



Proform Food Group Pty Ltd
ACN 651 562 971

Proform Innovation Pty Limited
ACN 117 578 971

Proform Gourmet Pty Limited
ACN 167 199 813

Proform Foods Pty Limited
ACN 136 915 341

Proform Admin Pty Limited
ACN 131 324 377

(all in Liquidation)
(collectively the Group)

Statutory Report by Liquidator

27 November 2024

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Glossary

Abbreviation	Description
\$	Australian dollar
\$000s	Thousands of dollars
ACN	Australian Company Number
Act	The Corporations Act 2001
Administrators	James Dampney and Gayle Dickerson
Administration	The voluntary administration of the Group by the Administrators
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
BOQ	Bank of Queensland
DE	Department of Employment and Workplace Relations
Directors	Proform Food Group Pty Ltd Matthew Stephen Dunn Nathan Dunn Andrew Francis Mitchell Elizabeth Ann McCall Proform Innovation Pty Limited Matthew Stephen Dunn Proform Gourmet Pty Limited Matthew Stephen Dunn Proform Foods Pty Limited Matthew Stephen Dunn Proform Admin Pty Limited Matthew Stephen Dunn
DOCA Proponent	Proform Foods Global Pty Limited ACN 678 773 192
Dritex Pty Limited	Dritex Pty Limited in its capacity as trustee for the Dunn Family Trust
ERV	Estimated Realisable Value
FEG	Fair Entitlements Guarantee
FY	Financial Year
Group	Proform Food Group Pty Limited Proform Innovation Pty Limited Proform Gourmet Pty Limited Proform Foods Pty Limited Proform Admin Pty Limited
GST	Goods and Services Tax
Liquidators	James Dampney and Gayle Dickerson
R&D	Research and development
ROCAP	Report on Company Activities and Property

Voluntary Administrators' Reports	Reports prepared pursuant to IPR 75-225 and Section 438A of the Act, dated 18 June 2024 and 20 August 2024
WBC	Westpac Banking Corporation

1 Introduction

We refer to our Voluntary Administrators' Reports dated 18 June and 20 August 2024.

At the meeting of creditors held on 28 August 2024, creditors resolved that the Group be wound up under Section 439C(c) of the Act and Gayle Dickerson and I were appointed Liquidators of the Group.

We now take this opportunity to report to you on the following matters relating to the liquidation of the Group:

- An update on the progress of the liquidation;
- The current position in relation to the realisation of the Group's assets;
- An update on our investigations into the Group's affairs; and
- The likelihood of a dividend being paid in the liquidation.

This report should be read in conjunction with the information contained in our Initial Notice to Creditors dated 24 May 2024 and the Voluntary Administrators' Reports.

2 Current position

2.1 Matters addressed during the liquidation

A summary of key matters and events since our appointment as Liquidators is provided below:

- On 28 August 2024, the Group ceased to trade and the majority of employees were made redundant. We retained a small group of employees to assist with the managed wind down of the business which predominantly related to realising the Group's remaining inventory, collecting debtors and preparing for the auction of Proform's plant and equipment. This process took approximately four weeks with the final Proform employee leaving the business in late September.
- From 18 October 2024 through to 30 October 2024, an online auction was run on our behalf by Slattery Auctions to realise the Group's plant and equipment. Over 125 parties made bids in the auction with net proceeds (after deduction of auction costs and commission) totalling over \$0.5m. Following discussions with Proform's secured creditor, certain items of bespoke plant and equipment were removed from the auction process. We will shortly be contacting several parties who have previously expressed an interest in these items, together with the Group's brands and intellectual property, to realise these remaining assets.
- On 11 November 2024, the Group's secured debt (totalling c. \$3.1m) was assigned by BOQ to Dritex Pty Limited in its capacity as trustee for the Dunn Family Trust. The practical consequence of this assignment is that Dritex has now assumed all rights, title and interests in the debts due to BOQ and it is therefore entitled to all realisations that are or may in the future become due and payable under the BOQ finance agreements. These realisations include proceeds generated from the auction process.

Additional tasks completed by the Liquidators following their appointment include:

- Liaising with employees and DE in relation to the payment of outstanding employee entitlements by the Fair Entitlements Guarantee Scheme;
- Pursuing the ATO with respect to the payment of the outstanding FY22 R&D tax incentive totalling approximately \$0.9m;
- Preparing to lodge the FY24 R&D tax incentive (c. \$1m) including making a submission to AusIndustry together with finalising the FY24 Group tax returns;
- Preliminary investigations into the recovery of potential unfair preference payments and other antecedent transactions; and
- Investigation into the pre-appointment affairs of the Group including preparing to lodge a statutory report with ASIC together with attending to other statutory requirements.

2.2 Financial position of the Group

As outlined in the Voluntary Administrators' Reports, the Directors of the Group provided a ROCAP to the Administrators on 20 June 2024. The table below summarises the assets and liabilities disclosed in the Directors' ROCAP.

Please refer to the Voluntary Administrators' Reports for further information and breakdown by entity:

\$000s	Ref	Book Value	Directors' ERV	Liquidators' ERV Low	Liquidators' ERV High
Assets					
Cash at bank	2.2.1.1	562	562	423	423
Debtors	2.2.1.2	38,030	1,247	369	1,247
Inventory	2.2.1.3	796	Uncertain	796	796
Plant and equipment	2.2.1.4	4,668	Uncertain	Commercially sensitive	Commercially sensitive
Other assets		134	134	Commercially sensitive	Commercially sensitive
Total assets		44,190	Uncertain	Commercially sensitive	Commercially sensitive
Liabilities					
Secured creditors	2.2.2.1	(3,066)	(3,066)	(3,066)	(3,066)
Employee claims	2.2.2.2	(250)	(250)	(657)	(657)
Trade and other unsecured creditors	2.2.2.3	(38,486)	(38,486)	(38,486)	(38,286)
Contingent claims		-	-	-	-
Total liabilities		(41,802)	(41,802)	(42,209)	(42,009)
Estimated surplus / deficiency		2,388	Uncertain	Commercially sensitive	Commercially sensitive

Our comments are as follows:

2.2.1 Assets

2.2.1.1 Cash at bank

As outlined in the Voluntary Administrators' Reports, immediately upon appointment we issued instructions to all Australian banks to freeze bank accounts held in the Group's name. The Group maintained accounts with WBC with approximately \$423,000 being transferred to the Administrators' post appointment shortly following their appointment.

The difference of approximately \$139,000 between the Directors' ROCAP balance and the Administrators' ERV relates to two BOQ term deposit bank accounts, which were offset against the outstanding BOQ asset finance facilities balance.

2.2.1.2 Debtors

The Directors' ROCAP disclosed an outstanding debtor balance of c. \$38m as at the date of administration.

Debtors \$000s	Proform Food Group	Proform Innovation	Proform Foods	Proform Gourmet	Proform Admin	Total
Trade debtors	-	-	-	369	-	369
ATO R&D refund	-	-	878	-	-	878
Intercompany	20,631	14,150	2,002	-	-	36,783
Total	20,631	14,150	2,880	369	-	38,030

The Liquidators have largely recovered the pre-appointment debtors' ledger and continue to pursue a disputed FY22 ATO R&D tax incentive of \$878,000. We are currently awaiting further explanation from the ATO relating to the dispute and should any refund be ultimately received, this will form an asset of Proform Foods.

There will be no realisations available from any intercompany debtors totalling \$36.8m given our appointment to all entities within the Group.

2.2.1.3 Inventory

Upon our appointment as Administrators, the Group held stock with a book value of c. \$796,000 as per the Group's books and records. The Group's inventory on appointment comprised of raw materials, packaging, work in progress and finished goods, which was sold progressively as the Administrators continued to trade, and subsequently, wind down the business.

2.2.1.4 Plant and equipment

From 18 October 2024 through to 30 October 2024, an online auction was run on our behalf by Slattery Auctions to realise the Group's plant and equipment. Over 125 parties made bids in the auction with net proceeds (after deduction of auction costs and commission) totalling over \$0.5m. Certain items of bespoke plant and equipment, together with the Group's brands and intellectual property, remain unsold and we intend to run a separate expressions of interest process regarding these items shortly.

2.2.2 Liabilities

2.2.2.1 Secured creditors

On 11 November 2024, the Group's secured debt (totalling c. \$3.1m) was assigned by BOQ to Dritex Pty Limited in its capacity as trustee for the Dunn Family Trust. The practical consequence of this assignment is that Dritex has now assumed all rights, title and interests in the debts due to BOQ and it is therefore entitled to all realisations that are or may in the future become due and payable under the BOQ finance agreements.

2.2.2.2 Employee claims

The estimated outstanding employee entitlements position is presented below for Proform Foods, Proform Gourmet and Proform Admin, the three employing entities of the Group:

Employee entitlements \$000s	Proform Foods	Proform Gourmet	Proform Admin	Total
Annual leave	33	31	79	143
Leave loading	0	4	1	5
Long service leave	29	11	-	40
PILN	35	44	129	208
Redundancy	76	89	96	261
Total	173	179	305	657

We understand the Department of Jobs and Small Business is currently reviewing employee claims that may be eligible to be paid by FEG.

On 12 July 2024, an agreement was executed with an entity relating to the DOCA Proponent to allow short term funding pursuant to Section 560 of the Act to be provided to the Administrators to allow continuation of trading whilst the proposed DOCA was being negotiated. The balance of this loan is currently c. \$35k and any remaining balance will be repaid to the lender once all employee related expenses relating to the Voluntary Administration trading period have been paid.

2.2.2.3 Trade and other unsecured creditors

The Directors disclosed PMSI, trade and other unsecured creditor claims totalling \$38.5m in their ROCAP as summarised below:

PMSI, trade and other unsecured creditors \$000s	Proform Food Group	Proform Innovation	Proform Foods	Proform Gourmet	Proform Admin	Total \$
Trade creditors	11	24	40	1,388	-	1,463
Statutory creditors	-	-	22	-	-	22
Intercompany	-	5,523	11,850	19,410	-	36,783
Related party creditors	-	-	-	218	-	218
Total	11	5,547	11,912	21,016	-	38,486

Since our appointment as Liquidators, we have received:

- Four new proofs of debt relating to Proform Gourmet, increasing the estimate provided in the Voluntary Administrators' Reports by c. \$58k.
- A proof of debt from the ATO totalling \$1.2m relating to Proform Foods. This predominantly relates to outstanding income tax for the year ended 30 June 2022 and late payment charges.

A summary of the receipts and payments in the liquidation to date is attached at **Annexure A**.

3 Investigation into the Group's affairs

A summary of our preliminary investigations into the Group's affairs is provided below and we will keep creditors informed of any material developments.

3.1 Voidable transactions

3.1.1 Unfair preferences

Section 588FA of the Act gives the Liquidator the power to recover certain transactions that have had the effect of conferring a priority, preference or advantage to the creditor within six months of the commencement of the winding up (the relation back period).

To date, we have identified payments of up to \$570,000 that were made by Proform Gourmet to eight creditors during the relation back period which appear to potentially represent unfair preferences.

The Liquidators are reviewing each of these payments to determine the available level of evidence together with the commercial merits of each claim.

3.1.2 Uncommercial transactions

Section 588FB of the Act requires the Liquidator to investigate transactions which may be deemed to be uncommercial, having regard to the detriment to the Group (if any) suffered as a consequence of the transaction in the period two years prior to the appointment.

In addition, Section 588FDA of the Act refers to “unreasonable director-related transactions” and requires the Liquidator to investigate such transactions, having regard to the detriment to the Group (if any) suffered as a consequence of the transaction.

From the information available, we have identified potential transactions totalling \$42,330 which may constitute unreasonable director-related transactions.

The Liquidators are reviewing these payments to determine the available level of evidence together with the commercial merits of each claim.

3.1.3 Unfair loans

Section 588FD of the Act requires investigations of transactions which may be deemed to be unfair loans to the Group. A loan to the Group is considered to be unfair if and only if, interest on the loan is extortionate, or the charges in relation to the loan were extortionate.

From the information available, we have not identified any transactions which would constitute unfair loans to the Group.

3.1.4 Voidable transactions – related parties

Section 588FE(4) of the Act requires investigations of transactions which may be deemed to be insolvent transactions with a related party entered into within 4 years of the commencement of the winding up.

From the information available, we have not identified any transactions which would constitute voidable transactions with related parties.

3.2 Insolvent trading

Section 588G of the Act provides that directors are obliged to prevent a company from:

- Incurring a debt whilst insolvent; or
- Becoming insolvent by incurring a debt.

If a contravention of Section 588G can be established, then Section 588M empowers a Liquidator (or a creditor under certain circumstances) to recover compensation from a director for any loss or damage suffered as a consequence of any such contravention.

The Voluntary Administrators’ Report sets out our comments and findings regarding the indicators of insolvency identified from the information available to us.

Section 588H of the Act provides a number of statutory defences available to the Directors which would have to be considered in deciding whether to commence an insolvent trading action.

Any decision to commence an action against the Directors for insolvent trading must have regard to the following:

- The quantum of the claim;
- The funding of the claim whether that is utilising the Group’s assets or via litigation funders;
- The costs of litigation and the unknown likelihood of success; and
- The Directors’ capacity to meet a claim for compensation.

Our investigations regarding insolvent trading, and the financial capacity of the Directors to meet any potential action that may be identified, are ongoing and we will continue to update creditors as appropriate.

4 Return to creditors

The estimated outcome to creditors remains largely unchanged to that communicated in the Administrators Reports.

The estimated dividend calculations are an estimate only and are subject to:

- The final amount realised from circulating assets, which includes both the FY22 and FY24 R&D tax incentives;
- The final proving of priority employee and unsecured creditor claims;

- Any final expenses and insurance costs relating to the asset realisation activities undertaken to date; and
- The proceeds and costs of any future litigation to recover any potential voidable transactions.

The following table outlines an estimated outcome for each class of creditor based on actual realisations to date and estimated future realisations and costs:

Liquidation ERV	Proform Food Group		Proform Innovation		Proform Foods		Proform Gourmet		Proform Admin	
Creditor Class (Estimated cents in \$)	High	Low	High	Low	High	Low	High	Low	High	Low
Priority employee	N/A	N/A	N/A	N/A	100	-	-	-	-	-
Secured	40.3	-	-	-	21.0	-	11.8	10.8	-	-
Unsecured	-	-	-	-	-	-	-	-	-	-
Related party	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

Please note that the Administrators' Reports previously allocated the FY24 R&D tax incentive claim to Proform Gourmet. We have since clarified this position and any proceeds will instead form an asset of Proform Food Group on the basis that only the head company of a consolidated group should register, and claim, a tax incentive for R&D activities.

For clarity, we confirm there are no asset realisations in the other Group entities (i.e. Proform Innovation and Proform Admin) and no funds exist to enable a distribution to any class of creditor.

5 Liquidators' remuneration and internal disbursements

Creditors will recall that in accordance with the Initial Remuneration Notice (IRN) provided to creditors during the Voluntary Administration, the Liquidators' remuneration will be fixed on the basis of time spent by the Liquidators and their staff of an appropriate level having regard to the nature and complexity of the work, and calculated by reference on the hourly rates set out in the IRN.

We previously estimated our Liquidator fees at \$225,000, plus applicable GST and disbursements. Full details of the calculation and composition of the Liquidators' estimated remuneration was provided in our Remuneration Approval Request dated 20 June 2024. The estimated remuneration for the liquidation was approved at the meeting of creditors held on 28 August 2024. We confirm no remuneration in respect of the Liquidation has been drawn to date.

A summary table by each entity is also set out below:

Liquidation (28 August 2024 to completion) \$ excl. GST	
Proform Food Group	18,000
Proform Innovation	25,500
Proform Foods	30,000
Proform Gourmet	139,000
Proform Admin	12,500
Total remuneration approved	225,000

It should be noted that if, during the liquidation, any unanticipated issues arise, it may be necessary to revisit the fee estimate. If we become aware that the liquidation costs will exceed the approved amounts, we will advise you accordingly.

An information sheet concerning approval of remuneration in external administrators can be obtained from ASIC at www.asic.gov.au.

6 Conclusion

The following matters will continue to be progressed:

- Realising the remaining assets of the Group;
- Pursuing the recovery of the FY22 R&D tax incentive;
- Lodgement of the FY24 income tax returns of the Group (including the FY24 R&D tax incentive);
- Completing our investigations into the Group's affairs; and
- Completing our reporting to ASIC and attending to statutory obligations.

At this stage we do not anticipate that we will write to you again unless any additional information becomes available that otherwise alters the information contained in this report.

We expect to have completed this liquidation within 12 months, noting this is dependent on the outcome of the investigations.

Should you have any questions, please contact Grace Talty of this office on 02 9273 5666.

Dated this 27th day of November 2024



James Dampney
Liquidator

Annexures

A – Receipts & Payments

\$	Proform Food Group	Proform Innovation	Proform Gourmet	Proform Foods	Proform Admin
Receipts					
Cash at bank	109,938	2,942	354,529	752	-
Trading receipts	-	-	760,117	33	-
Interest income	917	23	2,876	6	-
GST refund	-	-	34,024	-	-
Section 560 funding	-	-	158,076	-	-
Intercompany	-	-	71,907	-	-
Proceeds from sale of plant and equipment	-	-	583,896	-	-
Total Receipts	110,855	2,965	1,965,425	791	-
Payments					
Wages and salaries	-	-	(146,881)	-	-
Payroll tax	-	-	(8,242)	-	-
Subcontractors	-	-	(8,942)	-	-
Rent and rates	-	-	(6,700)	-	-
Raw materials	-	-	(138,413)	-	-
Packaging	-	-	(79,549)	-	-
Pallet hire	-	-	(29,704)	-	-
IT expenses	-	-	(8,886)	-	-
Storage	-	-	(44,704)	-	-
Cleaning	-	-	(10,689)	-	-
Insurance	-	-	(31,379)	-	-
Employee expense claims	-	-	(1,101)	-	-
Food testing	-	-	(3,387)	-	-
Freight	-	-	(19,453)	-	-
Fuel and oil	-	-	(4,003)	-	-
Hire and leasing	-	-	(1,287)	-	-
Repairs and maintenance	-	-	(17,625)	-	-
Utilities	-	-	(66,974)	-	-
Printing and stationery	-	-	(16,794)	-	-
Appointee fees	(38,948)	-	(444,186)	-	-
Appointee disbursements	-	-	(9,012)	-	-
Accounting fees	-	-	(21,668)	-	-
Auctioneer's charges	-	-	(76,552)	-	-
Legal fees and disbursements	-	-	(116,873)	-	-
Advertising	-	-	(7,590)	-	-

Data room costs	-	-	(1,181)	-	-
Intercompany	(71,907)	-	-	-	-
Other costs	-	-	(3,297)	-	-
Total Payments	(110,855)	-	(1,325,072)	-	-
Cash at bank at 27 November 2024	-	2,965	640,353	791	-