

2 September 2014

CIRCULAR TO EMPLOYEES

Dear Sir/Madam

**Killarnee Civil & Concrete Contractors Pty Ltd
(Administrators Appointed)
ACN 085 230 486 (“KCCC”)**

**Killarnee Contracting Pty Ltd
(Administrators Appointed)
ACN 109 535 686 (“KCPL”)**

**Killarnee Equipment Holdings Pty Ltd
(Administrators Appointed)
ACN 125 969 502 (“KEH”)**

(Collectively referred to as “Killarnee Group” or the “Companies”)

I advise that Darren Weaver, Ben Johnson and I were appointed Administrators of the Companies’ on 1 September 2014 pursuant to Section 436A of the Corporations Act 2001 (**the Act**).

Enclosed is an information sheet from the Australian Securities & Investments Commission which provides general information to employees whose employer is in administration.

This circular is to advise you about the status of your employment.

1 Employment during the administration

We are examining the Companies’ trading and financial position with a view to assessing its future viability. Once determined, we will advise you of our intentions regarding ongoing trading.

Prior to our appointment, I advise that the director of the Companies’ had negotiated a business sale agreement, with Central Systems Pty Ltd, an independent third party purchaser. As part of our appointment we are currently assessing the terms of the business sale agreement with a view to firm up the terms and conditions of the sale (including the timing of the settlement).

We will provide you with further details on the sale process once further information is available. In the interim, your employment by the Companies’ continues on the same terms and conditions that existed at the time of our appointment.

SYDNEY
MELBOURNE
ADELAIDE
BRISBANE
PERTH
KUALA LUMPUR
SINGAPORE

Affiliated through:
Zolfo Cooper
CARIBBEAN
UNITED KINGDOM
UNITED STATES
KLC Kennic Lui & Co.
CHINA
HONG KONG

As a consequence of the appointment, the Administrators assume responsibility for the Companies' management and the control of assets. Without the written authority of the Administrators, you must not, nor must you permit anyone else to:

- Place any orders for goods or services, unless they have been duly authorised by the Administrators or others as notified in our circular to creditors.
- Accept delivery of any goods or services, unless they are the subject of a duly authorised order.
- Supply any services to customers or dispatch any goods to customers.
- Enter into any commitments with suppliers or customers.
- Make any compromise or arrangement with any debtor or creditor of the Company, including the allowance of any set-offs.
- Incur any debts or liabilities in the name of the Companies' or pledge its assets.
- Return any goods to suppliers.
- Make any payments.
- Remove any of the Companies' assets from the Companies' custody or control.

All monies received must be forwarded to this office or paid into the newly-opened bank account named:

- "Killarnee Civil & Concrete Contractors Pty Ltd (Administrators Appointed)"; or
- "Killarnee Contracting Pty Ltd (Administrators Appointed)"; or
- "Killarnee Equipment Holdings Pty Ltd (Administrators Appointed)".

Every invoice, order for goods, business letter, or similar document must have the words "(Administrators Appointed)" immediately following the name of the relevant company.

All assets of the Companies must be secured against theft.

We must be notified in writing immediately of all known breaches of the law or regulations (for example, health, safety, hygiene, fire, etc.).

2 Your employee entitlements at the date of the administration

Outstanding employee entitlements, such as wages, superannuation contributions payable by the Company, holiday pay, long service leave and retrenchment payments, are afforded a statutory priority.

Entitlements of directors and other related persons also have a statutory priority, however the priority for such persons is limited to \$2,000 for wages and superannuation contributions and \$1,500 for holiday pay and long service leave entitlements.

An employee's priority ranks after the Administrators' costs and remuneration but ahead of ordinary unsecured creditor claims.

To assist in determining any employee claim you might have, please complete the enclosed form, detailing your outstanding entitlements at the date of our appointment, and return it to this office.

At this stage, we are not in a position to determine whether the Companies' will have sufficient funds to pay any outstanding employee entitlements accrued prior to the administration in full.

In the event that the Company transitions liquidation and if there are insufficient to pay employee entitlements, the **enclosed** information sheet provides information concerning the Australian Government's Fair Entitlements Guarantee (**FEG**). You may be eligible to submit an application and be compensated for unpaid entitlements under FEG. For further information regarding FEG, including your eligibility, visit the Department of Education, Employment & Workplace Relations' FEG webpage (www.deewr.gov.au/FEG) , call the FEG Hotline on 1300 135 040 or email FEG@deewr.gov.au .

Please advise this office in writing of any change of address. If you do not, you may not receive future communications regarding the Companies' and your entitlements.

3 Confidentiality

While employed by the Companies' or after leaving employment, you must not disclose (except in the proper course of your duties or as is required by law) any confidential information acquired by you about the Companies' and associated businesses, its products and customers to any person or organisation, including the Companies' directors, except where written permission is granted by the Administrators or our authorised representatives. You must not use any confidential information in a manner which may cause injury or loss to the Companies' and associated businesses.

If you leave the Companies' employment, you must return all property and confidential documents of the Companies.

4 Further information

For further information concerning the voluntary administration process and Ferrier Hodgson, you may wish to visit our website at www.ferrierhodgson.com.

Should you have any questions, please contact either William Hulmes or Nirav Shah of this office.

Yours faithfully

Killarnee Civil & Concrete Contractors Pty Ltd
Killarnee Contracting Pty Ltd
Killarnee Equipment Holdings Pty Ltd



Martin Jones
Joint and Several Administrator

Encl.

**KILLARNEE CIVIL & CONCRETE CONTRACTORS PTY LTD
(IN LIQUIDATION) (THE COMPANY)
ACN 085 230 486**

CLAIM OF EMPLOYEE

Name _____

Address: Street Number and Name: _____

Suburb: _____ State: _____ Postcode: _____

Contact number: _____

Position: _____

Wages/Salary: \$ _____ per week/fortnight _____

Period of Employment: From / / to / /

Details of Claim: Wages and salaries for the period from / / to
/ / \$ _____

Superannuation: _____

Unused annual leave: _____

Long service leave: _____

Sick Leave: _____

Pay in Lieu of Notice: _____

Redundancy: _____

Other (provide details): _____

\$ _____

Total

Please complete to the best of your knowledge and return to Ferrier Hodgson using any of the following methods:

Mail:

Facsimile:

Email:

Ferrier Hodgson
GPO Box 2537
Perth WA 6001

(08) 9214 1400

Attention Nirav Shah

Nirav.Shah@fh.com.au



Eligibility for FEG assistance

The Fair Entitlements Guarantee (FEG) is a basic payment scheme to assist employees who have been terminated due to the liquidation or bankruptcy of their employer. FEG provides financial assistance, called an advance, to cover certain unpaid employment entitlements. Decisions about eligibility and advances for FEG assistance are made in accordance with the *Fair Entitlements Guarantee Act 2012* (the FEG Act).

The FEG Act

The FEG is a legislative scheme established under the FEG Act which commenced on 5 December 2012.

The FEG Act is available at www.comlaw.gov.au.

FEG may apply to a person if their employer enters liquidation or bankruptcy on or after 5 December 2012 (see s. 10 of the FEG Act). For the purposes of the FEG Act, the date of liquidation or bankruptcy is defined as an insolvency event (see s. 5).

If the date of the insolvency event occurred before 5 December 2012, you will not be eligible for FEG, but you may be eligible for assistance under the General Employee Entitlements and Redundancy Scheme (GEERS). To find out more about GEERS visit www.deewr.gov.au/GEERS.

Am I eligible?

Subject to certain exclusions, you will be eligible for FEG assistance if you meet the *Conditions of eligibility for advance* (see s. 10). The conditions are:

- your employment with the relevant employer has ended
- your former employer entered liquidation or bankruptcy on or after 5 December 2012
- the end of your employment:
 - was due to the insolvency of your employer
 - occurred less than 6 months before the appointment of an insolvency practitioner for the employer
 - occurred on or after the appointment of an insolvency practitioner for the employer

- you are owed employment entitlements (see s. 5)
- you have taken reasonable steps to prove those debts in the winding up or bankruptcy of the employer
- if you were owed employment entitlements before the insolvency event occurred, you took reasonable steps to have them paid
- at the time your employment ended, you were an Australian citizen or, under the *Migration Act 1958*, the holder of a permanent visa or special category visa
- you, or a person on your behalf, have made an effective claim that you are eligible for an advance (see s. 14).

Making an effective claim

If you do not make an effective claim (in accordance with s. 14) you will not be eligible for FEG assistance. It is important that you submit your claim as soon as possible because FEG has strict time limits.

To make an effective claim, you must lodge a FEG claim form and include all mandatory information and documentation. For more information about lodging a FEG claim form, please refer to the *How do I apply for FEG assistance* fact sheet. Your claim must also be made:

- no more than 12 months after the end of your employment or the date of the insolvency event (whichever is later) and
- before the discharge of your former employer's bankruptcy (if your employer was a bankrupt).

If your claim is not made within this timeframe, or does not include all required information and documentation, it will not be effective and you will not be eligible for FEG assistance.

Exclusions from eligibility

FEG is a basic payment scheme for employees only. Other classes of workers, for example contractors and sub-contractors, are not eligible for assistance.

Some classes of employees are also ineligible for FEG assistance. You will be ineligible if:

- you have a personal connection with the employer (see s. 11)
- you became an employee of the employer shortly before the insolvency event following a period working as a contractor (see s. 12)
- your former employer was within the scope of the Special Employee Entitlement Scheme for Ansett Group Employees (s. 13).

What assistance is available?

FEG covers the following employment entitlements:

- **wages** – up to 13 weeks of unpaid wages ending at the earlier of the following times (see s. 5 and s. 24)
 - the time your employment ended
 - the first time an insolvency practitioner had power (however expressed) to control or manage your employment by your former employer
- **annual leave** (see s. 20)
- **long service leave** (see s. 21)
- **payment in lieu of notice** – maximum of 5 weeks (see s. 22)
- **redundancy pay** – maximum of 4 weeks per full year of service and pro-rata for less than a full year of service, if the governing instrument provides such an entitlement (see s. 23)

Transfer of employment to new employer

You will not be eligible for an advance for payment in lieu of notice and redundancy if the business of your former employer is transferred to a new employer and, within 14 days of the end of your employment, the new employer offers to employ you:

- to do work that is the same, or substantially the same, as the work you did for your former employer and
- on terms and conditions substantially similar to, and considered on an overall basis, no less favourable than those under which you were

employed immediately before your employment ended (see s. 16).

Superannuation

Employer superannuation contributions required under the Superannuation Guarantee are not covered by FEG. If you have unremitted employer superannuation contributions you should contact the insolvency practitioner managing your former employer's affairs to discuss your rights as an employee creditor.

Working out the amount of advance

The amount of assistance you may be eligible for is calculated based on the terms and conditions of the governing instrument (see s. 5) you were employed under (e.g. industrial award, collective agreement, contract of employment etc.).

In calculating the amount of each employment entitlement, the department will reduce the entitlement by any amounts that you have already been paid or amounts that are payable by anyone for that particular entitlement (see s. 19). For example, if you are entitled to receive a payment for a particular employment entitlement from a fund such as a redundancy trust fund or long service leave industry trust fund, the amount you are eligible for under FEG for that particular employment entitlement will be reduced by the amount that is payable from the relevant fund.

FEG maximum weekly wage

For the purpose of calculating the amount of advance, employment entitlements are capped by the FEG maximum weekly wage – currently \$2,364.00 (see ss. 5 and 26–27). If you earned more than the FEG maximum weekly wage we will calculate your employment entitlements as if you earned the FEG maximum weekly wage.

The FEG maximum weekly wage is indexed annually in line with movements in the 'average weekly ordinary time earnings' (AWOTE).

Recently agreed changes in terms and conditions

When calculating employment entitlements we may disregard any recently agreed terms and conditions of employment (see s. 25). For example, if your employer agreed to more favourable terms and conditions of employment in the 6 months before the end of your employment and it was unreasonable to expect that the employer could

satisfy this obligation, we will work out the amount of your advance as if the terms and conditions had not been changed.

Other things that may affect the amount of advance

Once we have worked out the basic amount of advance, we will consider whether, in accordance with the provisions of the FEG Act, there are any other circumstances which may affect the amount of advance. Under the FEG Act, the amount of advance may be reduced if:

- you owe debts to your former employer (see s. 17)
- the insolvency practitioner expects that there will be money available to pay your employment entitlements in the next 112 days (see s. 18).

How can you help?

While we generally rely on the information provided by the insolvency practitioner, it is important that you provide us with as much information as possible to help us decide if you are eligible for FEG assistance and, if so, to work out the amount of assistance you are eligible for.

For more information about the type of information you should provide please refer to the *How do I apply for FEG assistance* fact sheet.

Want more information?

You can contact the FEG Hotline if you would like more information about eligibility for FEG assistance.

To contact the FEG Hotline:

- phone 1300 135 040 or
- email FEG@deewr.gov.au.

If you speak a language other than English, call the Translating and Interpreting Service (TIS) on 13 14 50 for free help anytime.

Further information about FEG is also available on our website www.deewr.gov.au/FEG.

The information contained in this fact sheet is of a general nature and explains, in summary form, the intended operation of the *Fair Entitlements Guarantee Act 2012* - it is not legal advice. Where necessary, you should seek your own independent legal advice relevant to your particular circumstances. The Commonwealth is not liable for any loss resulting from any action taken or reliance made by you on the information contained in this factsheet.



ASIC

Australian Securities & Investments Commission

INFORMATION SHEET 75

Voluntary administration: a guide for employees

If a company is in financial difficulty, it can be put into voluntary administration.

This information sheet provides general information for employees of companies in voluntary administration. Employees should also read ASIC's information sheet INFO 74 *Voluntary administration: a guide for creditors*.

Who is an employee?

You are likely to be classified as an employee if you are:

- engaged by a company under an award, Certified Agreement, Australian Workplace Agreement, or a contract of employment, and
- paid a salary, wages or commission.

Contractors are not employees. They are ordinary unsecured creditors of the company.

If you are an employee who is owed money for unpaid wages, superannuation, annual leave, sick leave, long service leave, retrenchment pay or other benefits, you are a creditor of the company. You may be entitled to some or all of what you are owed in priority to the company's other creditors.

The purpose of voluntary administration

Voluntary administration is designed to resolve a company's future direction quickly. An independent and suitably qualified person (the voluntary administrator) takes full control of the company to try to work out a way to save either the company or its business.

If it isn't possible to save the company or its business, the aim is to administer the affairs of the company in a way that results in a better return to creditors than they would have received if the company had instead been placed straight into liquidation. A mechanism for achieving these aims is a deed of company arrangement.

A voluntary administrator is usually appointed by a company's directors, after they decide that the company is insolvent or likely to become insolvent. Less commonly, a voluntary administrator may be appointed by a liquidator, provisional liquidator, or a secured creditor.

A secured creditor is someone who has a charge, such as a mortgage, over company assets, to secure a debt owed by the company. Lenders usually require a charge over company assets when they provide a loan.

A company in voluntary administration may also be in receivership: see ASIC information sheet

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. You will need a qualified professional adviser to take into account your particular circumstances and to tell you how the law applies to you.

INFO 55 *Receivership: a guide for employees.*

The voluntary administrator's role

After taking control of the company, the voluntary administrator investigates and reports to creditors on the company's business, property, affairs and financial circumstances, and on the three options available to creditors (including employees). These are:

- end the voluntary administration and return the company to the directors' control
- approve a deed of company arrangement through which the company will pay all or part of its debts and then be free of those debts, or
- wind up the company and appoint a liquidator.

The voluntary administrator must give an opinion on each option and recommend which option is in the best interests of creditors. In doing so, the voluntary administrator tries to work out the best solution to the company's problems, assesses any proposals put forward by others for the company's future, and compares the possible outcomes of the proposals with the likely outcome in a liquidation.

A creditors' meeting is usually held about five weeks after the company goes into voluntary administration to decide on the best option. In complex administrations, the meeting may be held later if the court consents. Employees are entitled to vote at creditors' meetings. You should lodge details of your claim with the voluntary administrator before the meeting to enable you to vote.

The voluntary administrator has all the powers of the company and its directors. This includes the power to sell or close down the company's business, or sell individual assets in the lead up to the creditors' decision on the company's future.

Another responsibility of the voluntary administrator is to report to ASIC on possible offences by people involved with the company.

Employee entitlements

If the voluntary administrator continues to trade the business, they must pay out of the assets available to them ongoing wages for services provided and other employee entitlements that arise after the date of their appointment. These payments are treated as an expense of the voluntary administration.

The appointment of a voluntary administrator does not automatically terminate the employment of the company's employees. As a result, unless the voluntary administrator adopts the employment contracts or enters into new contracts of employment with employees, they are not personally liable for any employee entitlements that arise during voluntary administration.

As voluntary administration is an interim form of external administration, employee entitlements that arose prior to voluntary administration are not usually paid during voluntary administration.

How and when these employee entitlements are paid depends on the option passed at the creditors' meeting (i.e. company returned to directors, a deed of company arrangement, or liquidation).

Company returned to directors

If the company is returned to the directors, the directors will be responsible for ensuring that the company pays outstanding entitlements as they fall due. It is only in very rare circumstances that creditors will resolve to return the company to the control of its directors.

Deed of company arrangement

If creditors approve a deed of company arrangement, the priority in which outstanding employee entitlements are paid depends on the terms of the deed. Sometimes the deed proposal is for these entitlements to be paid in the same priority as in a liquidation. Other times, a different priority is proposed.

A deed of company arrangement must ensure that employees' entitlements have the same priority as in

a liquidation unless the eligible employees agree by a majority in both number and value to vary this priority.

This means that unless a variation to priority is agreed to, in a deed of company arrangement employees have the right, if there are funds left over after payment of the fees and expenses of the voluntary administrator and deed administrator, to be paid their outstanding entitlements in priority to other unsecured creditors.

Priority employee entitlements are grouped into classes and paid in the following order:

1. outstanding wages and superannuation
2. outstanding leave of absence (including annual leave and sick leave, where applicable, and long service leave), and
3. retrenchment pay.

Each class is paid in full before the next class is paid. If there are insufficient funds to pay a class in full, the available funds are paid on a pro rata basis (and the next class or classes will be paid nothing).

To find out more, see ASIC's information sheet INFO 46 *Liquidation: a guide for employees*.

Where deed proposal seeks to vary priority for employee entitlements

If a deed proposal seeks to vary the priority for employee entitlements, the voluntary administrator must call a meeting of eligible employees giving at least five business days notice of the meeting. They must give to eligible employees at the same time as the notice of meeting a statement setting out:

- their opinion about whether the proposed variation would result in the same or better outcome for employees than if the company went into liquidation
- their reasons for this opinion, and
- any other information to help them make an informed decision about varying the priority.

Before you make a decision on how to vote at the meeting of eligible employee creditors or the creditors' meeting where the decision is made whether or not to accept the deed of company arrangement proposal, make sure you understand how the deed will affect the priority of payment of your outstanding entitlements.

The General Employee Entitlements and Redundancy Scheme (GEERS)

GEERS is a basic payment scheme designed to assist employees whose employment has been terminated due to the liquidation or bankruptcy of their employer and who are owed certain employee entitlements. GEERS is administered by the Department of Education, Employment and Workplace Relations.

You are not eligible for GEERS assistance if your former employer is a company in voluntary administration or subject to a deed of company arrangement until and unless the company goes into liquidation.

If the company was subject to a deed of company arrangement in the 12 months before the liquidation and:

- the deed had a different priority for payment of outstanding claims, including employee entitlements to that in a liquidation; and/or
- the deed did not provide for the distribution of all of the company's available funds and assets;

this will affect your ability to make a claim under GEERS.

You may wish to seek independent legal advice on whether the terms of a proposed deed will affect your ability to make a claim under GEERS if the company subsequently goes into liquidation.

For more on liquidation, refer to our related information sheets (listed below).

For more on GEERS, visit www.deewr.gov.au/geers or contact the GEERS Hotline on 1300 135 040 or email GEERS@deewr.gov.au.

If the deed provides for your ongoing employment, you may wish to seek advice on how this affects payment of your outstanding entitlements.

Liquidation

If creditors resolve that the company is to be wound up, the priority given to outstanding employee entitlements in a liquidation will apply.

Employees have the right, if there are funds left over after payment of the fees and expenses of the administrator and liquidator, to be paid their outstanding entitlements in priority to other unsecured creditors.

The grouping of outstanding employee entitlements and order of payment in a liquidation is the same as discussed above.

To find out more, see ASIC's information sheet *INFO 46 Liquidation: a guide for employees*.

You may also be entitled to make a claim under GEERS when the company enters into liquidation.

Establishing your claim under a deed of company arrangement

How claims are dealt with under a deed of company arrangement depends on the deed's terms. Sometimes the deed incorporates the *Corporations Act 2001* provisions for dealing with claims in a liquidation.

Regardless of the deed's terms, if the deed administrator must pay outstanding priority employee entitlements, they may advise you beforehand how much they believe you are owed. Contact the deed administrator promptly if you disagree with their calculation.

You may be required to complete an employee entitlement claim form (this is called a 'proof of debt' in a liquidation). In this case, contact the deed administrator's office to agree and settle the amount.

You may need to provide evidence to justify your claim. It is important that you keep your pay records or other records of the terms of your employment. You may also need these records to help you complete your income tax return and establish any entitlement to GEERS if the company proceeds to liquidation.

When submitting a claim, ask the deed administrator to acknowledge receipt of your claim and advise if any further information is needed.

If the deed administrator rejects your claim after you have taken the above steps, you may wish to seek your own legal advice. This should be done promptly. Depending on the terms of the deed, you may have a limited time in which to take legal action to challenge the decision. If you have a query about the timing of the payment, discuss this with the deed administrator.

For details on proving your claim in a liquidation, see ASIC's information sheet *INFO 46 Liquidation: a guide for employees*.

Payment Summaries and Separation Certificates

Most employees require a PAYG Payment Summary (group certificate) to complete and lodge their income tax return. A Separation Certificate may also be required before an employee who loses their job can apply for social security.

If a voluntary administrator or deed administrator pays you any employee entitlements, they must provide you with a PAYG Payment Summary recording the entitlements paid and any income tax deducted. Contact the voluntary administrator or deed administrator to find out if they are going to prepare your PAYG Payment Summary for entitlements paid by the company prior to their appointment, and, if so, what period it will cover.

If you can't obtain a PAYG Payment Summary for any period, contact the Australian Taxation Office on 13 28 61 to find out how to meet your obligations.

A voluntary administrator and deed administrator must prepare a Separation Certificate for any employee whose employment is terminated during the voluntary administration or deed of company arrangement. They are not obliged to prepare one for terminations of employment that occurred prior to voluntary administration.

Contact Centrelink on 13 10 21 to find out what you should do if you can't obtain a Separation Certificate.

Creditors' committee

A creditors' committee may be formed to consult with the voluntary administrator or deed administrator, and receive reports on the conduct of their administration. In a voluntary administration, this committee is called a 'committee of creditors'. While the company is under a deed of company arrangement, it is called a 'committee of inspection'.

Employees may wish to nominate a representative to be on the committee and have a say in matters that may impact on their interests.

Queries and complaints

You should first raise any queries or complaints with the voluntary administrator/deed administrator. If this fails to resolve your concerns, including any concerns about the administrator's conduct, you can lodge a complaint with ASIC at www.asic.gov.au/complain, or write to:

ASIC Complaints
PO Box 9149
TRARALGON VIC 3844

ASIC will usually not become involved in matters of commercial judgement by a voluntary administrator or deed administrator. Complaints against companies and their officers can also be made to ASIC. For other enquiries, contact ASIC's infoline on 1300 300 630 or make an enquiry at www.asic.gov.au/question.

To find out more

For an explanation of terms used in this information sheet, see ASIC's information sheet INFO 41 *Insolvency: a glossary of terms*. For more on external administration, see ASIC's related information sheets at www.asic.gov.au/insolvencyinfosheets:

- INFO 74 *Voluntary administration: a guide for creditors*
- INFO 45 *Liquidation: a guide for creditors*
- INFO 46 *Liquidation: a guide for employees*
- INFO 54 *Receivership: a guide for creditors*
- INFO 55 *Receivership: a guide for employees*
- INFO 43 *Insolvency: a guide for shareholders*
- INFO 42 *Insolvency: a guide for directors*
- INFO 84 *Independence of external administrators: a guide for creditors*
- INFO 85 *Approving fees: a guide for creditors*

These are also available from the Insolvency Practitioners Association (IPA) website at www.ipaa.com.au. The IPA website also contains the IPA's Code of Professional Practice for Insolvency Professionals, which applies to IPA members.