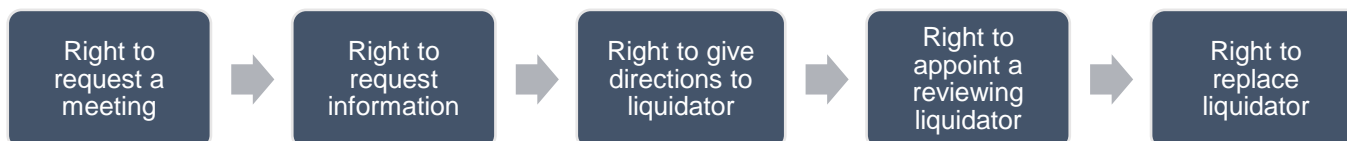
**Jason Tracy**  
Liquidator



## **Appendix A: Creditor rights in a liquidation (ARITA)**

# Creditor Rights in Liquidations

As a creditor, you have rights to request meetings and information or take certain actions:



## Right to request a meeting

In liquidations, no meetings of creditors are held automatically. However, creditors with claims of a certain value can request in writing that the liquidator hold a meeting of creditors.

A meeting may be requested in the first 20 business days in a creditors' voluntary liquidation by  $\geq 5\%$  of the value of the debts held by known creditors who are not a related entity of the company.

Otherwise, meetings can be requested at any other time or in a court liquidation by:

- $> 10\%$  but  $< 25\%$  of the known value of creditors on the condition that those creditors provide security for the cost of holding the meeting
- $\geq 25\%$  of the known value of creditors
- creditors by resolution, or
- a Committee of Inspection (this is a smaller group of creditors elected by, and to represent, all the creditors).

If a request complies with these requirements and is 'reasonable', the liquidator must hold a meeting of creditors as soon as reasonably practicable.

## Right to request information

Liquidators will communicate important information with creditors as required in a liquidation. In addition to the initial notice, you should receive, at a minimum, a report within the first three months on the likelihood of a dividend being paid.

Additionally, creditors have the right to request information at any time. A liquidator must provide a creditor with the requested information if their request is 'reasonable', the information is relevant to the liquidation, and the provision of the information would not cause the liquidator to breach their duties.

A liquidator must provide this information to a creditor within 5 business days of receiving the request, unless a longer period is agreed. If, due to the nature of the information requested, the liquidator requires more time to comply with the request, they can extend the period by notifying the creditor in writing.

## Requests must be reasonable.

### They are not reasonable if:

Both meetings and information:

- (a) complying with the request would prejudice the interests of one or more creditors or a third party
- (b) there is not sufficient available property to comply with the request
- (c) the request is vexatious

Meeting requests only:

- (d) a meeting of creditors dealing with the same matters has been held, or will be held within 15 business days

Information requests only:

- (e) the information requested would be privileged from production in legal proceedings
- (f) disclosure would found an action for breach of confidence
- (g) the information has already been provided
- (h) the information is required to be provided under law within 20 business days of the request

If a request is not reasonable due to (b), (d), (g) or (h) above, the liquidator must comply with the request if the creditor meets the cost of complying with the request.

Otherwise, a liquidator must inform a creditor if their meeting or information request is not reasonable and the reason why.

## Right to give directions to liquidator

Creditors, by resolution, may give a liquidator directions in relation to a liquidation. A liquidator must have regard to these directions, but is not required to comply with the directions.

If a liquidator chooses not to comply with a direction given by a resolution of the creditors, they must document their reasons.

An individual creditor cannot provide a direction to a liquidator.

## Right to appoint a reviewing liquidator

Creditors, by resolution, may appoint a reviewing liquidator to review a liquidator's remuneration or a cost or expense incurred in a liquidation. The review is limited to:

- remuneration approved within the six months prior to the appointment of the reviewing liquidator, and
- expenses incurred in the 12 months prior to the appointment of the reviewing liquidator.

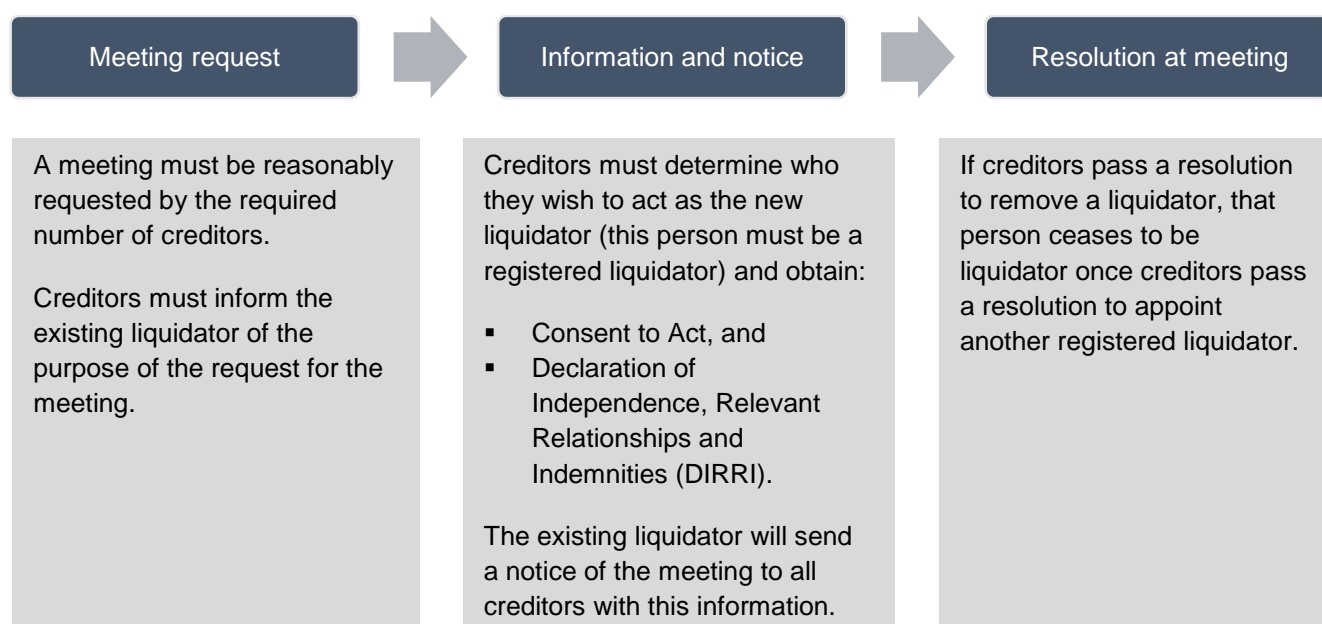
The cost of the reviewing liquidator is paid from the assets of the liquidation, in priority to creditor claims.

An individual creditor can appoint a reviewing liquidator with the liquidator's consent, however the cost of this reviewing liquidator must be met personally by the creditor making the appointment.

## Right to replace liquidator

Creditors, by resolution, have the right to remove a liquidator and appoint another registered liquidator.

For this to happen, there are certain requirements that must be complied with:



**For more information, go to [www.arita.com.au/creditors](http://www.arita.com.au/creditors)**