



**D&G Hoists & Cranes Pty Ltd  
ACN 084 148 096  
(Administrators Appointed)**

**Report by Administrators Pursuant to  
Section 439A(4)(a) of  
The Corporations Act 2001**

**Martin Jones  
Andrew Saker**

6 September 2012

**Ferrier  
Hodgson**

**FERRIER HODGSON**

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## Glossary of Terms

Abbreviation	Description
ABN	Australian Business Number
ACN	Australian Company Number
Act	The Corporations Act 2001
APAAP	All present and after acquired property
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
ACPS	Australian Concrete Pumping Service Pty Ltd
CI	Crane Investments (WA) Pty Ltd (Administrators Appointed) ACN 103 911 226 trading as Northern Suburbs Crane Hires
DGWA / the Company	D&G Hoists & Cranes Pty Ltd (Administrators Appointed) ACN 084 148 096
DGV	D&G Hoists & Cranes Pty Ltd (Administrators Appointed) ACN 136 357 054 trading as D&G Verticon
DLL	De Lage Landen Pty Ltd
DOCA	Deed of Company Arrangement
ERV	Estimated Realisable Value
FBT	Fringe Benefits Tax
GEERS	General Employee Entitlements Redundancy Scheme
GST	Goods and Services Tax
HP	Hire Purchase
JP Nelson	JP Nelson Equipment Pte Ltd
nab	National Australia Bank Limited
nva	No value attributed
ME Bank	Industry Funds Management (Nominees 2) Pty Ltd trading as ME Bank
PAYG	PAYG Withholding Tax
PMSI	Purchase Money Security Interest
PPSA	Personal Property Securities Act 2009
PPSR	PPS Register
ROT	Retention of Title
SGC	Superannuation Guarantee Charge
Statement	Directors' Statement about the Company's Business, Property, Affairs and Financial Circumstances

## Listing of Annexures

<b>Annexure 1</b>	Administrators' Remuneration Report
<b>Annexure 2</b>	IPA Creditor Information Sheets

## 1. Executive Summary

Andrew Saker and Martin Jones, partners of Ferrier Hodgson were appointed Joint and Several Administrators of DGWA on 10 August 2012 pursuant to Section 436A of the Act.

Creditors ratified our appointment as Administrators at the first meeting of creditors held on 22 August 2012. A Committee of Creditors was formed at that meeting.

Immediately following our appointment, we took control of the Company's assets and continued to carry on the Company's business in a limited capacity whilst a potential restructure of the Company (together with the related entity, DGV) was assessed by the Company's major shareholder, JP Nelson.

The second meeting of creditors is convened for Friday, 14 September 2012 and will be held at the Hotel Ibis, 334 Murray Street, Perth at 10.30am.

We advise that on 31 August 2012, a proposal for a DOCA was received from JP Nelson, however that proposal was not in a form suitable for us to table for creditors to consider, nor did it provide creditors with any better return than a winding up scenario, and accordingly we wrote to JP Nelson on 3 September 2012 advising them of the same. As at the date of writing this report, we have not received any DOCA proposals capable of being put to creditors but we continue to have an open dialogue with JP Nelson on the merit of a DOCA. Should we receive a proposal that we consider may provide a greater return to creditors than would be available under a winding up prior to the date of the Second Meeting of Creditors then creditors may vote to adjourn the meeting for a period not to exceed forty-five (45) days. This will allow us further time to refine the terms of the DOCA proposal and make a recommendation to creditors. We will keep all creditors apprised in this regard.

As there is no suitable proposal for a DOCA to put to creditors, it is our opinion that, for the reasons set out in this report, the Company should be wound up.

We estimate that no dividend will be payable to unsecured creditors from the realisation of the Company's assets in the event the Company is wound up, but a return to creditors may eventuate from the recovery of any preference payments and other voidable transactions.

We also advise that once the Company transitions in to liquidation, all employees may submit a claim for certain unpaid entitlements with the Federal Government's GEERS. This process will provide creditors a more timely return than waiting for the yet to be appointed liquidator to determine whether there will be surplus assets for the benefit of priority creditors.

## 2. Introduction

### 2.1. Appointment of Administrators and First Meeting of Creditors

Creditors attended a first meeting of creditors held at the Mercure Hotel, Perth, Western Australia on 22 August 2012. At that meeting, creditors ratified our appointment as Administrators of the Company. Creditors elected the following creditors to a committee of creditors:

Committee of Creditors		Representative
1.	Manitowoc Cranes	Kelvin Kent
2.	Westpac Banking Corporation	James McCusker
3.	De Lage Landen	Peter Brotherson
4.	JP Nelson Equipment Pty Ltd	Teo Yew Boon or Dermott McVeigh
5.	Employees' Representative	Chris Whitney
6.	CBUS	Clara Lai

### 2.2. Second Meeting of Creditors

Pursuant to Section 439A of the Act, the second meeting of creditors of the Company is convened for 14 September 2012 at the IBIS Hotel, 334 Murray Street, Perth, Western Australia at 10.30am WST (12.30pm EST).

At the second meeting, creditors will decide the Company's future in voting on one of the following options:

- That the administration should end and control of the Company revert to its directors; **or**,
- That the Company should be wound up.

We advise that on 31 August 2012, a proposal for a DOCA was received from JP Nelson, however that proposal was not in a form suitable for us to table for creditors to consider, nor did it provide creditors with any better return than a winding up scenario, and accordingly we wrote to JP Nelson on 3 September 2012 advising them of the same. As at the date of writing this report, we have not received any DOCA proposals capable of being put to creditors. Should we receive a proposal that we consider may provide a greater return to creditors than would be available under a winding up prior to the date of the Second Meeting of Creditors then creditors may vote to adjourn the meeting for a period not to exceed forty-five (45) days. This will allow us further time to refine the terms of the DOCA proposal and make a recommendation to creditors.

The option to enter in to a DOCA is not available to creditors in this case, as no has been put forward that is capable of being put to creditors. It is also open to creditors to adjourn the meeting, however given:

- The cessation of trading operations;
- The withdrawal of funding support by the major shareholder; and
- The requirement for employee creditors to lodge claims with GEERS to access employee entitlements.

We do not consider that this would be in the best interest of creditors collectively.

## 2.3. Purpose of Report

Section 439A(4) of the Act explains the purpose of an Administrator's report in providing that the notice (of second meeting) must be accompanied by a copy of:

- (a) *A report by the Administrator about the company's business, property, affairs and financial circumstances; and*
- (b) *A statement setting out the Administrator's opinion about each of the following matters:*
  - *Whether it would be in the creditors' interests for the company to execute a Deed of Company Arrangement; and*
  - *Whether it would be in the creditors' interest for the administration to end;*
  - *Whether it would be in the creditors' interest for the company to be wound up;*
  - *His or her reasons for those opinions and provide such other information known to the Administrators as will enable the creditors to make an informed decision about each of the above matters; and*
- (c) *If a Deed of Company Arrangement is proposed – a statement setting out details of the proposed deed.*

## 2.4. Non-Disclosure of Certain Information

There are sections of this report wherein we considered it inappropriate to disclose certain information to creditors. Such information includes valuations of specific assets.

We recognise the need to provide creditors with complete disclosure of all necessary information relating to the Company. However, we believe this information is commercially sensitive and it is not in creditors' interests for the Administrators to disclose the information publicly at this stage.

The Committee of Creditors have been requested to sign confidentiality agreements with the Administrators, and will privy to all such information.

## 2.5. Declaration of Independence, Relevant Relationships and Indemnities

The Administrators provided a Declaration of Independence, Relevant Relationships and Indemnities to creditors with their first circular to creditors and also tabled the declaration at the first meeting of creditors.

There has been no change in the declaration since that time.

Andrew Saker and Martin Jones are partners of Ferrier Hodgson. Ferrier Hodgson is Australia's and the Asia-Pacific's largest independent corporate restructuring practice with 47 partners and over 440 staff throughout Australia and Asia. Ferrier Hodgson does not provide accounting, audit, legal or taxation services.

Martin Jones is a Chartered Accountant, Registered Liquidator and member of the Insolvency Practitioners Association with over 32 years' experience in corporate insolvency. Andrew Saker is a Chartered Accountant, Registered Liquidator and member of the Insolvency Practitioners Association with over 24 years' experience in corporate insolvency.

Further information regarding Ferrier Hodgson and the Administrators can be obtained from the firm's website at [www.ferrierhodgson.com](http://www.ferrierhodgson.com).

## 2.6. Summary of Receipts and Payments

A summary of the Administrators' receipts and payments for the period «AppointmentDate» to 31 August 2012 is included within Part B of the Administrators' Remuneration Report attached as Annexure 1.

## 3. Company Information

### 3.1. Statutory Information

A search of the ASIC database revealed the following information.

#### 3.1.1. Incorporation Date and Registered Office

DGWA was incorporated as D&G Hoists Pty Ltd on 31 August 1998 and subsequently changed its name to D&G Hoists & Cranes Pty Ltd on 25 January 2001.

DGWA's registered office is listed as care of Charles Foti and Co Level 1, 159 Main Street Osborne Park Western Australia 6017 but operates from its head office at 6A Mulgal Road, Malaga Western Australia 6090.

#### 3.1.2. Company Officers

The ASIC database disclosed DGWA's officers over the past 12 months to be:

Name	Role	Appointment Date	Cessation date
Decesare, Luigi Vincenzo	Director	31/08/1998	Current
Keating, David Patrick Majella	Director	31/08/1998	Current
Lim, Eng Koo	Director	09/09/2010	06/08/2012
Decesare, Luigi Vincenzo	Secretary	31/08/1998	Current

A search of the National Personal Insolvency Index maintained by the Insolvency Trustee Service, Australia, shows that the Company's directors are not bankrupt or subject to a Personal Insolvency Agreement under Part X of the Bankruptcy Act 1966.

We note that Mr Eng Koo Lim of JP Nelson stepped down as a director due to his commitments in other JP Nelson group companies on 6 August 2012, however it was JP Nelson's intention to re-appoint another director shortly thereafter. We note that Mr Lim may be liable as a director of DGWA for an insolvent trading claim in the event one is pursued by a liquidator. We refer to Section 6 for more information.

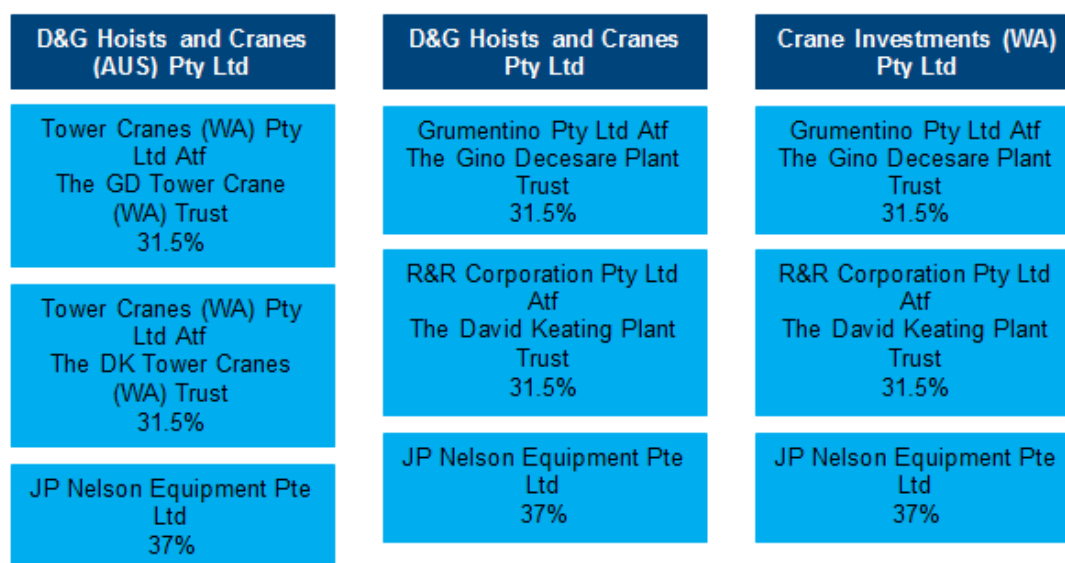
#### 3.1.3. Shareholders

DGWA is a propriety company with 653,425 issued shares. The ASIC database discloses the following current shareholders:

Name	Type of Share Held	Shares Held	Shares Value
R&R Corporation Pty Ltd	Ordinary	205,829	\$1,109,987.60
Grumentino Pty Ltd	Ordinary	205,829	\$1,109,987.60
JP Nelson Equipment Pte Ltd	Ordinary	241,767	\$1,303,792.82

### 3.1.4. Corporate Structure

The current corporate structure of the Company is as follows:



### 3.1.5. Registered Chargeholder

The following table represents the parties which have a registered circulating charge on the PPSR over all commercial property of DGWA under the following charge numbers:

Name	Charge Registration Numbers
De Lage Landen Pty Limited	201112160135165
Esanda Finance Corporation Limited	201112112400633
Esanda Finance Corporation Limited	201112151412495
Esanda Finance Corporation Limited	201112160749935
Industry Funds Management (Nominees 2) Pty Ltd	201112230607222
National Australia Bank Limited	201112113325576
National Australia Bank Limited	201112121556804
National Australia Bank Limited	201112131779996
National Australia Bank Limited	201112131783439
National Australia Bank Limited	201112151155174
National Australia Bank Limited	201112151161515
National Australia Bank Limited	201112151195378
National Australia Bank Limited	201112160085805
National Australia Bank Limited	201112160665332
National Australia Bank Limited	201112160915566
National Australia Bank Limited	201112161018436
National Australia Bank Limited	201112161035779

Name	Charge Registration Numbers
National Australia Bank Limited	201112190363530
National Australia Bank Limited	201112200192832
National Australia Bank Limited	201112203707700
National Australia Bank Limited	201201091122565
ORIX Australia Corporation Limited	201112150497145
Societe Generale	201112190124973
St George Finance Limited	201112141393987
St George Finance Limited	201112141882189
St George Finance Limited	201201050198954
St George Finance Limited	201201050201738
Suncorp Metway Advances Corporation Pty Ltd	201112200617916
Westpac Banking Corporation Limited	201112141877622
Westpac Banking Corporation Limited	201112150682619
Westpac Banking Corporation Limited	201112151241948
Westpac Banking Corporation Limited	201112151499016
Westpac Banking Corporation Limited	201112280786155
Westpac Banking Corporation Limited	201112280813106

Under the new PPSA legislation effective 30 January 2012, security over property, except land, must be registered as a security interest on the PPSR.

Briefly, the concept of fixed and floating charges was replaced under the PPSA by “security interests over non-circulating assets” and “security interests over circulating assets” respectively. In the case of inventory, the title to any inventory will require registration as a PMSI on the PPSR. Where security interests are not registered on the PPSR, the goods under ROT may become property of DGWA in a liquidation to the benefit of its creditors.

Whilst there is a two year transitional period for all pre 30 January 2012 security interests to be registered on the PPSR, any new transaction after 30 January 2012 needs to be considered thoroughly to ensure they perfected and may be enforceable under the new PPSA legislation.

The following parties hold security interests in DGWA’s assets, summarised in the table below:

Secured Party	No. Charges	Collateral Description	PMSI?
Brookfield Multiplex Constructions Pty Ltd	1	Other goods	Yes
Capital Finance Australia Limited	2	Other goods/Motor vehicle	No/Yes
D&G Hoists & Cranes (Aus) Pty Ltd	1	Other goods	Yes
De Lage Landen Pty Limited	38	Other goods/Motor vehicle	No/Yes
Energy Power Systems Australia Pty Limited	2	Other goods/Motor vehicle	Yes
Esanda Finance Corporation Limited	1	Motor vehicle	No
Freo Group Limited	1	Other goods	Yes
Industry Funds Management (Nominees 2) Pty Ltd	2	Other goods	Yes
JP Nelson Equipment Pte Ltd	11	Other goods	No
Kennards Hire Pty Limited	1	Other goods	Yes
KSAM Rental PTE LTD	2	Other goods	No
Macquarie Leasing Pty Ltd	2	Other goods	No

Secured Party	No. Charges	Collateral Description	PMSI?
P.T. Limited	2	Other goods/Motor vehicle	No
Plastral Pty Ltd	1	Other goods	Yes
SKF Bearing Supplies Pty Ltd	1	Other goods	Yes
Toyota Finance Australia Ltd	1	Motor vehicle	No
Westpac Banking Corporation Limited	5	Other goods	No

We have undertaken a review of the above PPSR and, prima facie, seem to be valid. A Liquidator would be required to investigate the security interests further and possibly obtain legal advice to clarify this position.

### 3.1.6. Outstanding Winding up Applications

Public searches indicate that there were no winding up orders against DGWA. However we note that some creditors have issued letters of demands and statutory letters of demands and statutory demands for payment. This is discussed further in Section 6 of this Report.

## 3.2. Company History

DGWA was incorporated on 31 August 1998 in Western Australia, and commenced trading as D&G Hoists Pty Ltd on the same date from the premises Level 5, 16 Irwin Street Perth in Western Australia. The trading address was changed on the same date to 18 Lorikeet Court, Stirling in Western Australia. DGWA later changed its name to D&G Hoists & Cranes Pty Ltd and began operating from 6 Kirke Street, Balcatta in Western Australia between 5 February 2001 and 27 May 2001. DGWA began trading from 3 Halley Road, Balcatta in Western Australia on 28 May 2001 to 18 April 2004 before finally changing their trading address to 6A Mulgal Road, Malaga in Western Australia on 19 April 2004.

DGWA registered office was listed as Level 5, 16 Irwin Street Perth in Western Australia from 31 August 1998 to 10 September 1998 until it was changed to as care of Charles Foti and Co Level 1, 159 Main Street Osborne Park Western Australia 6017 on 11 September 1998.

DGWA have grown to become Western Australia's leading Hoist and Tower Crane rental company in, supplying new and innovative construction equipment to the market place. Gaining their knowledge from extensive travel to other European and Asian countries and bringing back the best systems from around the world that can be incorporated into Australian construction projects.

## 3.3. Decision to Appoint Administrators

Management have identified a number of factors contributing to the decline of the business, including:

- Poor trading results from delays in project commencements and abnormally high work in progress amounts.
- Poor financial performance of DGV's Melbourne and Queensland operations.
- Increasing creditor pressure.
- In late July 2012, an error in company forecasting was identified requiring additional debt payments to be factored in which highlighted an imminent cash shortage.
- The cash injection from the ROP Funding was applied directly towards the outstanding ATO debt, and not utilised to provide general cash flow relief.

Upon becoming aware of the cash shortage position, the directors advised their major shareholder, and sought advice from its professional advisers. This led to a critical analysis of the Company's solvency and short term options, which led to our appointment.

Whilst we have not had the opportunity in the limited time available for us to conduct detailed investigations into the causes of failure, it would be reasonable to expect the effect of the global financial crisis to have impacted on demand for services in the construction industry which reduced revenue from plant hire against the fixed leasing costs payable to financiers.

The directors resolved to appoint Administrators with effect from 10 August 2012.

## 4. Historical Financial Information

### 4.1. Preparation of Financial Statements

The Company's financial statements were prepared up to 30 June 2012 (however this particular financial statement was not finalised), with the internal monthly management accounts for July 2012 being incomplete at the date of my appointment. The financial statements were audited by Messrs Somes Cooke. The Company's financial year end was 31 December 2012 therefore the December 2012 accounts were the final set to be audited.

The Company also prepared monthly management accounts and reports on a monthly basis.

At section 6.2.3 of this report, we comment on the adequacy of the Company's books and records.

### 4.2. Profit and Loss Statement

We have not had adequate time to fully interrogate the Company's financials, however we set out below a high level summary of the annual financial statements up until the final set produced for the six months ending 30 June 2012 (these financials were not finalised for this period) for the information of creditors.

We also note that from 31 December 2010, the Company had changed its reporting framework to align with its major shareholders reporting period 1 January to 31 December. For simplicity in understanding the financial circumstances, we have calculated the net profit/(loss) at six (6) monthly intervals.

Period Ended	6 Months Ending						
	31 Dec 10 \$ '000	30 Jun 11 \$ '000	% Change	31 Dec 11 \$ '000	% Change	30 Jun 12 \$ '000	% Change
Sales	12,977	14,985	15.5%	14,792	(1.3%)	11,163	(24.5%)
Other Income	714	1,253	75.6%	1,182	(5.7%)	1,418	20.0%
<b>Total Income</b>	<b>13,691</b>	<b>16,238</b>	<b>18.6%</b>	<b>15,973</b>	<b>(1.6%)</b>	<b>12,581</b>	<b>(21.2%)</b>
<b>Expenses</b>							
Changes in Inventories of Finished Goods and Work in Progress	(30)	26	188.9%	116	337.7%	(92)	179.1%
Raw Materials, Consumables and Other Costs of Sale	(2,169)	(1,481)	31.7%	(1,347)	9.1%	(1,036)	23.1%
Operating Expenses	(2,143)	(1,494)	30.3%	(1,310)	12.3%	(1,062)	18.9%
Employee Benefits Expense	(5,071)	(8,767)	(72.9%)	(8,802)	(0.4%)	(6,894)	21.7%
Depreciation and Amortisation Expenses	(1,854)	(1,897)	(2.3%)	(1,790)	5.6%	(1,704)	4.8%
Administrative Expenses	(1,061)	(687)	35.2%	(798)	(16.2%)	(516)	35.4%

Period Ended	6 Months Ending						
	31 Dec 10 \$ '000	30 Jun 11 \$ '000	% Change	31 Dec 11 \$ '000	% Change	30 Jun 12 \$ '000	% Change
Finance Costs	(1,522)	(1,409)	7.4%	(1,408)	0.1%	(1,182)	16.0%
<b>Total Expenses</b>	<b>(13,849)</b>	<b>(15,709)</b>	<b>(13.4%)</b>	<b>(15,339)</b>	<b>2.4%</b>	<b>(12,486)</b>	<b>18.6%</b>
<b>Net Profit/(Loss)</b>	<b>(158)</b>	<b>529</b>	<b>434.1%</b>	<b>634</b>	<b>19.8%</b>	<b>95</b>	<b>85.0%</b>

We make the following comments in relation to the above:

- Sales dropped dramatically in the six (6) months ending 30 June 2012 compared with 31 December 2011.
- Whilst the profit and loss statement discloses a profit, the business of DGWA requires high cash requirements to meet the HP liabilities.
- The crane and hoist division of the construction industry requires significant employee expenditure, which amounts on average to circa 50% of the total expenses over the above periods.

### 4.3. Balance Sheet

A summary of the Company's balance sheet for the past three (3) financial years is set out below:

Balance Sheet	30 Jun 10 \$ '000	31 Dec 10 \$ '000	30 Jun 11 \$ '000	31 Dec 11 \$ '000	30 Jun 12 \$ '000
<b>Assets</b>					
Current Assets	3,906	4,756	3,854	3,707	4,123
Non-Current Assets	42,375	40,367	40,218	38,395	33,496
<b>Total Assets</b>	<b>46,281</b>	<b>45,123</b>	<b>44,072</b>	<b>42,102</b>	<b>37,620</b>
<b>Liabilities</b>					
Current Liabilities	16,496	17,355	17,968	20,304	17,167
Non-Current Liabilities	24,002	19,893	17,590	12,307	11,370
<b>Total Liabilities</b>	<b>40,499</b>	<b>37,247</b>	<b>35,557</b>	<b>32,611</b>	<b>28,537</b>
<b>Net Asset</b>	<b>5,782</b>	<b>7,875</b>	<b>8,514</b>	<b>9,491</b>	<b>9,083</b>

We make the following comments in relation to the above:

- The net asset position of the Company shows a healthy position, however when looking at the working capital position of the Company this is negative. Refer Section 6 below.
- The Company's Property, Plant and Equipment equates to approximately 90% of total assets, which 55% are subject to HP arrangements with various financiers. The on-going HP arrangements caused constant cash flow constraints in recent times and management often found it difficult to keep their taxation obligations under control.

As noted above, our investigations are only at a preliminary stage, however the financials above do not show significant changes or sudden deterioration. The account balances are reasonably consistent from period to period.

## 4.4. Cashflow Statement

A summary of the Company's Cashflow Statement for the past three (3) six (6) month periods is set out below:

	6 Months Ending				
	30-Jun-11	31-Dec-11	% Change	30-Jun-12	% Change
	\$ '000	\$ '000		\$ '000	
<b>CASH FLOW FROM OPERATING ACTIVITIES</b>					
Receipts from customers	16,564	16,088	(2.9%)	12,269	(23.7%)
Payments to suppliers and employees	(11,832)	(12,130)	(2.5%)	(12,165)	(0.3%)
Interest received	1	1	3.4%	0	(73.6%)
Borrowing costs	(1,409)	(1,408)	0.1%	(1,182)	16.0%
<b>Net cash generated by operating activities</b>	<b>3,324</b>	<b>2,551</b>	<b>(23.3%)</b>	<b>(1,078)</b>	<b>(142.3%)</b>
<b>CASH FLOW FROM INVESTING ACTIVITIES</b>					
Proceeds from sale of property, plant and equipment	296	11	(96.4%)	3,383	31389.7%
Payment for property, plant and equipment	(189)	(113)	(40.0%)	(99)	12.6%
<b>Net cash generated by investing activities</b>	<b>107</b>	<b>(103)</b>	<b>(196.1%)</b>	<b>3,284</b>	<b>3298.0%</b>
<b>CASH FLOW FROM FINANCING ACTIVITIES</b>					
Proceeds from issue of shares, net of issue costs	215	448	108.6%	-	(100.0%)
Repayments of hire purchase arrangements	(3,686)	(3,975)	7.8%	(3,046)	(23.4%)
Repayment of other borrowings	(90)	-	(100.0%)	(726)	100.0%
Proceeds from borrowings	-	981	100.0%	1,966	100.4%
<b>Net cash used in financing activities</b>	<b>(3,561)</b>	<b>(2,546)</b>	<b>(28.5%)</b>	<b>(1,805)</b>	<b>(29.1%)</b>
Net increase / (decrease) in cash and cash investments	(130)	(98)	(24.9%)	400	508.1%
Cash and cash equivalents at beginning of financial period	532	402	(24.5%)	304	(24.4%)
<b>Cash and cash equivalents at end of financial period</b>	<b>402</b>	<b>304</b>	<b>(24.4%)</b>	<b>704</b>	<b>131.4%</b>

We make the following high level comments in relation to the above:

- The cash receipts from customers substantially decreased in the six (6) months to 30 June 2012 with compared to the other corresponding periods.
- Without the injection of the proceeds from the sale of property, plant and equipment, which is later discussed as the RPO funding, it would have been difficult for the Company to continue making a positive cashflow in the six (6) months to 30 June 2012.
- The cash payments to suppliers and employees is constant over the analysed period, even with the varying cash receipts from customers.

## 5. Statement by Directors

### 5.1. Summary

Section 438B of the Act requires the directors to give an Administrator a statement about the Company's business, property, affairs and financial circumstances. The directors requested an extension to complete the Statement and this was granted by the Administrators to 31 August 2012. We advise that we have not received the directors' final Statement as at the date of this report, however have been provided with a draft.

Based on the above, the Administrators have detailed the Company's assets and liabilities at book value and ERV where possible. The following table summarises the assets and liabilities described in the financial statements and draft Statement.

Statement as at 10 August 2012	Report Reference	Cost or Net Book Value \$ '000	Directors' ERV \$ '000	Administrators' ERV	
				High \$ '000	Low \$ '000
<b>Assets:</b>					
Sundry Debtors	5.1.2	114		114	96
Cash on Hand	5.1.3	2		2	-
Cash at Bank	5.1.3	24		-	-
Stock on Hand	5.1.4	245	nva	241	120
Work in Progress	5.1.5	29		-	-
Plant & Equipment	5.1.6	32,963		Commercially Sensitive	
Deposits & Investments	5.1.7	224		-	-
Other Assets	5.1.8	601		42	-
<b>Sub Total</b>		<b>34,203</b>	<b>-</b>	<b>398</b>	<b>217</b>
<b>Assets Subject to Specific Charges</b>					
Factored debtors		1,905	nva	1,905	1,514
Less Amounts owing to nab		(1,416)	nva	(1,416)	(1,416)
Plant & Equipment (DLL)				Commercially Sensitive	
Less Amounts owing to DLL		(10,729)	nva	(10,729)	(10,729)
Plant & Equipment (ME Bank)				Commercially Sensitive	
Less Amounts owing to ME Bank	5.1.9	(1,830)	nva	(1,830)	(1,830)
Plant & Equipment (BOQ)				Commercially Sensitive	
Less Amounts owing to BOQ		(1,234)	nva	(1,234)	(1,234)
Plant & Equipment (Westpac)				Commercially Sensitive	
Less Amounts owing to Westpac		(802)	nva	(802)	(802)
Plant & Equipment (Other)				Commercially Sensitive	
Less Amounts owing to other financiers		(3,518)	nva	(3,518)	(3,518)
<b>Total Available Assets</b>		<b>16,579</b>	<b>-</b>	<b>(17,225)</b>	<b>(17,798)</b>
<b>Liabilities:</b>					
Less: Priority Creditors					
- Employee Entitlements Payable in Advance of Secured Creditors	5.1.11	(1,210)		(1,092)	(1,092)
- Secured Creditors	5.1.12	-	nva	-	-
- Partly Secured Creditors	5.1.13	-		-	-
<b>Total Priority Creditors</b>		<b>(1,210)</b>	<b>-</b>	<b>(1,092)</b>	<b>(1,092)</b>
Contingent Assets	5.1.10	-		uncertain	
Contingent Liabilities	5.1.15	-	nva	uncertain	

Statement as at 10 August 2012	Report Reference	Cost or Net Book Value \$ '000	Directors' ERV \$ '000	Administrators' ERV	
				High \$ '000	Low \$ '000
<b>Available to Unsecured Creditors</b>		<b>15,369</b>	<b>-</b>	<b>(18,317)</b>	<b>(18,891)</b>
Ordinary Unsecured Creditor Claims	5.1.14	(7,602)	nva	(7,602)	(7,602)
<b>Estimated Surplus/(Deficiency)</b>		<b>7,767</b>		<b>(25,920)</b>	<b>(26,493)</b>

We comment on the Statement as follows:

### 5.1.1. Interest in Land

A property search indicates that the Company does not currently own any real property.

### 5.1.2. Sundry Debtors

The Company's debtors' ledger as at 10 August 2012 totalled \$2,304,058. An 'aged' analysis follows:

	Current \$	30 Day \$	60 Days \$	90 Days \$	+90 Days \$	Total \$
Factored Debtors	184,566	1,019,650	553,954	53,830	93,281	<b>1,905,281</b>
Non Factored Debtors	-	39,734	42,147	-	32,114	<b>113,995</b>
DGV	141,153	143,629	-	-	-	<b>284,782</b>
<b>Total</b>	<b>325,719</b>	<b>1,203,013</b>	<b>596,101</b>	<b>53,830</b>	<b>125,395</b>	<b>2,304,058</b>
<b>Percentage of Total</b>	<b>14.1%</b>	<b>52.2%</b>	<b>25.9%</b>	<b>2.3%</b>	<b>5.4%</b>	<b>100.0%</b>

We performed a high level review of each debtor balance and consider it prudent to inform creditors of the following:

- On 13 August 2012 the nab appointed Melanie Grohovaz and Derrick Vickers as agents to collect the recovery of the factored debtors. Accordingly, whilst the nab remains exposed to DGWA, we are unable to collect the factored debtors until they have been paid out in full. As at the date of this report, nab's exposure has been reduced to \$872,931.
- \$284,782 of debtors relate to DGV, which would be set off against DGV's unsecured counter claim against DGWA.
- The surplus factored debtors that fall outside nab's exposure have been discounted by 80% due to the potential counterclaims by the debtor against DGWA for non-performance of the contract. In order to recover the debtors, it is probable that legal proceedings will need to be considered.
- We have to date collected \$42,147 of the non-factored debtors since our appointment as Administrators. However this was received into DGWA's USD bank account held with the nab and subsequently was assumed by nab to reduce its exposure.

### 5.1.3. Cash on Hand and Cash at Bank

The Company operated two (2) bank accounts with nab. Shortly following the appointment of agents to the collection of the factored debtors, the nab assumed control of the two operating accounts and applied the proceeds (namely \$24,336) of the bank accounts to its exposure. Accordingly, we have not recovered any of the cash at bank proceeds.

As at our appointment on 10 August 2012, we understand that there was cash held in petty cash of \$1,786.

#### 5.1.4. Stock

The Company's stock records revealed stock with a book value of \$244,792 as at 10 August 2012. The stock held by DGWA at our appointment are:

	Book Value \$	ERV \$
Equipment	101,332	50,500
Spares	126,110	64,000
Steel Ties	13,408	6,500
Fuel	3,942	Nil
<b>Total Stock</b>	<b>\$244,792</b>	<b>\$120,000</b>

The Administrators estimate that the stock has a residual value of \$121,000. This is an arbitrary number of approximately 50% reduction in the book value. Once a valuer has been engaged to conduct a valuation of the Stock a more conclusive value may be attributed.

Certain suppliers claim that they retain legal or beneficial ownership of goods supplied to the Company. Various suppliers have lodged Retention of Title claims to goods valued at \$620 as at the time of writing this report. These ROT claims are subject to our further investigation.

#### 5.1.5. Work in Progress

The directors reported Work in Progress totalling \$29,353 as at the date of appointment of Administrators. Our staff have reviewed the status of all Work in Progress which reveals that the asset is simply preparation work for new contracts which are expensed to the profit and loss once the contract commences. Accordingly, there is no realisable benefit for creditors.

Given the limited time available during the course of the Administration, we have been unable to wholly assess the financial circumstances of the major contracts on foot as at our appointment. Notwithstanding the above, should a liquidator be appointed, then a liquidator will be required to assess the major contracts to determine the impact, if any, on the affairs of the Company and whether there would be any sort of return.

#### 5.1.6. Plant and Equipment

Almost all of the plant and equipment owned by DGWA was subject to asset finance arrangements with third party equipment financiers, with no equity in the financed equipment (that is, the amount to the financier exceeded the auction value of the equipment). We engaged independent auctioneers and valuers to prepare a strategy to realise that equipment. As the majority of that equipment is subject to the security of third party financiers, we have, since the date of our appointment, been liaising with the financiers to determine an appropriate and acceptable realisation strategy, given the lack of funds in the administration.

We have tabled below the book value of the plant and equipment for creditors information:

Asset Description	Book Value \$	ERV \$
Plant and Equipment	31,895,227	
Office Furniture and Equipment	94,954	to be determined
Other	86,522	
<b>Total</b>	<b>\$32,076,702</b>	to be determined

We note the following:

- The above plant and equipment figure includes motor vehicles
- 65% of the plant and equipment is financed through various hire purchase arrangements. There is no commercial value for the benefit of creditors.
- The 'other' assets relate to the small value asset pool of DGWA.
- We are uncertain of the current estimate realisable values of the plant and equipment given the status of the valuation report.

### 5.1.7. Deposits and Investments

The following table summarises the Company's deposits and investments.

	Book Value \$	ERV \$
Security Deposit - Air Liquide	2,000	Nil
Talbot Olivier	22,000	Nil
JP Nelson	190,000	Nil
Bond - Landsdale Property	9,750	Nil
<b>Total Deposits</b>	<b>\$ 223,750</b>	<b>\$0</b>

We make the following comments in relation to the above:

- The deposits in respect to Air Liquide, Talbot Olivier and the Bond for the Landsdale property are not recoverable as all respective parties have a claim of set-off for the outstanding debt in their position as an unsecured creditor of the Company.
- The JP Nelson amount relates to the RPO Funding that is discussed at Section 6. This amount is also not recoverable.

### 5.1.8. Other Assets

The Statement disclosed other assets, (not included in other categories), as follows:

- Prepayments of \$588,842 are summarised as follows:

	Book Value \$	ERV \$
Insurance Premiums	92,004	Nil
Prepaid Computer Maintenance Expenses	300,068	Nil
Payroll Tax	34,728	Nil
Manitowoc	4,939	Nil
DGV	3,320	Nil
Workers Compensation Refund	41,640	41,640
Cigar Divan	614	Nil
Court Fines	90,000	Nil
<b>Total Deposits</b>	<b>\$588,842</b>	<b>\$41,640</b>

- Unexpired borrowing costs of \$10,787.
- Current tax asset of \$1,692

Of the above amounts, only the workers compensation refund has a residual benefit for creditors. All other amounts are accruals that do not result in a realisable value for the Company.

### 5.1.9. Assets Subject to Specific Charges

Our review of the Company's records reveals that the following assets are subject to specific charges:

	Payout Value \$ '000	Book Value \$ '000	Directors ERV \$ '000	Market Value for Existing Use \$ '000	Auction Value \$ '000
Factored debtors (nab)	1,416	1,905	nva	1,905	na
Plant & Equipment (DLL)	10,729		nva		
Plant & Equipment (ME Bank)	1,830		nva		
Plant & Equipment (BOQ)	1,234	32,963	nva	unknown	unknown
Plant & Equipment (Westpac)	802		nva		
Plant & Equipment (Other)	3,518		nva		
<b>Total</b>	<b>\$19,529</b>	<b>\$34,868</b>	<b>-</b>	<b>\$1,905</b>	<b>unknown</b>

We advise that we have been meeting with the financiers on regular occasions to ascertain their views on sale of the encumbered plant and equipment. Our meeting on 4 September 2012 provided a number of options for the financiers to consider, amongst them:

- The Administrators notify the financiers that they do not intend on collecting the encumbered property and that they should collect their stock from the relevant construction site.
- Subject to the authority from the financiers, the Administrators may deal with the assets to find suitable parties who may:
  - Be interested in assigning the HP arrangement to them; or
  - Acquire the equipment from DGWA, with any surplus proceeds available to creditors.

We advise that we have received a small number of offers to date for the acquisition of the HP assets, however these are confidential between the Financiers' and Administrators. Creditors should be aware that the Administrators may only deal with these assets with the authority from the Financiers.

At this stage of the administration, it is difficult to quantify whether there would be any surplus assets available for the benefit of unsecured creditors.

### 5.1.10. Contingent Assets

We are unaware of any contingent assets of the Company.

### 5.1.11. Employee Claims

We have examined the Company's employee records and estimate the priority debts owed to employees as follows:

Employee Entitlements	Total Employee Entitlements \$	Non Priority Excluded Amount \$	Net Priority Entitlements \$
Wages and Expenses	86,880	2,326	84,554
Superannuation (excluded from GEERS funding)	81,197	3,879	77,318
Sick Leave (excluded from GEERS funding)	137,778	-	137,778
Annual Leave	392,536	35,057	357,478
Long Service Leave	135,030	76,444	58,586

Employee Entitlements	Total Employee Entitlements	Non Priority Excluded Amount	Net Priority Entitlements
	\$	\$	\$
Rostered Days Office (excluded from GEERS funding)	143,540	-	143,540
Allowances (excluded from GEERS funding)	88,239	-	88,239
Redundancy	25,802	-	25,802
Pay in Lieu of Notice	119,094	-	119,094
<b>Total</b>	<b>1,210,095</b>	<b>117,707</b>	<b>1,092,389</b>

Employee claims are afforded priority of repayment pursuant to Section 556 of the Act.

The Act provides that 'Excluded Employees', which includes company directors and their spouses, are each restricted to a total maximum priority claim of \$2,000 for unpaid wages and \$1,500 for annual leave entitlements.

Amounts owed to Excluded Employees that exceed the statutory cap for wages and superannuation and annual leave/long service leave, and all payments owing in respect of retrenchment, being redundancy and payment in lieu of notice, rank for dividend with all other unsecured creditors.

When the Company transitions into liquidation, employees may apply to the Federal Government's GEERS to seek their entitlements to be paid in an orderly fashion, rather than wait until the realisation of assets. We advise that GEERS will only meet wages, annual leave, long service leave, redundancy and payment in lieu of notice. Employees should become familiar with this process and accordingly, we refer you to <http://www.deewr.gov.au>.

#### 5.1.12. Secured Creditors

As detailed as Section 3.1.5 of this report, there are twenty-two (22) secured parties that hold 108 registered security interests on the PPSR. The vast majority of those security interests are guaranteed by the directors and related entities.

We have summarised in the table below, the secured creditors that hold an APAAP General Security Interest over the assets and undertakings of the Company at our appointment, these are ranked in accordance with their security:

Ranking	Secured Creditor	Security Interest	Amount
			\$
1	nab	Circulating & Non Circulating	1,415,941
2	DLL	Circulating & Non Circulating	10,729,873
3	ME Bank	Circulating & Non Circulating	1,830,205
<b>Total</b>			<b>\$13,975,020</b>

We make the following comments in relation to the above:

- In accordance with a Deed of Priority, should there be a shortfall owing to nab under the factoring facility, then the nab is entitled to claim a priority to the extent of \$1.5m in front of DLL.
- DLL provide a number of HP arrangements for DGWA. In the event that there is a shortfall in the amount owing to DLL from the sell down of HP assets, then any surplus proceeds will be covered by DLL's circulating security interest. Where there are more than \$1.5m of circulating interest proceeds available, DLL's circulating security interest will entitle them to have the surplus proceeds in excess of \$1.5m be applied to its exposure.

- ME Bank has also provided a number of HP facilities to DGWA. ME Bank's circulating security interest ranks third (3<sup>rd</sup>) in line following the nab and DLL should there be a shortfall in the sell down of ME Bank HP assets.
- For the purposes of the Statement, we have estimated the Secured Creditor balance as nil, as it is captured at Section 5.1.9 above.

In accordance with the provisions of Section 450A(3) of the Act, we notified all secured creditors holding a General Security Interest (APAAP) of the appointment and advised of their right to enforce their security within 10 business days.

We advise that on 13 August 2012, we were notified by PriceWaterhouse Coopers that they had been appointed by nab as agents to collect the outstanding factored debtors. As at the date of this report the current exposure to nab is \$872,931.

#### 5.1.13. Partly Secured Creditors

There are no partly secured creditors.

#### 5.1.14. Ordinary Unsecured Creditors

Accounting for formal proofs of debt received to date and the Company's records, we estimate the Company's liability to unsecured creditors at \$7,602,185.

This figure is subject to the receipt and adjudication of final proofs of debt from creditors.

#### 5.1.15. Contingent Liabilities

At this stage of the administration we are unsure as to whether there will be any contingent liabilities owed by the Company. We are aware that there are some major contracts with customers that provide the customer with rights of set-off in the event the Company is unable to fulfil its obligations. In this regard, there may be a number of debtors that eventually become unsecured creditors.

#### 5.1.16. Related Entities

The amounts owing to related parties that is represented within the unsecured creditor balance is tabled below:

Related Entity	\$
DGV	727,177
CI	1,812,477
JP Nelson	33,249
<b>Total</b>	<b>2,542,903</b>

Our preliminary view is that the Company owes the amounts claimed.

Creditors should be aware the Act allows a creditor to apply to the Court to set aside or modify a resolution authorising the execution of a DOCA if the resolution carries as a consequence of a related entity vote. Similarly, a defeated resolution for the Company to be wound up may be declared carried, if defeated by the vote of a related entity.

### 5.1.17. Omissions from Statement

Save for my previous comments regarding specific disclosures in the Statement, there are no material omissions from the directors' Statement.

## 5.2. Explanation for Current Financial Position

We have not received an explanation from the directors' on the Company's current financial position.

Our preliminary view is that the Company failed because of:

- Highly geared – the vast majority of assets of the Company were financed through HP arrangements, either through a sell down and lease back arrangement, or direct HP arrangements. This caused heavy cash flow constraints with the Company's ability to meet the on-going HP repayments.
- The down turn in the construction industry generally, this resulted in many customers delaying the commencement of future work.
- Lack of adequate working capital to fund the operations.
- The inability to manage the on-going outstanding taxation commitments.
- The major shareholder, JP Nelson, withdrawing its support to continue the business.
- An error in the company forecasting was unveiled in late July 2012 which identified the requirement to secure additional debt payments to be factored, highlighting an imminent cash shortage.

Please note that the above analysis is a preliminary view only, a liquidator would need to conduct further investigations to determine the actual causes of failure.

## 6. Statutory Investigations

### 6.1. Nature and Scope of Review

The Act requires an administrator to carry out preliminary investigations into a Company's business, property, affairs and financial circumstances.

Investigations centre on transactions entered into by a Company that a liquidator might seek to void or otherwise challenge where the Company is wound up. Investigations allow an administrator to advise creditors what funds might become available to a liquidator such that creditors can properly assess whether to accept a DOCA proposal or resolve to wind up the Company.

Funds recovered would be available to the general body of unsecured creditors including secured creditors but only to the extent of any shortfall incurred after realising their security.

A liquidator may recover funds from each type of voidable transaction detailed in this report. A Deed Administrator does not have recourse to these voidable transactions. A liquidator may also recover funds through other avenues, for example, through action seeking compensation for insolvent trading.

An administrator is not obliged to carry out investigations to the same extent as a liquidator. A liquidator may require many months of investigation and conduct public examinations before forming a concluded view on recovery action.

We investigated matters to the extent possible in the time available. The dividend estimate in a liquidation scenario set out in Section 7.2 of this report reflects the outcome of my investigations.

The Administrators' knowledge of the Company's affairs comes principally from the following sources:

- Communications with the Company's major unsecured creditors regarding the nature and amount of the debts owed. Those creditors confirmed that the details disclosed by the Company are substantially correct.
- Communications with the secured creditors regarding the nature and amount of the debt owed. The secured creditor confirmed the information supplied by the Company.
- The directors' draft Statement and a detailed questionnaire concerning the Company's affairs prepared by the directors.
- Discussions with the directors and their advisors.
- Enquiries made with management.
- A search of the ASIC records relating to the Company and any related entities.
- Searches obtained from the PPSR and the each state Land Titles Office.
- An examination of the Company's books and records including its financial statements and management accounts.

## 6.2. The Company's Solvency

### 6.2.1. Overview

Proving company's insolvency is an important element in the recovery of funds by a liquidator through the voiding of certain transactions or through other legal action, such as seeking compensation from directors for insolvent trading.

Establishing insolvency is a complex matter due in part to the complexity of corporate financial transactions and the lack of clear prescriptive legal authority on proof of insolvency. Notwithstanding, there are two primary tests used in determining a company's solvency, at a particular date; namely:

- Balance sheet test;
- Cash flow or commercial test.

The Courts have widely used the cash flow or commercial test in determining a company's solvency at a particular date.

Section 95A of the Act also contains a definition of solvency. That definition reflects the commercial test in stating that a person is solvent if, "*the person is able to pay all the person's debts as and when they become due and payable*".

However, the commercial test is not the sole determinant of solvency. Determining solvency derives from a proper consideration of a company's financial position in its entirety and in the context of commercial reality. Relevant issues include, but are not limited to, the following:

- The degree of illiquidity. A temporary lack of liquidity is not conclusive;

- Regard should be had to:
  - cash resources;
  - monies available through asset realisations, borrowings against the security of assets or equity/capital raising.
- All of the Company's assets might not be relevant when considering solvency. For example, where a company proposes selling assets which are essential to its business operations, the proceeds of those assets should not be taken into account.
- The voluntary and temporary forbearance by creditors not to enforce payment terms; and
- It is not appropriate to base an assessment of whether a company can meet its liabilities as and when they fall due on the prospect that a company might trade profitably in the future.

In summary, it is a company's inability using such resources as are available to it through the use of its assets, or otherwise, to meet its debts as they fall due, which indicates insolvency.

### 6.2.2. Preliminary Determination

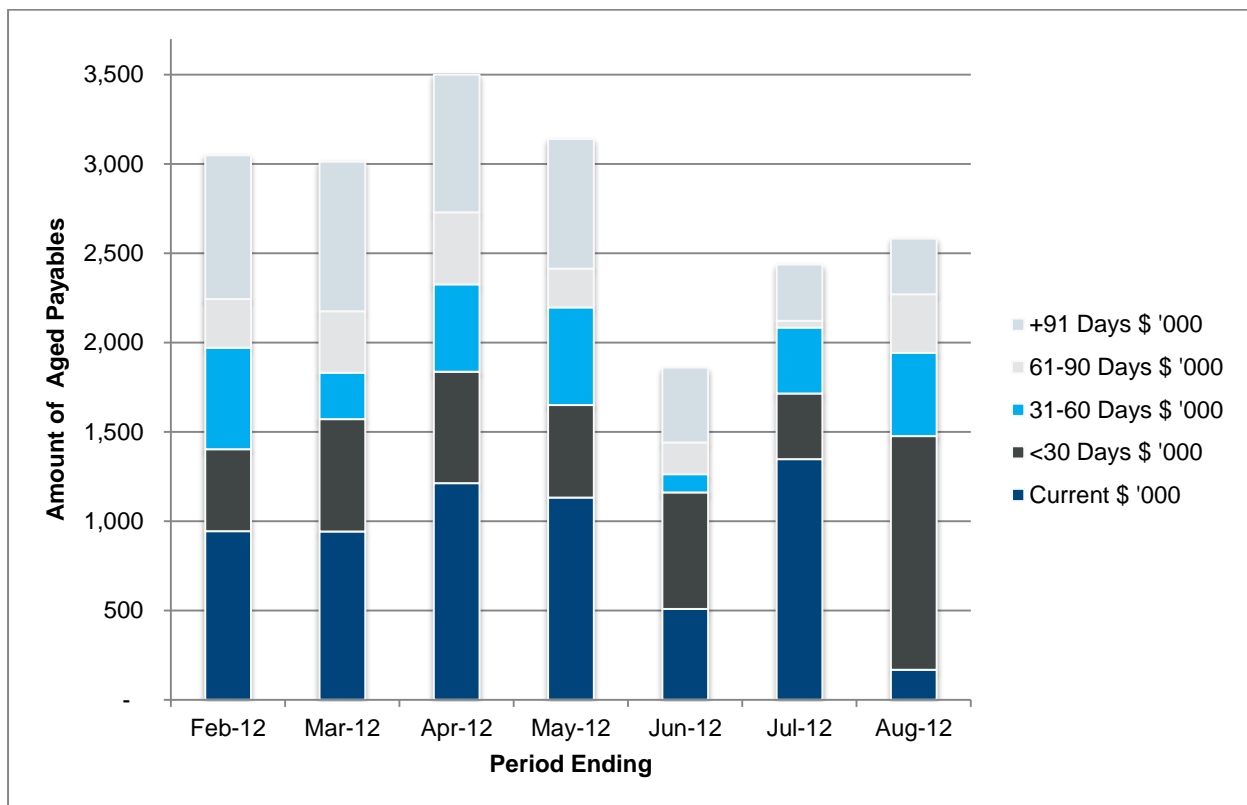
Set out below is a summary of the Administrators' preliminary investigations and their preliminary determination as to the Company's solvency.

#### Aged Payables Review

The table below sets out an analysis of the aged payables over the last 6 months ending at month end and our appointment as Administrators:

	Current	<30 Days	31-60 Days	61-90 Days	+91 Days	Total
	\$ '000	\$ '000	\$ '000	\$ '000	\$ '000	\$ '000
<b>29-Feb-12</b>	944	459	569	272	805	<b>3,049</b>
<b>% of Total</b>	<b>31.0%</b>	<b>15.1%</b>	<b>18.6%</b>	<b>8.9%</b>	<b>26.4%</b>	<b>100.0%</b>
<b>31-Mar-12</b>	942	630	260	344	837	<b>3,013</b>
<b>% of Total</b>	<b>31.2%</b>	<b>20.9%</b>	<b>8.6%</b>	<b>11.4%</b>	<b>27.8%</b>	<b>100.0%</b>
<b>30-Apr-12</b>	1,213	624	489	404	770	<b>3,500</b>
<b>% of Total</b>	<b>34.7%</b>	<b>17.8%</b>	<b>14.0%</b>	<b>11.6%</b>	<b>22.0%</b>	<b>100.0%</b>
<b>31-May-12</b>	1,131	520	545	218	726	<b>3,140</b>
<b>% of Total</b>	<b>36.0%</b>	<b>16.5%</b>	<b>17.4%</b>	<b>6.9%</b>	<b>23.1%</b>	<b>100.0%</b>
<b>30-Jun-12</b>	508	654	101	178	419	<b>1,860</b>
<b>% of Total</b>	<b>27.3%</b>	<b>35.2%</b>	<b>5.4%</b>	<b>9.6%</b>	<b>22.5%</b>	<b>100.0%</b>
<b>31-Jul-12</b>	1,348	368	369	38	316	<b>2,438</b>
<b>% of Total</b>	<b>55.3%</b>	<b>15.1%</b>	<b>15.1%</b>	<b>1.6%</b>	<b>12.9%</b>	<b>100.0%</b>
<b>10-Aug-12</b>	168	1,308	466	328	313	<b>2,583</b>
<b>% of Total</b>	<b>6.5%</b>	<b>50.6%</b>	<b>18.0%</b>	<b>12.7%</b>	<b>12.1%</b>	<b>100.0%</b>

The above may also be depicted in the following graph:



We comment on the above analysis as follows:

- The above creditor analysis includes amounts owing to DGV, CI and JP Nelson in the amounts of \$77,178, \$330, \$33,249 respectively owing at 10 August 2012.
- There was a substantial increase (circa 35%) in the aged payables within thirty (30) days overdue from 31 July to 10 August 2012.
- The aged creditor balance beyond ninety (90) days decreases circa 14.3% over the analysed period.
- From 31 May to 30 June 2012, the creditor balance decreases \$1.2 million with the following changes in balances occurring:
  - The ATO - \$435k
  - DGV - \$285k
  - JP Nelson - \$181k
  - Other trade creditors - \$299k
- Where the funds provided by JP Nelson/ACPS (refer below) resulted in a decrease in the creditor balance at June 2012, as there were no other asset sales and funding provided by JP Nelson after this date, DGWA continue to incur credit without been able to meet those liabilities. Accordingly, the creditor balance increased circa \$720k over the June to August 2012 period.

Further, our review indicates that creditors took the following action against the Company:

Creditor	Date of Action	Type of Action (formal/informal/email/verbal)	Amount Outstanding (\$)
ATO	15 April 2011	Formal payment arrangement	1,501,925
ATO	17 September 2011	Formal payment arrangement	1,426,949
Office of State Revenue – Western Australia	11 April 2012	Formal payment arrangement	240,883
Hilti (Aust.) Pty Ltd	14 August 2012	Account on hold notice	4,177

We also understand that there were a number of informal payment plans on foot with trade creditors, however given the limited time available to investigate the affairs, we were unable to determine when those arrangements were entered.

### Finance Commitments Review

From our preliminary investigations in to the affairs of the Company, all financial obligations (i.e. HP arrangements) of DGWA were maintained in accordance with their respective facilities. We are unaware of DGWA defaulting on any secured liability. A liquidator would be required to investigate this indicator in further detail upon his appointment.

### Profitability, Cashflow and Working Capital

The historical profitability of the Company has been detailed in Section 4 above in further detail and now tabled at a high level below:

Six (6) Months Ending	31 Dec 2010 \$ '000	30 Jun 2011 \$ '000	31 Dec 2011 \$ '000	30 Jun 2012 \$ '000
Income	13,691	16,238	15,973	12,581
Expenses	(13,849)	(15,709)	(15,339)	(12,486)
<b>Profit/Loss before income tax</b>	<b>(158)</b>	<b>529</b>	<b>634</b>	<b>95</b>

Month Ending	Jan 2012 \$ '000	Feb 2012 \$ '000	Mar 2012 \$ '000	Apr 2012 \$ '000	May 2012 \$ '000	Jun 2012 \$ '000
Income	1,726	2,323	2,142	1,677	1,677	1,496
Expenses	(1,811)	(2,387)	(2,009)	(1,624)	(1,753)	(1,364)
<b>Profit/Loss before income tax</b>	<b>(85)</b>	<b>(64)</b>	<b>133</b>	<b>53</b>	<b>(76)</b>	<b>132</b>

Whilst not recorded above, the Administrators are aware the Company traded at a loss at the year ended 30 June 2010 and again at the six (6) months ended 31 December 2010. The Company was able to return to profits at 30 June 2011 and 31 December 2011, however there was a big fall in profit for the six (6) month period ending 30 June 2012. The table also shows revenue falling over the respective periods.

The above analysis is inconclusive and a liquidator would be required to conduct further investigations.

The working capital position of the Company has been summarised in the table below:

As At	30 Jun 2010 \$ '000	31 Dec 2010 \$ '000	30 Jun 2011 \$ '000	31 Dec 2011 \$ '000	30 Jun 2012 \$ '000
Current Assets	3,906	4,756	3,854	3,707	4,123
Current Liabilities	(16,496)	(17,355)	(17,968)	(20,304)	(17,167)
<b>Working Capital</b>	<b>(12,591)</b>	<b>(12,599)</b>	<b>(14,114)</b>	<b>(16,597)</b>	<b>(13,044)</b>

The Company's current liabilities, have in the above analysis, always exceeded the Company's Current Assets. This means that the Company does not have sufficient short term assets to meet its outstanding current liabilities.

The significantly high current liabilities relates predominately to the high volume of HP arrangements on foot at any one time.

### Net Assets

The Net Asset position of the Company is somewhat different to the working capital position as this analysis sets off the net book value of the plant with the HP liability. A summary of the Net Asset position of the Company since 30 June 2010 is set out below:

	30 Jun 2010	31 Dec 2010	30 Jun 2011	31 Dec 2011	30 Jun 2012
	\$ '000	\$ '000	\$ '000	\$ '000	\$ '000
Total Assets	46,281	45,123	44,072	42,102	37,620
Total Liabilities	(40,499)	(37,247)	(35,557)	(32,611)	(28,537)
<b>Net Assets</b>	<b>5,782</b>	<b>7,875</b>	<b>8,514</b>	<b>9,491</b>	<b>9,083</b>

The Company maintain a positive Net Asset position over the analysed period, meaning that its assets (at net book value) were sufficient to meet its total liabilities. A liquidator would be required to conduct further investigations to determine whether the assets identified in the table above are actually realisable in a winding up scenario and are sufficient to meet the outstanding liabilities. This may change the net asset position of the Company of the periods above.

### Payment of statutory commitments including Superannuation Guarantee Charge

As previously mentioned above, the Company had formal payment arrangements with the ATO for unpaid PAYG, GST and FBT. The table below summarises the outstanding statutory commitment amounts as at 30 June 2012:

Statutory Liabilities	Outstanding as at 30 June 2012
Balance of Payment Plan (GST and PAYG)	(648,841)
PAYG	(410,194)
FBT	(27,278)
GST	(632,448)
Withholding Tax	(32,015)
<b>Total</b>	<b>(1,669,669)</b>

We also note that a Company of DGWA's size is defined as a "Large Proprietary Company" by Section 45A(3) of the Act which requires it to report GST liabilities monthly rather than quarterly and the volume of its payroll expenditure requires it to report and remit PAYG weekly to the ATO.

Generally, where a company has entered into payment arrangements with specific creditors this is usually a key indicator of insolvency. However, the payment plans that were entered into with the ATO on 15 April 2011 and later 17 September 2011 were adhered to with a total of \$1.356 million contributed by DGWA during the period of October 2011 to June 2012 in accordance with the arrangement. It was not until November 2011 that DGWA was no longer complying with the ATO's requirement to remit current PAYG after the payment of wages weekly and began remitting the amounts some two (2) months late. In this regard, the Administrators' have formed the view that the key indicator of the Company's solvency position in relation to the statutory liabilities was in November 2011.

We also note that the superannuation was paid up to date with the exception of July 2012 and to 10 August 2012, which did not fall due until 31 October 2012.

A liquidator would be required to conduct further investigations into the outstanding statutory commitments.

### Sources and Applications of Funds

Our investigations to date have revealed that the Company was negotiating with JP Nelson in November / December 2011 in relation to providing additional working capital to assist with business operations. JP Nelson was reluctant to provide any additional capital without security. Accordingly, it was agreed in May 2012 between the Company and JPN Nelson that they would sell certain assets (as outlined below) to JP Nelson and then leaseback the equipment at \$95,000 per month.

Enquiries with management have also revealed that JP Nelson chose to acquire the plant from an unrelated third party (being ACPS) as this would minimise disclosure requirements of acquiring assets from a 'related' party as a result of compliance with Singaporean authorities. Accordingly, it was decided that the Company would sell the plant to ACPS, who would on sell the plant to JP Nelson for the same amount. Thereafter, JP Nelson leased back the various plant and equipment in the amount of \$3.402 million to DGWA. Whilst the arrangement was not formally documented, our investigations have revealed that the 'agreed in principle' arrangement was as follows:

	Amount (\$)
4x Potain Tower Cranes (ranging in specs)	1,100,000
5x Alimak Construction Hoist (ranging in specs)	1,000,000
1x Comedil Tower Crane	800,000
<b>Subtotal</b>	<b>2,900,000</b>
Add: GST	290,000
<b>Total Sale to ACPS</b>	<b>\$3,190,000</b>
<b>Lease Back Arrangement (JP Nelson)</b>	
Repayment of Residual	2,900,000
JPN Margin	290,000
Interest on residual set at 5% pa. (say for 2 ½ years)	nva
<b>Total Lease Back Arrangement</b>	<b>\$3,190,000</b>
<b>Repayment</b>	
18x \$95,000 per month	1,710,000
12x \$141,000 per month	1,692,000
<b>Total Repayments to JP Nelson</b>	<b>\$3,402,000</b>
<b>Variance (assumed to be the 5% interest component)</b>	<b>\$212,000</b>

Our investigations have also revealed that JP Nelson directed DGWA to allocate \$2.2million of the proceeds towards the outstanding PAYG liabilities. The reason behind this was that the outstanding PAYG liabilities at the time were incurred when a representative of JP Nelson (Mr Lim) was an appointed director of DGWA. Thereby reducing the PAYG liability of DGWA would mean that the JP Nelson representative would reduce his personal obligation if the event the ATO issued director penalty notices. A summary of these transactions are tabled below:

Date	Payee	Type of Payment	Amount	Running Balance of RPO Funding	Proceeds Applied		
					DGWA - PAYG	DGV - PAYG	Creditors
17/05/2012	JP Nelson	Advance	500,000	(81,919)	502,404	79,515	-
6/06/2012	ACPS	1st Instalment on sale of plant and equipment	1,050,000	517,833	67,793	69,455	313,000
15/06/2012				390,608	63,503	63,722	-
19/06/2012	ACPS	2nd Instalment on sale of plant and equipment	1,150,000	1,540,608	-	-	-
20/06/2012				943,223	293,582	303,803	-
21/06/2012				781,023	162,200	-	-
22/06/2012				732,202	48,821	-	-
29/06/2012	JP Nelson	Advance repaid to JP Nelson	(500,000)	(30,025)	-	262,227	-
<b>Total</b>					<b>1,138,303</b>	<b>778,722</b>	<b>313,000</b>

Our preliminary opinion in respect to the sale of the above assets to ACPS/JP Nelson ultimately delayed the inevitable external administration of the Company. We expect a liquidator to conduct further investigations on this indicator.

### Summary of Solvency

Solvency Indicator	Likely date Insolvent
Aged Payables Review	Inconclusive
Creditor Actions	April 2011
Finance Commitment Review	Unascertained
Profitability	Inconclusive
Working Capital	Prior to 30 June 2010
Net Asset Position	Unascertained
Payment of Statutory Liabilities	
Payment Plan with the ATO	15 April 2011
PAYG Outstanding after payment plan	November 2011
GST Liabilities	July 2012
Superannuation	n/a
Sources and Applications of Funds	June 2012

Based on the above analysis, it is my preliminary view that the Company may be insolvent from as early as November 2011, the time at which the Company commenced the postponement of its PAYG obligations that fell outside the formal payment arrangement dated 17 September 2011. However a liquidator would be required to conduct further investigations, and possibly conduct public examinations of relevant parties, to ultimately determine whether or not the Company became insolvent at that time or earlier.

### 6.2.3. Presumption of Insolvency – Inadequate Books and Records

Failure to keep or retain adequate books and records in accordance with Section 286 of the Act provides a rebuttable presumption of insolvency under Section 588E of the Act. A liquidator can rely on the presumption of insolvency in litigation including:

- Compensation claims arising from insolvent trading; and,
- Recovery of voidable transactions from related entities.

The presumption cannot be relied upon in the recovery of unfair preference from an unrelated entity.

My preliminary view is that the Company maintained adequate books and records in accordance with Section 286. Accordingly, the presumption of insolvency under Section 588E would not be available.

## 6.3. Voidable Transactions

### 6.3.1. Unfair Preferences

A payment to a creditor is preferential if it is made at a time when the Company is insolvent and it results in the recipient receiving a greater return than they would receive if the payment were set aside and the creditor lodged a claim in the liquidation.

Should a liquidator establish any such unfair preference payments, these amounts may be recouped thereby increasing the funds available to ordinary unsecured creditors. If a creditor disgorges an unfair preference payment to a liquidator, the creditor is entitled to prove for dividend. Therefore, whilst recovering an unfair preference increases the pool of funds available to creditors, it also increases total creditor claims.

Our preliminary investigations into the Company's affairs reveal the following payments may be voidable as unfair preferences:

Creditor Group	For	Amount
Australian Taxation Office	Payment Arrangement	888,000
Australian Taxation Office	BAS & PAYG	3,104,258
Office of State Revenue – WA	Payment Arrangement	262,677
JP Nelson	Offset of trade creditor and loan	1,490,000
Trade Creditors	Informal payment arrangements	1,459,643
<b>Total Potential Unfair Preferences</b>		<b>\$7,204,578</b>

Factors which indicate these payments might be unfair preferences are:

- Payments in response to winding up applications, statutory demands and other pressure from the creditor;
- Repayment plans with the creditor;
- Significant 'round' payments made to the creditor.

The payments would be protected if the creditor from whom the liquidator seeks to recover;

- Became a party to the transaction in good faith; and
- At the time when they became a party:
  - They had no reasonable grounds for suspecting that the Company was insolvent at that time, or would become insolvent; and
  - A reasonable person in that person's circumstances would have had no such grounds for so suspecting; and,
- Provided valuable consideration under the transaction or has changed their position in reliance on the transaction.

A creditor seeking protection must prove all three elements.

Further, where a creditor received a series of payments as part of a so called 'running account' and their overall indebtedness increases over the same period, the creditor is taken not to have received an unfair preference. This is called 'the running account defence'.

A liquidator would likely seek legal advice on the strength of a claim including the applicability of these defences.

It is likely any recovery action commenced by a liquidator would be defended. Therefore, costs are a major consideration.

For the purposes of this report, we estimate potential recoveries from unfair preferences at between \$7,200,000 and Nil. Please note this is an estimate only. There is no guarantee that a liquidator will recover funds or that costs ultimately dissipate the benefit to creditors.

### **6.3.2. Uncommercial Transactions**

A transaction is an uncommercial transaction if it is made at a time when the Company is insolvent and it may be expected that a reasonable person in the Company's circumstances would not have entered into the transaction having regard to:

- The benefits or detriment to the company of entering into the transaction;
- The prospective benefits to other parties to the transaction upon entering into it.

Should a liquidator establish any such uncommercial transactions, those transactions may be set aside thereby increasing the funds available to ordinary unsecured creditors.

We consider that the sale of assets mentioned at Section 6.2.2 of this report require further investigations by a liquidator. This transaction may be an uncommercial transaction as ACPS had only contributed \$2.2 million toward the total invoiced amount of \$3.19 million, therefore not providing full consideration for the plant. Our enquiries with management confirm that no such valuation was conducted at the time and the value of the invoice was based on the written down book value. We understand that the difference had been agreed between DGWA and JP Nelson/ACPS that \$990,000 of JP Nelson's trade creditor balance and loan account were applied to the sale.

For the purposes of this report, we estimate potential recoveries from uncommercial transactions at between \$990,000 and or Nil. Please note this is an estimate only. There is no guarantee that a liquidator will recover funds or that costs ultimately dissipate the benefit to creditors.

### **6.3.3. Unfair Loans**

Section 588FD provides that a loan to a company is unfair if the interest and charges are extortionate. In considering whether interest and charges are extortionate, regard must be had to:

- Risk the lender is exposed to;
- Value of security;
- Term;
- Repayment schedule; and,
- Amount of loan.

Based on our investigations to date, the Company was not a party to any unfair loans.

### **6.3.4. Unreasonable Director-related Transactions**

Pursuant to Section 588FDA of the Act, a transaction is an unreasonable director-related transaction of the company if:

- The transaction is a payment, transfer of property, issue of securities or incurring of an obligation by the company; and,
- Made by the director or close associate of the director;
- That a reasonable person in the company's circumstances would not have entered into having regard to the benefit or detriment to the company or other parties.

Should a liquidator establish any such transactions, they may be set aside thereby increasing the funds available to unsecured creditors.

Our preliminary investigations do not reveal any unreasonable director related transactions.

### **6.3.5. Obstruction of Creditors' Rights**

Section 588FE of the Act provides for the voiding of transactions designed to defeat, delay or interfere with creditors rights.

Our investigations do not disclose any such transactions

## 6.4. Insolvent Trading

### 6.4.1. Directors' Liability

Section 588G of the Act imposes a positive duty upon company directors to prevent insolvent trading. If a director is found guilty of an offence in contravening Section 588G, the Court may order him or her to pay compensation to the company equal to the amount of loss or damage suffered by its creditors.

The Court may also impose upon the directors' one of two types of civil penalty orders. The first can include a fine not exceeding \$200,000 or an order prohibiting directors from participating in the management of a company. The second, where there is criminal intent and a conviction, a director could also be imprisoned for up to five years or fined as well.

ASIC usually applies for civil penalty orders while applications for compensation payable to the company are usually made by a liquidator, or in specified circumstances, a creditor.

The substantive elements of Section 588G are:

- A person must be a director of a company at a time when the company incurs a debt. This is relevant for the JP Nelson representative, Mr Lim;
- The company must be insolvent at that time or becomes insolvent by incurring the debt;
- The director must have reasonable grounds for suspecting that the company is insolvent or would so become insolvent by incurring the debt;

Summarised below are the defences contained in Section 588H:

- The directors had reasonable grounds at the time the debt was incurred to expect the company to be solvent and would remain solvent even after the debt was incurred;
- The directors relied on another person to provide information about whether or not the company was solvent;
- The directors were ill or for some other good reason did not take part in the management of the company;
- The directors took reasonable steps to prevent the incurring of the debt.

A liquidator must form an opinion as to the date the company became insolvent and determine the debts incurred from that date; thereby quantifying the loss to the company.

Based on our analysis at Section 6.2 of this report, we indicated it was probable that the Company was insolvent from at least as early as November 2011, and that the directors would have had reasonable grounds for suspecting so.

In their defence, the directors could argue:

- No substantial debts were incurred beyond June 2012;
- They sought advice on July 2012, which led to the appointment of administrators; and
- A reasonable expectation that the major shareholder would continue to provide funding, and assist with the on-going working capital of the business, until at least 6 August 2012, the date at which the JP Nelson representative resigned as a director.

Again, a liquidator would likely seek legal advice on these issues and conduct more investigations possibly including a public examination.

The costs of proceeding with an insolvent trading action must be considered as does the personal financial capacity of the directors to pay a judgement obtained against them. The latter issue is addressed in Section 6.8 and indicates the directors have no substantial assets.

Presently, it is our view that an insolvent trading action would not be commercially viable in that the likely realisations in a liquidation would be nil.

#### **6.4.2. Holding Company Liability**

Section 588V of the Act provides that a holding company may be held liable for the debts of a subsidiary in certain circumstances. The substantive elements of Section 588V are:

- The corporation is the holding company at the time when the company incurs a debt;
- The subsidiary is insolvent at that time, or becomes insolvent by incurring that debt;
- At that time, there are reasonable grounds for suspecting that the subsidiary is insolvent;
- The holding company, or one or more of its directors, is aware at that time there are grounds for suspecting the subsidiary is insolvent; or
- Having regard to the nature and extent of the holding company's control of the subsidiary's affairs, then it would be reasonable to expect that:
  - The holding company would be aware of the subsidiary's financial position;
  - Or at least that the holding company's directors would also be aware.

The defences the holding company may rely upon are set out in Section 588X and are essentially the same as those a director may rely upon under Section 588H.

JP Nelson was the holding company of the Company from 9 September 2010 and at the appropriate times.

Furthermore, in my view, the nature and extent of JP Nelson's control over the Company's operations was such that it would be reasonable to expect JP Nelson and its directors had knowledge of the Company's financial position.

We stated at Section 6.2 that the Company was probably insolvent as early as November 2011.

On our preliminary analysis it does not appear that JP Nelson could be held liable under this section for the debts incurred by the Company from that date.

However, the Courts have held that, as a defence to such proceedings, a holding company can off-set any claim by a liquidator under Section 588W against monies owing under an intercompany loan account. JP Nelson may also argue the following in its defence:

- No substantial debts were incurred beyond June 2012;
- They sought advice in conjunction with the directors on July 2012, which led to the appointment of administrators;
- JP Nelson had a reasonable expectation that additional working capital provided in June 2012 was sufficient to keep the Company's affairs going.
- It was not accurately informed of the financial position of the Company.

Creditors should be aware the JP Nelson is a foreign entity. The costs of pursuing it to judgement here in Australia, and then enforcing that judgement in an overseas jurisdiction, would be prohibitively expensive.

Again, a liquidator would likely seek legal advice on these issues and consider the commerciality of proceeding with recovery action.

At this stage of our preliminary investigations, we are unsure of the monetary value of pursuing JP Nelson pursuant to Section 588V.

## **6.5. Director Duties**

Based on preliminary investigations, we have not identified any breaches by the directors of their statutory or fiduciary duties, other than the potential claim for insolvent trading.

## **6.6. Other Matters Arising from Investigations**

### **6.6.1. Avoidance of Employee Entitlements**

Provisions contained in Part 5.8A of the Act commenced operation on 30 June 2000 and aim to protect the entitlements of a company's employees from agreements that deliberately defeat the recovery of those entitlements upon insolvency.

Under Section 596AB(1) of the Act, it is an offence for a person to enter into a transaction or relevant agreement with the intention of, or with intentions that include:

- Preventing recovery of employee entitlements; or
- Significantly reducing the amount of employee entitlements recoverable.

The offence created in Part 5.8A is not limited to the company's, directors, officers or employees. The section is applicable to any individual regardless of their relationship to the company or employees.

If a breach is proven, Part 5.8A provides for the imposition of both criminal and civil penalties. Under Section 596AC(1), a civil penalty, in the form of compensation, is available to employees where:

- Section 596AB(1) is contravened;
- The company is being wound up; and,
- Employees suffered loss or damage.

It should be noted the company need not have been insolvent at the time.

A liquidator may take action to recover compensation as a debt due to the company. Employees would have priority to the compensation under Section 556 of the Act.

While the liquidator has priority standing to take the action for any contravention, an employee may sue directly for compensation in certain circumstances pursuant to Section 596AF(1) of the Act.

Based on our investigations to date, there has been no contravention of Part 5.8A by any person.

### **6.6.2. Debts Incurred by Company as Trustee**

Pursuant to Section 197 of the Act, a director of a company, when it incurs a liability while acting or purporting to act as trustee, is liable to discharge the liability if the company:

- (a) Has not, and cannot, discharge the liability or that part of it; and,
- (b) Is not entitled to be fully indemnified against the liability out of trust assets.

This is so even if the trust does not have enough assets to indemnify the trustee. The person is liable both individually and jointly with the company and anyone else who is liable under the section.

Our preliminary investigations have revealed that the Company was not a trustee of any trusts.

### **6.6.3. Falsification of Books**

Pursuant to Section 1307 of the Act, it is an offence for a person to engage in conduct that results in the concealment, destruction, mutilation or falsification of any securities of or belonging to the company or any books effecting or relating to affairs of the company.

If a breach is proven, Part 9.4 of the Act provides for criminal penalties only. Therefore, any breaches of Section 1307 will not result in recovery of funds by a liquidator.

Our preliminary investigations do not reveal any evidence of falsification of books.

### **6.6.4. False or Misleading Statements**

Pursuant to Section 1308 of the Act, a company must not advertise or publish a misleading statement regarding the amount of its capital. It is an offence for a person to make or authorise a statement that, to the person's knowledge, is false or misleading in a material particular.

If a breach is proven, Part 9.4 of the Act provides for criminal penalties only. Therefore, any breaches of Section 1308 will not result in recovery of funds by a liquidator.

Our preliminary investigations do not reveal any evidence of any false or misleading statements.

### **6.6.5. False Information**

Pursuant to Section 1309 of the Act, it is an offence for an officer or employee to make available or give information to a director, auditor, member, debenture holder, or trustee for debenture holders of the company that is to the knowledge of the officer or employee:

- (a) False or misleading in a particular manner; or,
- (b) Has omitted from it a matter the omission of which renders the information misleading in a material respect.

If a breach is proven, Part 9.4 of the Act provides for criminal penalties only. Therefore, any breaches of Section 1309 of the Act will not result in any recovery by a liquidator.

Our preliminary investigations do not reveal any evidence of any false information.

## 6.7. Summary of Potential Liquidator's Claims

Set out below is a summary of the potential recoveries by a liquidator in the event the Company is wound up:

Potential Recovery Item	High (\$)	Low (\$)
Unfair Preferences	7,200,000	Nil
Uncommercial Transactions	990,000	Nil
Unfair Loans	-	-
Unreasonable Director Related Transactions	-	-
Transactions Undertaken to Obstruct creditors' Creditors' Rights	-	-
Compensation from Director for Insolvent Trading	to be determined	
Breaches of Directors Duties	-	-
Avoidance of Employee Entitlements	-	-
Debts Incurred by Company as Trustee	-	-
Holding Company Liability	to be determined	
<b>Total</b>	<b>\$8,190,000</b>	<b>Nil</b>

## 6.8. Directors' Ability to Pay a Liquidator's Claims

We advise that we wrote to the current directors on 27 August 2012 requesting information on their personal asset and liability position by 31 August 2012. As at the date of this report we have not yet received that information.

However, we have conducted some limited searches that shows that the directors own real property in Western Australia (however there may be subject to registered mortgages). We are still awaiting results of the motor vehicle searches.

The directors do hold a Management Liability policy which includes a directors' and officers' insurance policy which would respond to any claims brought by a liquidator. However, we note that this policy does not cover any insolvent trading claims.

Should we be provided with a copy of their personal asset and liability position before the second creditors meeting we will disclose that information then.

We also advise that we have not requested an asset and liability position of Mr Lim (the JP Nelson representative) to ascertain whether he has the ability to meet an insolvent trading claim.

## 7. Creditors' Options, Dividend Estimates & Cost Estimates

Pursuant to Section 439A(4)(b) of the Act, the Administrators' are required to provide creditors with a statement setting out their opinion on whether it is in the creditors' interests for the:

- Administration to end;
- Company to be wound up; or,
- Company to execute a DOCA.

There is no proposal for a DOCA. Accordingly, creditors have the options of resolving that the administration end or resolving that the Company be wound up.

In forming our opinion, we considered an estimate of the dividend creditors might expect, and the likely costs, under each option.

## **7.1. Administration to End**

Creditors may resolve that the administration should end if it appears the Company is solvent or, for some other reason, control of the Company should revert to its directors.

Based on my preliminary investigations and analysis of the Company's financial information, the Company is insolvent. There appears no valid commercial reason why control of the Company should revert to its directors.

If the administration were to end, there is no mechanism controlling an orderly realisation of assets and distribution to creditors. We are unable to say what the Company ultimately pay creditors or what costs it might incur.

Therefore, our opinion is that it is not in the creditors' interest for the administration to end.

## 7.2. Winding up of Company

Based upon the information in this report, where the Company is wound up, we estimate a dividend to creditors as follows:

Estimated Liquidation Dividend	Ref	High (\$) '000	Low (\$) '000
<b>Non Circulating Assets</b>			
Plant & Equipment (encumbered and unencumbered)	i.	Commercially sensitive	
Vehicles (encumbered and unencumbered)	i.	Commercially sensitive	
Less Realisation Costs	ii.	unknown	unknown
<b>Net Realisations from Non Circulating Assets</b>		<b>unknown</b>	<b>unknown</b>
<b>Less HP Financiers' Non Circulating Claim</b>		<b>(18,113)</b>	<b>(18,113)</b>
<b>Surplus/(Deficiency) after HP Financiers' Non Circulating Claim</b>		<b>unknown</b>	<b>unknown</b>
<b>Non Circulating Factored Debtor Assets</b>			
Factored Debtors		1,905	1,514
Less: Realisation Costs		nil	unknown
<b>Net Realisations from Non Circulating Factored Debtor Assets</b>		<b>1,905</b>	<b>1,514</b>
<b>Less Debtor Factored Financier Non Circulating Claim</b>		<b>(1,416)</b>	<b>(1,416)</b>
<b>Surplus/(Deficiency) after Debtor Factored Financier Non Circulating Claim</b>		<b>489</b>	<b>98</b>
<b>Circulating Charge Assets</b>			
Cash		2	nil
Non Factored Debtors		156	96
Stock	iii.	241	120
Less: Realisation Costs	ii.	unknown	unknown
<b>Net Realisations from Circulating Charge Assets</b>		<b>398</b>	<b>217</b>
<b>Less Priority Claims</b>			
Administrators' Fees and Disbursements to 31 August 2012	iv.	(170)	(170)
Estimated Administrators' Fees and Disbursements 1 Sep 2012 to 2 <sup>nd</sup> Crs Meeting	iv.	(50)	(75)
Estimated Liquidators' Fees and Disbursements to Conclusion	iv.	(250)	(350)
Employee Entitlements	v.		
• Wages/Superannuation		(162)	(162)
• Annual Leave		(357)	(357)
• Long Service Leave		(59)	(59)
• Redundancy		(26)	(26)
• Pay in Lieu of Notice		(119)	(119)
• Sick Leave / Rostered Days Off / Allowances (excludes GEERS funding)		(369)	(369)
<b>Total Priority Claims</b>		<b>(1,562)</b>	<b>(1,662)</b>
<b>Net Funds Available to Secured Creditor After Priority Claims</b>		<b>(675)</b>	<b>(1,347)</b>
<b>Less Secured Creditor's Claim</b>	vi.	<b>(12,560)</b>	<b>(12,560)</b>
<b>Total Funds Available after Priority Claims &amp; Secured Creditor's Claim</b>		<b>nil</b>	<b>nil</b>
<b>Total Voidable Transaction &amp; Other Recoveries (as per summary at section 8.9)</b>	vii.	<b>8,190</b>	<b>nil</b>
Less Recovery Costs	viii.	(500)	(350)
<b>Total Funds Available to Ordinary Unsecured Creditors</b>		<b>7,690</b>	<b>(350)</b>
Known Unsecured Creditor Claims		(7,602)	(7,602)
Shortfall to Secured Creditors'	vi.	(12,560)	(12,560)
Shortfall to HP Creditors'		(5,553)	(5,553)
Excluded Employee Entitlements		(118)	(118)
Increase in Creditor Pool as a result of Liquidator Recovery Claims	ix.	(7,690)	nil
<b>Total Unsecured Creditors' Claims</b>		<b>(33,523)</b>	<b>(25,833)</b>
<b>Estimated Surplus/Shortfall to Ordinary Unsecured Creditors</b>		<b>(25,833)</b>	<b>(26,183)</b>
<b>Estimated Return to Ordinary Unsecured Creditors (cents in \$)</b>	x.	<b>22.9c</b>	<b>nil</b>

We make the following comments in relation to the above:

- i. Given our comments at Section 5.1.6 above, we have not commissioned a valuation of the plant, equipment and motor vehicles in the Company's possession. We advise that while the sale of the Financiers' equipment is on foot, the valuation report will be kept confidential until after a sale (if any) transpires. The release of the report prior to any sale may detrimentally affect the value obtained from a prospective purchaser.
- ii. As we have not finalised a strategy with the HP Financiers and auctioneer to realise the encumbered property, the potential realisation costs are unknown at this stage. We advise that we will be in contact with all HP financiers' shortly once a strategy moving forward has been agreed.
- iii. The stock has been assessed at a 50% reduction on the book value as the low return. Once a valuation has been conducted this may impact the overall return.
- iv. The Administrators current and estimated costs along with the Liquidators prospective costs have been enclosed in the Administrators' Remuneration Report dated 6 September 2012. The Administrators' will be seeking creditor approval for these amounts at the upcoming second meeting of creditors.
- v. We refer you to Section 5 of this Report. Given the shortfall to priority creditors, once DGWA transitions into liquidation, employees may claim their entitlements (other than superannuation, sick leave, rostered days off and allowances) from GEERS. More information on the GEERS claims will be advised to employees in due course.
- vi. As mentioned at Section 5 above, the nab, DLL and ME Bank have a registered APAAP over all present and after acquired property. Accordingly, in the event any of these three (3) secured creditors' have a shortfall in the HP arrangement, they may claim that shortfall from its General Security Interest. As no value has been attributed to the encumbered assets, it is impossible to determine a 'likely' shortfall to these secured creditors. Therefore, we have assumed that the secured creditors' total exposure is the whole of the HP shortfall in this estimate. Should there be no security available for nab, DLL or ME Bank to recover, then the balance will rank as an unsecured creditor.
- vii. The voidable transactions has been summarised at Section 6 above. We must strongly emphasise to creditors that while the Administrators' believe there may be a number of potential liquidator recovery items, it is difficult (at this early stage of investigations) to determine whether the liquidator claims are fully recoverable. We also note that along with pursuing such liquidator claims, there are inherent risks and significant costs involved (that are briefly discussed below). A liquidator will need to consider all avenues of pursuing such claims before a final determination is made.
- viii. The main costs associated with pursuing liquidator claims are legal fees and (possibly) litigation funder fees.
- ix. In the event a liquidator successfully pursues a creditor for a liquidator recovery claim, that creditor is entitled to rank for dividend purposes as an unsecured creditor for that amount.
- x. The Administrators' cannot stress enough that creditors should view this return as a 'best' case scenario. There is a very real possibility that a liquidator may not be able to pursue the liquidator claims in full, accordingly, any return to creditors may decrease.

The Administrators' stress to creditors that the above dividend calculations are an estimate only and may change due to:

- The amounts realised from the sale of encumbered and unencumbered assets;
- Total liabilities once proofs of debt are lodged and adjudicated upon;
- Costs of litigation (for example, in recovering assets, debtors and voidable transactions);
- Costs of the administration and liquidation resulting from additional issues arising.

At this stage, it is too early to say when the likely return to unsecured creditors may occur given the unknown strategy with respect to the HP Financiers' assets and the lengthy process in pursuing the liquidator claims. The Administrators (or yet to be appointed liquidators) will notify all creditors in due course.

## 8. Administrators' Opinion

As stated in section 7.1 above, the option of the administration ending is clearly not viable. The only remaining option available to creditors is to **wind up the Company**.

## 9. Administrators' Remuneration Report

Pursuant to Section 446E of the Act, we enclose as Annexure 1 the Administrators' Remuneration Report. At the second meeting of creditors, we intend seeking approval of the remuneration set out in the remuneration report. Details of disbursements incurred are also included in the remuneration report.

## 10. Further Queries

We will advise creditors in writing, if practicable, of any additional matter that comes to our attention after the dispatch of this report that, in my view, is material to creditors' deliberations.

In the meantime, should creditors have any queries in relation to this report, or the administration generally, please do not hesitate to contact Jason Soo or William Hulmes of this office.

DATED this 6th day of September 2012



**Martin Jones**  
Joint and Several Administrator



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# **Annexure 1**

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Administrators' Remuneration Report

# CORPORATIONS ACT 2001

Section 449E

## **D&G HOISTS & CRANES PTY LTD (ADMINISTRATORS APPOINTED) (THE COMPANY) ACN 084 148 096**

### **REMUNERATION REPORT**

We, Martin Jones and Andrew Saker of Ferrier Hodgson have undertaken a proper assessment of this remuneration claimed for our appointment as Voluntary Administrators of D&G Hoist & Cranes Pty Ltd (Administrators Appointed) in accordance with the law and applicable professional standards. We are satisfied that the remuneration claimed is in respect of necessary work, properly performed in the conduct of the administration.

The Administrators' Remuneration Report, prepared pursuant to Section 449E of the Corporations Act 2001, takes the following format.

#### **Part A**

- A1 Schedule of hourly rates and general guide to staff experience.
- A2 Tasks undertaken by the Administrators and remuneration calculation for the period 10 August 2012 to 31 August 2012.
- A3 Schedule of the Administrators' anticipated tasks and remuneration estimate for the period 1 September 2012 to the 14 September 2012.
- A4 Where Liquidators are appointed, a schedule of the Liquidators' anticipated tasks and remuneration estimate from 15 September 2012 to the conclusion of the liquidation.
- A5 Remuneration approved and drawn to date.
- A6 Resolutions to be put to creditors at the meeting convened for 14 September 2012.

#### **Part B**

- B1 Administrators' disbursements.
- B2 Summary of Receipts and Payments for the period 10 August 2012 to 31 August 2012.
- B3 Other creditor information on remuneration.
- B4 Initial advice to creditors.

The Remuneration Report must be read in conjunction with the report to creditors dated 6 September 2012.

## **PART A**

### **A1 SCHEDULE OF HOURLY RATES & GENERAL GUIDE TO STAFF EXPERIENCE**

<b>Title</b>	<b>Rate (\$)</b>	<b>Experience</b>
Partner / Executive Director	580	The Partner/Appointee is a registered liquidator and member of the ICAA and, generally, the IPA, bringing specialist skills to the administration or insolvency task. For specific experience and other details of the appointee/s, please visit our website at <a href="http://www.ferrierhodgson.com">www.ferrierhodgson.com</a>
Director	490	Generally, minimum of 12 years experience at least 2 years of which is to be at Manager level. University degree; member of the ICAA and, generally, the IPA, with deep knowledge and lengthy experience in relevant insolvency legislation and issues.
Senior Manager	440	Generally, more than 7 years experience with at least 2 years as a Manager. University degree; member of the ICAA and, generally, the IPA; very strong knowledge of relevant insolvency legislation and issues.
Manager	370	Generally, 5-7 years chartered accounting or insolvency management experience. University degree; member of the ICAA and generally, the IPA; sound knowledge of relevant insolvency legislation and issues.
Assistant Manager	330	Generally, 4-6 years chartered accounting or insolvency management experience. University degree; member of the ICAA; completing IPAA Insolvency Education Program. Good knowledge of relevant insolvency legislation and issues.
Senior Analyst	285	Generally, 2-4 years chartered accounting or insolvency management experience. University degree; completing the ICAA's CA program. Good knowledge of basic insolvency legislation and issues.
Analyst	255	Generally, 2-3 years chartered accounting or insolvency management experience. University degree, ICAA's CA program commenced.
Accountant	200	0 to 2 years experience. Has completed or substantially completed a degree in finance/accounting. Under supervision, takes direction from senior staff in completing administrative tasks.
Junior Accountant	120	0 – 1 years experience. Undertaking a degree part-time in finance/accounting. Under supervision, takes direction from senior staff in completing more complex administrative tasks.
Senior Secretary	170	Appropriate skills including machine usage.
Accounts Clerk / Filing Clerk	140	Completed schooling and plans to undertake further studies. Required to assist in administration and day to day field work under the supervision of more senior staff.

#### **Notes:**

1. The hourly rates are exclusive of GST.
2. The guide to staff experience is intended only as a general guide to the qualifications and experience of our staff engaged in the administration. Staff may be engaged under a classification that we consider appropriate for their experience.
3. Time is recorded and charged in six-minute increments.
4. Rates are subject to change from time to time. The hourly rates reflect the total cost of providing professional services and should **not** be compared to an hourly rate. See Part B1 for details of disbursements.

**A2. Tasks undertaken by the Administrators and remuneration calculation for the period from 10 August 2012 to 31 August 2012.**

<b>Task Area</b>	<b>General Description</b>	<b>Includes:</b>
<b>Assets</b> 62.6 hours \$20,925.00	Sale of business as a going concern	<ul style="list-style-type: none"> <li>▪ Liaising with valuers, auctioneers and interested parties</li> <li>▪ Internal meetings to discuss/review offers received</li> <li>▪ Meetings with major shareholder on reconstructions of company</li> </ul>
	Plant and equipment	<ul style="list-style-type: none"> <li>▪ Liaising with valuers, auctioneers and interested parties</li> <li>▪ Reviewing asset listings</li> </ul>
	Assets subject to specific charges	<ul style="list-style-type: none"> <li>▪ Understand locality of all HP assets</li> <li>▪ Preparing and comparing the fixed asset register with the HP assets</li> <li>▪ Meeting with various financiers</li> </ul>
	Debtors	<ul style="list-style-type: none"> <li>▪ Correspondence with debtors</li> <li>▪ Reviewing and assessing debtors ledgers</li> <li>▪ Liaising with debt collectors</li> </ul>
	Stock	<ul style="list-style-type: none"> <li>▪ Conducting stock takes</li> <li>▪ Reviewing stock values</li> <li>▪ Liaising with ROT creditors</li> </ul>
	Leasing	<ul style="list-style-type: none"> <li>▪ Reviewing leasing documents</li> <li>▪ Liaising with owners/lessors</li> <li>▪ Tasks associated with disclaiming leases</li> </ul>
	Other assets	<ul style="list-style-type: none"> <li>▪ Tasks associated with realising other assets</li> </ul>
	Creditor Enquiries	<ul style="list-style-type: none"> <li>▪ Receive and follow up creditor enquiries via telephone and email</li> <li>▪ Maintaining creditor enquiry register</li> <li>▪ Review and prepare correspondence to creditors and their representatives via facsimile, email and post</li> <li>▪ Correspondence with committee of creditors members</li> </ul>
	Retention of Title Claims	<ul style="list-style-type: none"> <li>▪ Receive initial notification of creditor's intention to claim</li> <li>▪ Provision of retention of title claim form to creditor</li> <li>▪ Receive completed retention of title claim form</li> <li>▪ Maintain retention of title file</li> <li>▪ Adjudicate retention of title claim</li> </ul>
	Secured creditor reporting	<ul style="list-style-type: none"> <li>▪ Preparing reports to secured creditor/financers</li> <li>▪ Responding to secured creditors queries</li> </ul>
<b>Creditors</b> 86.6 hours \$24,772.50	Creditor reports/circulars	<ul style="list-style-type: none"> <li>▪ Prepare further reports to creditors pursuant to section 439A of the Act</li> </ul>
	Dealing with proofs of debt	<ul style="list-style-type: none"> <li>▪ Receipting and filing POD's when not related to a dividend</li> <li>▪ Corresponding with OSR and ATO regarding POD's when not related to a dividend</li> </ul>
	Meeting of Creditors	<ul style="list-style-type: none"> <li>▪ Preparation of meeting notices, proxies and advertisements</li> <li>▪ Forward notice of meeting to all known creditors</li> <li>▪ Preparation of meeting file, including agenda, certificate of postage, attendance register, list of creditors, reports to creditors, advertisement of meeting and draft minutes of meeting</li> <li>▪ Preparation and lodgement of minutes of meetings with ASIC</li> <li>▪ Respond to stakeholder queries and questions immediately following meeting</li> <li>▪ Liaising with major shareholder on various enquiries</li> </ul>
<b>Employees</b> 15.1 hours \$4,494.50	Shareholder enquiries	<ul style="list-style-type: none"> <li>▪ Liaising with major shareholder on various enquiries</li> </ul>
	Employee enquiries	<ul style="list-style-type: none"> <li>▪ Receive and follow up employee enquiries via telephone</li> <li>▪ Maintain employee enquiry register</li> <li>▪ Review and prepare correspondence to creditors and their representatives via facsimile, email and post</li> </ul>

Task Area	General Description	Includes:
		<ul style="list-style-type: none"> <li>▪ Preparation of letters to employees advising of their entitlements and options available</li> <li>▪ Receive and prepare correspondence in response to employees objections to leave entitlements</li> </ul>
	Calculation of entitlements	<ul style="list-style-type: none"> <li>▪ Reviewing employee files and the Company's books and records</li> <li>▪ Calculating employee entitlements</li> <li>▪ Reconciling superannuation accounts</li> <li>▪ Reviewing awards (EBAs)</li> </ul>
	Workers compensation claims	<ul style="list-style-type: none"> <li>▪ Review insurance policies</li> <li>▪ Receipt of claim</li> <li>▪ Liaising with claimant</li> <li>▪ Liaising with insurers and solicitors regarding claims</li> <li>▪ Identification of potential issues requiring attention of insurance specialists</li> <li>▪ Correspondence with Blue Broking regarding initial ongoing workers compensation insurance requirements</li> <li>▪ Correspondence with previous brokers</li> </ul>
	Other employee issues	<ul style="list-style-type: none"> <li>▪ Correspondence with Child Support</li> <li>▪ Correspondence with Unions</li> </ul>
<b>Trade On</b> 105 hours \$35,964.00	Trade On Management	<ul style="list-style-type: none"> <li>▪ Liaising with suppliers</li> <li>▪ Liaising with management and staff</li> <li>▪ Attendance on site</li> <li>▪ Authorising purchase orders</li> <li>▪ Maintaining purchase order registry</li> <li>▪ Preparing and authorising receipt vouchers</li> <li>▪ Preparing and authorising payment vouchers</li> <li>▪ Liaising with OSR regarding payroll tax issues</li> </ul>
	Processing receipts and payments	<ul style="list-style-type: none"> <li>▪ Entering receipt and payments into accounting system</li> </ul>
	Budgeting & financial reporting	<ul style="list-style-type: none"> <li>▪ Reviewing the Company's budgets and financial statements</li> <li>▪ Preparing budgets and cashflow forecast</li> <li>▪ Meetings to discuss cashflow forecast</li> </ul>
	Conducting investigation	<ul style="list-style-type: none"> <li>▪ Collection of the Company's books and records</li> <li>▪ Correspondence with ASIC to receive assistance in obtaining books and records</li> <li>▪ Reconstruction of financial statements</li> <li>▪ Reviewing the Company's books and records and Report as to Affairs</li> <li>▪ Review and preparation of the Company's nature and history</li> <li>▪ Liaising with directors regarding certain transactions</li> <li>▪ Preparation of investigation file</li> </ul>
<b>Investigations</b> 24.9 hours \$10,291.00	Litigation/Recoveries	<ul style="list-style-type: none"> <li>▪ Internal meetings to discuss status of litigation</li> <li>▪ Preparing brief to solicitors</li> <li>▪ Liaising with solicitors regarding recovery actions</li> <li>▪ Attending to negotiations</li> <li>▪ Attending to settlement matters</li> </ul>
	ASIC reporting	<ul style="list-style-type: none"> <li>▪ Preparing statutory investigation reports</li> <li>▪ Preparing affidavits seeking non lodgements assistance</li> <li>▪ Liaising with ASIC</li> </ul>
	Processing proofs of debt	<ul style="list-style-type: none"> <li>▪ Receipt of PODs</li> <li>▪ Maintain POD register</li> <li>▪ Adjudicating PODs</li> <li>▪ Request further information from claimants regarding POD</li> </ul>
<b>Dividend</b> 0.2 hours \$51.00		

Task Area	General Description	Includes:
<b>Administration</b> 155.3 hours \$53,959.50	Correspondence	<ul style="list-style-type: none"> <li>▪ General correspondence</li> </ul>
	Document maintenance/file review/checklist	<ul style="list-style-type: none"> <li>▪ First month administration review</li> <li>▪ Filing documents</li> <li>▪ File reviews</li> <li>▪ Updating checklists</li> </ul>
	Insurance	<ul style="list-style-type: none"> <li>▪ Identification of potential issues requiring attention of insurance specialists</li> <li>▪ Correspondence with Blue Broking regarding initial and ongoing insurance requirements</li> <li>▪ Reviewing insurance policies</li> <li>▪ Correspondence with previous brokers</li> </ul>
	Bank account administration	<ul style="list-style-type: none"> <li>▪ Preparing correspondence opening and closing accounts</li> <li>▪ Requesting bank statements</li> <li>▪ Bank account reconciliations</li> <li>▪ Correspondence with bank regarding specific transfers</li> </ul>
	ASIC Form 524 and other forms	<ul style="list-style-type: none"> <li>▪ Preparing and lodging ASIC forms including 505, 911 etc</li> <li>▪ Correspondence with ASIC regarding statutory forms</li> </ul>
	ATO & other statutory reporting	<ul style="list-style-type: none"> <li>▪ Notification of appointment</li> <li>▪ Preparing BAS'</li> <li>▪ Completing group certificates</li> </ul>
	Planning / Review	<ul style="list-style-type: none"> <li>▪ Discussions regarding status/strategy of administration</li> </ul>
	Books and records/storage	<ul style="list-style-type: none"> <li>▪ Dealing with records in storage</li> <li>▪ Sending job files to storage</li> </ul>

**A2 (cont) Tasks undertaken by the Administrators and remuneration calculation for the period from 10 August 2012 to 31 August 2012**

Employee	Position	Current Charge Rate \$	Total		Assets		Creditors		Administration		Employees		Trade On		Investigation		Dividend	
			Hours	\$	Hours	\$	Hours	\$	Hours	\$	Hours	\$	Hours	\$	Hours	\$	Hours	\$
Martin Jones	Partner	580.00	38.00	22,040.00	-	-	2.40	1,392.00	29.80	17,284.00	-	-	5.80	3,364.00	-	-	-	-
Andrew Saker	Partner	580.00	0.30	174.00	-	-	-	-	0.30	174.00	-	-	-	-	-	-	-	-
Malcolm Field	Director	490.00	1.40	686.00	-	-	0.30	147.00	-	-	-	-	1.10	539.00	-	-	-	-
Sean Powell	Senior Manager	440.00	80.70	35,508.00	15.00	6,600.00	9.50	4,180.00	26.40	11,616.00	0.50	220.00	9.90	4,356.00	19.40	8,536.00	-	-
Bob Bickford	Assistant Manager	330.00	2.60	858.00	-	-	-	-	2.60	858.00	-	-	-	-	-	-	-	-
Kieran Chu	Assistant Manager	330.00	99.50	32,835.00	13.10	4,323.00	4.80	1,584.00	10.40	3,432.00	8.70	2,871.00	58.10	19,173.00	4.40	1,452.00	-	-
Shannon Coleman	Assistant Manager	330.00	38.70	12,771.00	5.30	1,749.00	16.70	5,511.00	14.30	4,719.00	1.20	396.00	0.90	297.00	0.30	99.00	-	-
Dario Musilin	Senior Analyst	285.00	1.10	313.50	-	-	1.10	313.50	-	-	-	-	-	-	-	-	-	-
Lauren McCann	Senior Analyst	285.00	64.40	18,354.00	26.90	7,666.50	6.90	1,966.50	3.70	1,054.50	0.60	171.00	26.30	7,495.50	-	-	-	-
Greshan Swam	Analyst	255.00	12.80	3,264.00	-	-	-	-	12.00	3,060.00	-	-	-	-	0.80	204.00	-	-
Anna Madetko	Analyst	255.00	1.00	255.00	-	-	1.00	255.00	-	-	-	-	-	-	-	-	-	-
Lucas Telles	Analyst	255.00	1.10	280.50	-	-	-	-	1.10	280.50	-	-	-	-	-	-	-	-
William Hulmes	Analyst	255.00	33.90	8,644.50	2.30	586.50	11.70	2,983.50	16.50	4,207.50	0.30	76.50	2.90	739.50	-	-	0.20	51.00
Thomas Guthrie	Accountant	200.00	5.70	1,140.00	-	-	5.70	1,140.00	-	-	-	-	-	-	-	-	-	-
Jason Soo	Accountant	200.00	45.30	9,060.00	-	-	26.50	5,300.00	16.50	3,300.00	2.30	460.00	-	-	-	-	-	-
Ashleigh Weaver	Accountant	200.00	6.50	1,300.00	-	-	-	-	5.00	1,000.00	1.50	300.00	-	-	-	-	-	-
Aimee Siekierka	Accountant	200.00	4.50	900.00	-	-	-	-	4.50	900.00	-	-	-	-	-	-	-	-
Jacqui Westwood	Senior Secretary	170.00	6.90	1,173.00	-	-	-	-	6.90	1,173.00	-	-	-	-	-	-	-	-
Genevieve Caldera	Senior Secretary	170.00	1.20	204.00	-	-	-	-	1.20	204.00	-	-	-	-	-	-	-	-
Talia Newland	Filing Clerk	170.00	4.10	697.00	-	-	-	-	4.10	697.00	-	-	-	-	-	-	-	-
<b>Total</b>			449.70	150,457.50	62.60	20,925.00	86.60	24,772.50	155.30	53,959.50	15.10	4,494.50	105.00	35,964.00	24.90	10,291.00	0.20	51.00
<b>GST</b>				15,045.75		2,092.50		2,477.25		5,395.95		449.45		3,596.40		1,029.10		5.10
<b>TOTAL (incl. GST)</b>				165,503.25		23,017.50		27,249.75		59,355.45		4,943.95		39,560.40		11,320.10		56.10
<b>Average hourly rate</b>				334.57		334.27		286.06		347.45		297.65		342.51		413.29		255.00

**A3 Schedule of the Administrators' anticipated tasks and remuneration estimate for the period 1 September 2012 to 14 September 2012.**

Based on the following anticipated tasks, I estimate the Administrators' fees for the above period to be \$75,000 (exclusive of GST).

<b>Task Area</b>	<b>General Description</b>	<b>Includes:</b>	
<b>Assets</b> 80 hours \$30,000	Plant and equipment	<ul style="list-style-type: none"> <li>▪ Liaising with valuers, auctioneers and interested parties</li> <li>▪ Reviewing asset listings</li> </ul>	
	Assets subject to specific charges	<ul style="list-style-type: none"> <li>▪ All tasks associated with realising a charged asset including liaising with financiers to determine strategy</li> </ul>	
	Debtors	<ul style="list-style-type: none"> <li>▪ Correspondence with debtors</li> <li>▪ Reviewing and assessing debtors ledgers</li> <li>▪ Liaising with debt collectors and solicitors</li> </ul>	
	Stock	<ul style="list-style-type: none"> <li>▪ Conducting stock takes</li> <li>▪ Reviewing stock values</li> <li>▪ Liaising with ROT creditors</li> </ul>	
	Leasing	<ul style="list-style-type: none"> <li>▪ Reviewing leasing documents</li> <li>▪ Liaising with owners/lessors</li> <li>▪ Tasks associated with disclaiming leases</li> </ul>	
	Other assets	<ul style="list-style-type: none"> <li>▪ Tasks associated with realising other assets</li> </ul>	
<b>Creditors</b> 42 hours \$12,500	Creditor Enquiries	<ul style="list-style-type: none"> <li>▪ Receive and follow up creditor enquiries via telephone and email</li> <li>▪ Maintaining creditor enquiry register</li> <li>▪ Review and prepare correspondence to creditors and their representatives via facsimile, email and post</li> <li>▪ Correspondence with committee of creditors members</li> </ul>	
	Retention of Title Claims	<ul style="list-style-type: none"> <li>▪ Receive initial notification of creditor's intention to claim</li> <li>▪ Provision of retention of title claim form to creditor</li> <li>▪ Receive completed retention of title claim form</li> <li>▪ Maintain retention of title file</li> <li>▪ Meeting claimant on site to identify goods</li> <li>▪ Adjudicate retention of title claim</li> <li>▪ Forward correspondence to claimant notifying outcome of adjudication</li> <li>▪ Preparation of payment vouchers to satisfy valid claim</li> <li>▪ Preparation of correspondence to claimant to accompany payment of claim (if valid)</li> </ul>	
	Secured creditor reporting	<ul style="list-style-type: none"> <li>▪ Preparing reports to secured creditor</li> <li>▪ Responding to secured creditors queries</li> </ul>	
	Creditor reports/circulars	<ul style="list-style-type: none"> <li>▪ Prepare further reports to creditors</li> </ul>	
	Dealing with proofs of debt	<ul style="list-style-type: none"> <li>▪ Receipting and filing POD's when not related to a dividend</li> <li>▪ Corresponding with OSR and ATO regarding POD's when not related to a dividend</li> </ul>	
	Meeting of Creditors	<ul style="list-style-type: none"> <li>▪ Preparation of meeting notices, proxies and advertisements</li> <li>▪ Forward notice of meeting to all known creditors</li> <li>▪ Preparation of meeting file, including agenda, certificate of postage, attendance register, list of creditors, reports to creditors, advertisement of meeting and draft minutes of meeting</li> <li>▪ Preparation and lodgement of minutes of meetings with ASIC</li> <li>▪ Respond to stakeholder queries and questions immediately following meeting</li> </ul>	
	Shareholder enquiries	<ul style="list-style-type: none"> <li>▪ Responding to any shareholder enquiries</li> </ul>	
			<ul style="list-style-type: none"> <li>▪</li> </ul>

<b>Task Area</b>	<b>General Description</b>	<b>Includes:</b>
<b>Employees</b> 16 hours \$5,000	Employee enquiries	<ul style="list-style-type: none"> <li>▪ Receive and follow up employee enquiries via telephone</li> <li>▪ Maintain employee enquiry register</li> <li>▪ Review and prepare correspondence to creditors and their representatives via facsimile, email and post</li> <li>▪ Preparation of letters to employees advising of their entitlements and options available</li> <li>▪ Receive and prepare correspondence in response to employees objections to leave entitlements</li> </ul>
	GEERS	<ul style="list-style-type: none"> <li>▪ Correspondence with GEERS</li> </ul>
	Calculation of entitlements	<ul style="list-style-type: none"> <li>▪ Reviewing employee files and the Company's books and records</li> <li>▪ Calculating employee entitlements</li> <li>▪ Reconciling superannuation accounts</li> <li>▪ Reviewing awards</li> <li>▪ Liaising with solicitors regarding entitlements</li> </ul>
	Workers compensation claims	<ul style="list-style-type: none"> <li>▪ Review insurance policies</li> <li>▪ Receipt of claim</li> <li>▪ Liaising with claimant</li> <li>▪ Liaising with insurers and solicitors regarding claims</li> <li>▪ Identification of potential issues requiring attention of insurance specialists</li> <li>▪ Correspondence with Blue Broking regarding initial ongoing workers compensation insurance requirements</li> <li>▪ Correspondence with previous brokers</li> </ul>
	Other employee issues	<ul style="list-style-type: none"> <li>▪ Correspondence with Child Support</li> <li>▪ Correspondence with Centrelink and Unions</li> </ul>
<b>Trade On</b> 20 hours \$7,500	Trade On Management	<ul style="list-style-type: none"> <li>▪ Liaising with suppliers</li> <li>▪ Liaising with management and staff</li> <li>▪ Attendance on site</li> <li>▪ Authorising purchase orders</li> <li>▪ Maintaining purchase order registry</li> <li>▪ Preparing and authorising receipt vouchers</li> <li>▪ Preparing and authorising payment vouchers</li> <li>▪ Liaising with superannuation funds regarding contributions, termination of employees employment</li> <li>▪ Liaising with OSR regarding payroll tax issues</li> </ul>
	Processing receipts and payments	<ul style="list-style-type: none"> <li>▪ Entering receipt and payments into accounting system</li> </ul>
	Budgeting & financial reporting	<ul style="list-style-type: none"> <li>▪ Reviewing the Company's budgets and financial statements</li> <li>▪ Preparing budgets</li> <li>▪ Preparing Statement of Position</li> <li>▪ Finalising trading profit or loss</li> <li>▪ Meetings to discuss trading position</li> </ul>
	Conducting investigation	<ul style="list-style-type: none"> <li>▪ Collection of the Company's books and records</li> <li>▪ Correspondence with ASIC to receive assistance in obtaining books and records</li> <li>▪ Reconstruction of financial statements</li> <li>▪ Reviewing the Company's books and records and Report as to Affairs</li> <li>▪ Review and preparation of the Company's nature and history</li> <li>▪ Liaising with directors regarding certain transactions</li> <li>▪ Preparation of investigation file</li> <li>▪ Lodgement of report to ASIC pursuant to section 438D of the act</li> <li>▪ Preparation and lodgement of supplementary report if required</li> </ul>
<b>Investigations</b> 12 hours \$5,000	Litigation/Recoveries	<ul style="list-style-type: none"> <li>▪ Internal meetings to discuss status of litigation</li> </ul>

Task Area	General Description	Includes:
		<ul style="list-style-type: none"> <li>▪ Preparing brief to solicitors</li> <li>▪ Liaising with solicitors regarding recovery actions</li> <li>▪ Attending to negotiations</li> <li>▪ Attending to settlement matters</li> </ul>
	ASIC reporting	<ul style="list-style-type: none"> <li>▪ Preparing statutory investigation reports</li> <li>▪ Preparing affidavits seeking non lodgements assistance</li> <li>▪ Liaising with ASIC</li> </ul>
	Correspondence	<ul style="list-style-type: none"> <li>▪ General correspondence</li> </ul>
	Document maintenance/file review/checklist	<ul style="list-style-type: none"> <li>▪ First month administration review</li> <li>▪ Filing documents</li> <li>▪ File reviews</li> <li>▪ Updating checklists</li> </ul>
	Insurance	<ul style="list-style-type: none"> <li>▪ Identification of potential issues requiring attention of insurance specialists</li> <li>▪ Correspondence with Willis regarding initial and ongoing insurance requirements</li> <li>▪ Reviewing insurance policies</li> <li>▪ Correspondence with previous brokers</li> </ul>
<b>Administration</b>	Bank account administration	<ul style="list-style-type: none"> <li>▪ Preparing correspondence opening and closing accounts</li> <li>▪ Requesting bank statements</li> <li>▪ Bank account reconciliations</li> <li>▪ Correspondence with bank regarding specific transfers</li> </ul>
48 hours		
\$15,000		
	ASIC Form 524 and other forms	<ul style="list-style-type: none"> <li>▪ Preparing and lodging ASIC forms including 505, 524, 911 etc</li> <li>▪ Correspondence with ASIC regarding statutory forms</li> </ul>
	ATO & other statutory reporting	<ul style="list-style-type: none"> <li>▪ Notification of appointment</li> <li>▪ Preparing BAS'</li> <li>▪ Completing group certificates</li> </ul>
	Planning / Review	<ul style="list-style-type: none"> <li>▪ Discussions regarding status/strategy of administration</li> </ul>
	Books and records/storage	<ul style="list-style-type: none"> <li>▪ Dealing with records in storage</li> <li>▪ Sending job files to storage</li> </ul>

**A3 (cont) Schedule of anticipated tasks and remuneration estimate for the period from 1 September 2012 to 14 September 2012**

Employee	Position	Current Charge Rate \$	Total		Assets		Creditors		Administration		Employees		Trade On		Investigation	
			Hours	\$	Hours	\$	Hours	\$	Hours	\$	Hours	\$	Hours	\$	Hours	\$
Martin Jones	Partner	580.00	16	9,280	7	4,060	1	580	5	2,900	-	-	3	1,740	-	-
Sean Powell	Senior Manager	440.00	55	24,200	30	13,200	5	2,200	5	2,200	2	880	5	2,200	8	3,520
Kieran Chu	Assistant Manager	330.00	39	12,918	15	4,950	3	825	5	1,650	8	2,693	5	1,650	3	1,150
Shannon Coleman	Assistant Manager	330.00	22	7,293	2	660	9	2,970	8	2,640	1	396	1	297	1	330
Lauren McCann	Senior Analyst	285.00	29	8,339	15	4,388	4	998	5	1,425	1	171	5	1,358	-	-
William Hulmes	Analyst	255.00	28	7,256	11	2,742	12	2,984	5	1,275	-	-	1	255	-	-
Jason Soo	Accountant	200.00	18	3,604	-	-	10	1,944	6	1,200	2	460	-	-	-	-
Ashleigh Weaver	Accountant	200.00	8	1,600	-	-	-	-	6	1,200	2	400	-	-	-	-
Jacqui Westwood	Senior Secretary	170.00	2	340	-	-	-	-	2	340	-	-	-	-	-	-
Talia Newland	Filing Clerk	170.00	1	170	-	-	-	-	1	170	-	-	-	-	-	-
<b>Total</b>			219	75,000	80	30,000	42	12,500	48	15,000	16	5,000	20	7,500	12	5,000
<b>GST</b>				7,500		3,000		1,250		1,500		500		750		500
<b>TOTAL (incl. GST)</b>				82,500		33,000		13,750		16,500		5,500		8,250		5,500
<b>Average hourly rate</b>				342		374		295		313		307		381		400

**A4 Where Liquidators are appointed, a schedule of the Liquidators' anticipated tasks and remuneration estimate from 15 September 2012 to the conclusion of the administration.**

Based on the following anticipated tasks of the Liquidation, I estimate the Liquidators' fees to be \$250,000 (exclusive of GST).

<b>Task Area</b>	<b>General Description</b>	<b>Includes:</b>
<b>Assets</b> 191 hours \$70,000	Plant and equipment	<ul style="list-style-type: none"> <li>▪ Liaising with valuers, auctioneers and interested parties</li> <li>▪ Reviewing asset listings</li> </ul>
	Sale of real property	<ul style="list-style-type: none"> <li>▪ Liaising with valuers, agents and strata agent</li> <li>▪ Attendance at auction</li> </ul>
	Assets subject to specific charges	<ul style="list-style-type: none"> <li>▪ All tasks associated with realising a charged asset including liaising with financiers to determine strategy</li> </ul>
	Debtors	<ul style="list-style-type: none"> <li>▪ Correspondence with debtors</li> <li>▪ Reviewing and assessing debtors ledgers</li> <li>▪ Liaising with debt collectors and solicitors</li> </ul>
	Stock	<ul style="list-style-type: none"> <li>▪ Conducting stock takes</li> <li>▪ Reviewing stock values</li> <li>▪ Liaising with purchasers</li> </ul>
	Leasing	<ul style="list-style-type: none"> <li>▪ Reviewing leasing documents</li> <li>▪ Liaising with owners/lessors</li> <li>▪ Tasks associated with disclaiming leases</li> </ul>
	Other assets	<ul style="list-style-type: none"> <li>▪ Tasks associated with realising other assets</li> </ul>
<b>Creditors</b> 150 hours \$40,000	Creditor Enquiries	<ul style="list-style-type: none"> <li>▪ Receive and follow up creditor enquiries via telephone and email</li> <li>▪ Maintaining creditor enquiry register</li> <li>▪ Review and prepare correspondence to creditors and their representatives via facsimile, email and post</li> <li>▪ Correspondence with committee of creditors members</li> </ul>
	Retention of Title Claims	<ul style="list-style-type: none"> <li>▪ Receive initial notification of creditor's intention to claim</li> <li>▪ Provision of retention of title claim form to creditor</li> <li>▪ Receive completed retention of title claim form</li> <li>▪ Maintain retention of title file</li> <li>▪ Meeting claimant on site to identify goods</li> <li>▪ Adjudicate retention of title claim</li> <li>▪ Forward correspondence to claimant notifying outcome of adjudication</li> <li>▪ Preparation of payment vouchers to satisfy valid claim</li> <li>▪ Preparation of correspondence to claimant to accompany payment of claim (if valid)</li> </ul>
	Secured creditor reporting	<ul style="list-style-type: none"> <li>▪ Preparing reports to secured creditor</li> <li>▪ Responding to secured creditors queries</li> </ul>
	Creditor reports/circulars	<ul style="list-style-type: none"> <li>▪ Prepare further reports to creditors</li> </ul>
	Dealing with proofs of debt	<ul style="list-style-type: none"> <li>▪ Receipting and filing POD's when not related to a dividend</li> <li>▪ Corresponding with OSR and ATO regarding POD's when not related to a dividend</li> </ul>
	Meeting of Creditors	<ul style="list-style-type: none"> <li>▪ Preparation of meeting notices, proxies and advertisements</li> <li>▪ Forward notice of meeting to all known creditors</li> <li>▪ Preparation of meeting file, including agenda, certificate of postage, attendance register, list of creditors, reports to creditors, advertisement of meeting and draft minutes of meeting</li> <li>▪ Preparation and lodgement of minutes of meetings with ASIC</li> <li>▪ Respond to stakeholder queries and questions immediately following meeting</li> </ul>

<b>Task Area</b>	<b>General Description</b>	<b>Includes:</b>
	Shareholder enquiries	<ul style="list-style-type: none"> <li>▪ ITAA section 104-145(1) declarations</li> <li>▪ Responding to any shareholder legal action</li> </ul>
	Employee enquiries	<ul style="list-style-type: none"> <li>▪ Receive and follow up employee enquiries via telephone</li> <li>▪ Maintain employee enquiry register</li> <li>▪ Review and prepare correspondence to creditors and their representatives via facsimile, email and post</li> <li>▪ Preparation of letters to employees advising of their entitlements and options available</li> <li>▪ Receive and prepare correspondence in response to employees objections to leave entitlements</li> </ul>
	<b>GEERS</b>	<ul style="list-style-type: none"> <li>▪ Correspondence with GEERS</li> </ul>
	Calculation of entitlements	<ul style="list-style-type: none"> <li>▪ Reviewing employee files and the Company's books and records</li> <li>▪ Calculating employee entitlements</li> <li>▪ Reconciling superannuation accounts</li> <li>▪ Reviewing awards</li> <li>▪ Liaising with solicitors regarding entitlements</li> </ul>
<b>Employees</b>		
66 hours		
\$20,000		
	Workers compensation claims	<ul style="list-style-type: none"> <li>▪ Review insurance policies</li> <li>▪ Receipt of claim</li> <li>▪ Liaising with claimant</li> <li>▪ Liaising with insurers and solicitors regarding claims</li> <li>▪ Identification of potential issues requiring attention of insurance specialists</li> <li>▪ Correspondence with Blue Broking regarding initial ongoing workers compensation insurance requirements</li> <li>▪ Correspondence with previous brokers</li> </ul>
	Other employee issues	<ul style="list-style-type: none"> <li>▪ Correspondence with Child Support</li> <li>▪ Correspondence with Centrelink and Unions</li> </ul>
	Trade On Management	<ul style="list-style-type: none"> <li>▪ Liaising with suppliers</li> <li>▪ Liaising with management and staff</li> <li>▪ Attendance on site</li> <li>▪ Authorising purchase orders</li> <li>▪ Maintaining purchase order registry</li> <li>▪ Preparing and authorising receipt vouchers</li> <li>▪ Preparing and authorising payment vouchers</li> <li>▪ Liaising with superannuation funds regarding contributions, termination of employees employment</li> <li>▪ Liaising with OSR regarding payroll tax issues</li> </ul>
<b>Trade On</b>		
62 hours		
\$20,000		
	Processing receipts and payments	<ul style="list-style-type: none"> <li>▪ Entering receipt and payments into accounting system</li> </ul>
	Conducting investigation	<ul style="list-style-type: none"> <li>▪ Collection of the Company's books and records</li> <li>▪ Correspondence with ASIC to receive assistance in obtaining books and records</li> <li>▪ Reconstruction of financial statements</li> <li>▪ Reviewing the Company's books and records and Report as to Affairs</li> <li>▪ Review and preparation of the Company's nature and history</li> <li>▪ Liaising with directors regarding certain transactions</li> <li>▪ Preparation of investigation file</li> <li>▪ Lodgement of report to ASIC pursuant to section 533 of the act</li> <li>▪ Preparation and lodgement of supplementary report if required</li> </ul>
<b>Investigations</b>		
154 hours		
\$50,000		
	Examinations	<ul style="list-style-type: none"> <li>▪ Preparing brief to solicitor</li> <li>▪ Liaising with solicitor(s) regarding examinations</li> <li>▪ Attendance at examination</li> <li>▪ Reviewing examination transcripts</li> <li>▪ Liaising with solicitor(s) regarding outcome of</li> </ul>

Task Area	General Description	Includes:
		examinations and further actions available
	Litigation/Recoveries	<ul style="list-style-type: none"> <li>▪ Internal meetings to discuss status of litigation</li> <li>▪ Preparing brief to solicitors</li> <li>▪ Liaising with solicitors regarding recovery actions</li> <li>▪ Attending to negotiations</li> <li>▪ Attending to settlement matters</li> </ul>
	ASIC reporting	<ul style="list-style-type: none"> <li>▪ Preparing statutory investigation reports</li> <li>▪ Preparing affidavits seeking non lodgements assistance</li> <li>▪ Liaising with ASIC</li> </ul>
<b>Dividend</b> 59 hours \$20,000	Processing proofs of debt	<ul style="list-style-type: none"> <li>▪ Preparation of correspondence to potential creditors inviting lodgement of POD</li> <li>▪ Receipt of PODs</li> <li>▪ Maintain POD register</li> <li>▪ Adjudicating PODs</li> <li>▪ Request further information from claimants regarding POD</li> <li>▪ Preparation of correspondence to claimant advising outcome of adjudication</li> </ul>
	Correspondence	<ul style="list-style-type: none"> <li>▪ General correspondence</li> </ul>
	Document maintenance/file review/checklist	<ul style="list-style-type: none"> <li>▪ Six (6) month administration review</li> <li>▪ Filing documents</li> <li>▪ File reviews</li> <li>▪ Updating checklists</li> </ul>
	Insurance	<ul style="list-style-type: none"> <li>▪ Identification of potential issues requiring attention of insurance specialists</li> <li>▪ Correspondence with Blue Broking regarding initial and ongoing insurance requirements</li> <li>▪ Reviewing insurance policies</li> <li>▪ Correspondence with previous brokers</li> </ul>
<b>Administration</b> 105 hours \$30,000	Bank account administration	<ul style="list-style-type: none"> <li>▪ Preparing correspondence opening and closing accounts</li> <li>▪ Requesting bank statements</li> <li>▪ Bank account reconciliations</li> <li>▪ Correspondence with bank regarding specific transfers</li> </ul>
	ASIC Form 524 and other forms	<ul style="list-style-type: none"> <li>▪ Preparing and lodging ASIC forms including 505, 524, 911 etc</li> <li>▪ Correspondence with ASIC regarding statutory forms</li> </ul>
	ATO & other statutory reporting	<ul style="list-style-type: none"> <li>▪ Notification of appointment</li> <li>▪ Preparing BAS'</li> <li>▪ Completing group certificates</li> </ul>
	Planning / Review	<ul style="list-style-type: none"> <li>▪ Discussions regarding status/strategy of administration</li> </ul>
	Books and records/storage	<ul style="list-style-type: none"> <li>▪ Dealing with records in storage</li> <li>▪ Sending job files to storage</li> </ul>

**A4 (cont) Where Liquidators are appointed, a schedule of the Liquidators' anticipated tasks and remuneration estimate from 15 September 2012 to the conclusion of the administration.**

Employee	Position	Current Charge Rate \$	Total		Assets		Creditors		Administration		Employees		Trade On		Investigation		Dividend	
			Hours	\$	Hours	\$	Hours	\$	Hours	\$	Hours	\$	Hours	\$	Hours	\$	Hours	\$
Martin Jones	Partner	580.00	45	26,100	28	16,240	2	1,160	5	2,900	-	-	5	2,900	5	2,900	-	-
Sean Powell	Senior Manager	440.00	135	59,400	45	19,800	10	4,400	10	4,400	15	6,600	10	4,400	30	13,200	15	6,600
Kieran Chu	Assistant Manager	330.00	130	42,900	40	13,200	15	4,950	10	3,300	10	3,300	15	4,950	30	9,900	10	3,300
Shannon Coleman	Assistant Manager	330.00	98	32,239	9	2,864	20	6,600	15	4,950	5	1,650	5	1,650	25	8,250	19	6,275
Lauren McCann	Senior Analyst	285.00	107	30,449	40	11,400	15	4,275	14	3,880	8	2,410	5	1,358	25	7,125	-	-
William Hulmes	Analyst	255.00	83	21,111	10	2,496	20	5,100	10	2,550	8	2,040	5	1,275	15	3,825	15	3,825
Jason Soo	Accountant	200.00	84	16,800	10	2,000	30	6,000	15	3,000	10	2,000	10	2,000	9	1,800	-	-
Ashleigh Weaver	Accountant	200.00	100	19,982	10	2,000	38	7,515	20	4,000	10	2,000	7	1,466	15	3,000	-	-
Jacqui Westwood	Senior Secretary	170.00	5	850	-	-	-	-	5	850	-	-	-	-	-	-	-	-
Talia Newland	Filing Clerk	170.00	1	170	-	-	-	-	1	170	-	-	-	-	-	-	-	-
<b>Total</b>			787	250,000	205	70,000	150	40,000	105	30,000	66	20,000	62	20,000	154	50,000	59	20,000
<b>GST</b>				25,000		7,000		4,000		3,000		2,000		2,000		5,000		2,000
<b>TOTAL (incl. GST)</b>				275,000		77,000		44,000		33,000		22,000		22,000		55,000		22,000
<b>Average hourly rate</b>				318		366		267		287		301		322		325		339

## A5 Remuneration approved and drawn to date

Creditors have not yet approved the Administrators' remuneration.

## A6 Resolutions to be put to creditors at the meeting convened for 6 September 2012

At the meeting of creditors convened for 14 September 2012, creditors will be asked to consider the following resolutions

*"That the Administrators' remuneration as set out in the Administrators' remuneration report dated 6 September 2012 for the period 10 August 2012 to 31 August 2012 be fixed in the amount of \$150,457.50 (exclusive of costs and GST)."*

*"The Administrators' estimated remuneration for the period 1 September 2012 to 14 September 2012 be fixed in accordance with the hourly rates of Ferrier Hodgson as detailed in the Administrators' remuneration report dated 6 September 2012 up to the amount of \$75,000 (exclusive of costs and GST), and that the Administrators be authorised to draw such amount monthly in arrears."*

If the Company is placed into Liquidation:

*" That the Liquidators' remuneration, as set out in the Administrators remuneration report dated 6 September 2012 for the period 15 September 2012 to the conclusion of the liquidation be fixed in accordance with the Ferrier Hodgson hourly rates up to the sum of \$250,000 (exclusive of costs and GST), but subject to upward revision by a resolution of creditors, the Committee of Inspection or the Court, and the Liquidators be authorised to make periodic payments on account of such accruing remuneration."*

## **PART B**

### **B1 Administrators' Disbursements**

Disbursements are divided into three types **D1**, **D2** and **D3**.

- D1** Disbursements are all externally provided professional services and are recovered at cost. An example of a D1 disbursement is legal fees.
- D2** Disbursements are externally provided non-professional costs such as travel, accommodation and search fees. D2 disbursements are recovered at cost.
- D3** Disbursements are internally provided non-professional costs such as photocopying and document storage. D3 disbursements are charged at cost except for photocopying, printing and telephone calls which are charged at a rate which is intended to recoup both variable and fixed costs. The relevant rates are set out below.

Disbursements	Charges (Excluding GST)
Advertising	At cost
Couriers	At cost
Mileage Reimbursement	\$0.67 per kilometre
Photocopying & document production (colour)	50 cents per copy
Photocopying & document production (mono)	20 cents per copy
Postage	At cost
Searches	At cost
Storage	At cost
Telephone	At cost

Creditor approval for the payment of disbursements is not required. However, the Administrators must account to creditors. Creditors have the right to question the incurring of disbursements and can challenge disbursements in court.

The disbursements incurred in the Administration for the period up to 31 August 2012 are detailed below:

Disbursements	Classification	Total (\$) (Excluding GST)
Facsimile	D3	18.00
Photocopying	D3	1,308.20
Postage	D3	784.06
Printing	D3	1,702.50
<b>Total</b>		<b>3,812.76</b>

## B2 Summary of Receipts and Payments for the period from 10 August 2012 to 31 August 2012

	\$
<b>RECEIPTS</b>	
Advance from Crane Investments Pty Ltd	20,000
Loan from D&G Verticon	963
Loan from JP Nelson	740,000
<b>Total Receipts</b>	<b>760,963</b>
<b>PAYMENTS</b>	
Employee Reimbursement	(3,668)
Insurance	(3,510)
IT Expenses	(13,500)
Repayment of Advance to Crane Investments Pty Ltd	(20,000)
Wages and Salaries (Net)	(501,720)
Total Payments	(542,399)
<b>Cash at Bank as at 31 August 2012</b>	<b>\$218,564</b>

## B3 Other Creditor Information on Remuneration

The partners of Ferrier Hodgson Western Australia are members of the Insolvency Practitioners Association of Australia and follow the IPA Code of Professional Practice. A copy of the Code of Professional Practice may be found on the IPA website at [www.ipaa.com.au](http://www.ipaa.com.au)

An information sheet concerning approval of remuneration in external administrations can also be obtained from the IPA website.

## **B4 Initial Advice to Creditors**

### **Remuneration Methods**

There are four basic methods that can be used to calculate the remuneration charged by an insolvency Practitioner. They are:

- 1. Time based / hourly rates**  
This is the most common method. The total fee charged is based on the hourly rate charged for each person who carried out the work multiplied by the number of hours spent by each person on each of the tasks performed.
- 2. Fixed Fee**  
The total fee charged is normally quoted at the commencement of the administration and is the total cost for the administration. Sometimes a Practitioner will finalise an administration for a fixed fee.
- 3. Percentage**  
The total fee charged is based on a percentage of a particular variable, such as the gross proceeds of assets realisations.
- 4. Contingency**  
The practitioner's fee is structured to be contingent on a particular outcome being achieved.

### **Method chosen**

Given the nature of this administration and having regard to our earlier engagement with creditors on the issue, we propose that our remuneration be calculated on time based hourly rates.

This method was selected as it is the most practical method, and provides the most transparency to creditors given the nature of this administration.

Queries regarding remuneration should be directed to Jason Soo or William Hulmes of this office.

Dated this 6<sup>th</sup> day of September 2012



**Martin Jones**  
Joint and Several Administrator  
D&G Hoists & Cranes Pty Ltd

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# **Annexure 2**

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IPA Creditor Information Sheets

# Creditor Information Sheet

## Offences, Recoverable transactions and Insolvent Trading



### Offences

A summary of offences that may be identified by the administrator:

180	Failure by officer to exercise a reasonable degree of care and diligence in the exercise of his powers and the discharge of his duties.
181	Failure to act in good faith.
182	Making improper use of position as an officer or employee, to gain, directly or indirectly, an advantage.
183	Making improper use of information acquired by virtue of his position.
184	Reckless or intentional dishonesty in failing to exercise duties in good faith for proper purpose. Use of position or information dishonestly to gain advantage or cause detriment.
206A	Contravening an order against taking part in management of a corporation.
206A, B	Taking part in management of corporation while being an insolvent under an administration.
206A, B	Acting as a director or promoter or taking part in the management of a company within five years after conviction or imprisonment for various offences.
209(3)	Dishonest failure to observe requirements on making loans to directors or related companies.
254T	Paying dividends except out of profits.
286	Failure to keep proper accounting records.
312	Obstruction of auditor.
314-7	Failure to comply with requirements for financial statement preparation.
437C	Performing or exercising a function or power as officer while a company is under administration.
437D(5)	Unauthorised dealing with company's property during administration.
438B(4)	Failure by directors to assist administrator, deliver records and provide information.
438C(5)	Failure to deliver up books and records to administrator.
590	Failure to disclose property, concealed or removed property, concealed a debt due to the company, altered books of the company, fraudulently obtained credit on behalf of the company, material omission from Report as to Affairs or false representation to creditors.

### Voidable Transactions

#### *Preferences*

A preference is a transaction such as a payment between the company and one or more of its creditors, in which the creditor receiving the payment is preferred over the general body of creditors. The relevant time period is six months before the commencement of the liquidation. The company must have been insolvent at the time of the transaction, or become insolvent as a result of the transaction.

Where a creditor receives a preferred payment, the payment is voidable as against a liquidator and is liable to be paid back to the liquidator subject to the creditor being able to successfully maintain any of the defences available to the creditor under either the Corporations Act.

#### *Uncommercial Transaction*

An uncommercial transaction is one that it may be expected that a reasonable person in the company's circumstances would not have entered into having regard to:

- the benefit or detriment to the company;
- the respective benefits to other parties; and,
- any other relevant matter.

To be voidable, an uncommercial transaction must have occurred during the two years before the liquidation. However, if a related entity is a party to the transaction, the time period is four years and if the intention of the transaction is to defeat creditors, the time period is ten years.



The company must have been insolvent at the time of the transaction, or become insolvent as a result of the transaction.

### ***Unfair Loan***

A loan is unfair if and only if the interest was extortionate when the loan was made or has since become extortionate. There is no time limit on unfair loans – they only have to have been entered into any time on or before the day when the winding up began.

### ***Arrangements to avoid employee entitlements***

If an employee suffers loss because a person (including a director) enters into an arrangement or transaction to avoid the payment of employee entitlements, the liquidator or the employee may seek to recover compensation from that person. It will only be necessary to satisfy the court that there was a breach on the balance of probabilities. There is no time limit on when the transaction occurred.

### ***Unreasonable payments to directors***

Liquidators have the power to reclaim "unreasonable payments" made to directors by companies prior to liquidation. The provision relates to transactions made to, on behalf of, or for the benefit of, a director or close associate of a director. To fall within the scope of the section, the transaction **must** have been unreasonable, and have been entered into during the 4 years leading up to a company's liquidation, regardless of its solvency at the time the transaction occurred.

### ***Voidable charges***

Certain charges are voidable by a liquidator:

- Floating charge created with six months of the liquidation unless it secures a subsequent advance;
- Unregistered charges; and
- Charges in favour of related parties who attempt to enforce the charge within 6 months of its creation.

### **Insolvent Trading**

In the following circumstances, directors may be personally liable for insolvent trading by the company:

- a person is a director at the time a company incurs a debt;
- the company is insolvent at the time of incurring the debt or becomes insolvent because of incurring the debt;
- at the time the debt was incurred, there were reasonable grounds to suspect that the company was insolvent;
- the director was aware such grounds for suspicion existed; and
- a reasonable person in a like position would have been so aware.

The law provides that the liquidator, and in certain circumstances the creditor who suffered the loss, may recover from the director, an amount equal to the loss or damage suffered. Similar provisions exist to pursue holding companies for debts incurred by their subsidiaries.

A defence is available under the law where the director can establish:

- there were reasonable grounds to expect that the company was solvent and they actually did so expect;
- they did not take part in management for illness or some other good reason; or,
- they took all reasonable steps to prevent the company incurring the debt.

The proceeds of any recovery for insolvent trading by a liquidator are available for distribution to the unsecured creditors before the secured creditors.

**Important note:** This information sheet contains a summary of basic information on the topic. It is not a substitute for legal advice. Some provisions of the law referred to may have important exceptions or qualifications. This document may not contain all of the information about the law or the exceptions and qualifications that are relevant to your circumstances.



ASIC

Australian Securities & Investments Commission

## INFORMATION SHEET 85

# Approving fees: a guide for creditors

If a company is in financial difficulty, it can be put under the control of an independent external administrator.

This information sheet gives general information for creditors on the approval of an external administrator's fees in a liquidation of an insolvent company, voluntary administration or deed of company arrangement (other forms of external administration are not discussed in this information sheet). It outlines the rights that creditors have in the approval process.

## Entitlement to fees and costs

A liquidator, voluntary administrator or deed administrator (i.e. an 'external administrator') is entitled to be:

- paid reasonable *fees*, or remuneration, for the work they perform, once these fees have been approved by a creditors' committee, creditors or a court, and
- reimbursed for out-of-pocket *costs* incurred in performing their role (these costs do not need creditors' committee, creditor or court approval).

External administrators are only entitled to an amount of fees that is reasonable for the work that they and their staff properly perform in the external administration. What is reasonable will depend on the type of external administration and the issues that need to be resolved. Some are straightforward, while others are more complex.

External administrators must undertake some tasks that may not directly benefit creditors. These include reporting potential breaches of the law and lodging a detailed listing of receipts and payments with ASIC every 6 months. The external administrator is entitled to be paid for completing these statutory tasks.

For more on the tasks involved, see ASIC's information sheets 'Liquidation: a guide for creditors' and 'Voluntary administration: a guide for creditors'.

Out-of-pocket costs that are commonly reimbursed include:

- legal fees

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- valuer’s, real estate agent’s and auctioneer’s fees
- stationery, photocopying, telephone and postage costs
- retrieval costs for recovering the company’s computer records, and
- storage costs for the company’s books and records.

Creditors have a direct interest in the level of fees and costs, as the external administrator will, generally, be paid from the company’s available assets before any payments to creditors. If there are not enough assets, the external administrator may have arranged for a third party to pay any shortfall. As a creditor, you should receive details of such an arrangement. If there are not enough assets to pay the fees and costs, and there is no third party payment arrangement, any shortfall is not paid.

## Who may approve fees

Who may approve fees depends on the type of external administration: see Table 1. The external administrator must provide sufficient information to enable the relevant decision-making body to assess whether the fees are reasonable.

**Table 1: Who may approve fees**

	Creditors’ committee	Creditors	Court
Administrator in a voluntary administration	✓ <sup>1</sup>	✓	✓
Administrator of a deed of company arrangement	✓ <sup>1</sup>	✓	✓
Creditors’ voluntary liquidator	✓ <sup>1</sup>	✓ <sup>3, 6</sup>	✗ <sup>4</sup>
Court-appointed liquidator	✓ <sup>1</sup>	✓ <sup>5, 6</sup>	✓ <sup>2</sup>

<sup>1</sup> If there is one.

<sup>2</sup> If there is no approval by the committee or the creditors.

<sup>3</sup> If there is no creditors’ committee.

<sup>4</sup> Unless an application is made for a fee review.

<sup>5</sup> If there is no creditors’ committee or the committee fails to approve the fees.

<sup>6</sup> If insufficient creditors turn up to the meeting called by the liquidator to approve fees, the liquidator is entitled to be paid up to a maximum of \$5000, or more if specified in the *Corporations Regulations 2001*.

## Creditors’ committee approval

If there is a creditors’ committee, members are chosen by a vote of creditors as a whole. In approving the fees, the members represent all the creditors, not just their own individual interests.

There is not a creditors’ committee in every external administration. A creditors’ committee makes its decision by a majority in number of its members present at a meeting, but it can only act if a majority of its members attend.

To find out more about creditors' committees and how they are formed, see ASIC's information sheets 'Liquidation: a guide for creditors', 'Voluntary administration: a guide for creditors' and 'Insolvency: a glossary of terms'.

### Creditors' approval

Creditors approve fees by passing a resolution at a creditors' meeting. Unless creditors call for a poll, the resolution is passed if a simple majority of creditors present and voting, in person or by proxy, indicate that they agree to the resolution. Unlike committee members, creditors may vote according to their individual interests.

If a poll is taken, rather than a vote being decided on the voices or by a show of hands, a majority in *number* and *value* of creditors present and voting must agree. A poll requires the votes of each creditor to be recorded.

A separate resolution of creditors is required for approving fees for an administrator in a voluntary administration and a deed of company arrangement, even if the administrator is the same person in both administrations.

A proxy is where a creditor appoints someone else to represent them at a creditors' meeting and to vote on their behalf. A proxy can be either a *general* proxy or a *special* proxy. A general proxy allows the person holding the proxy to vote as they wish on a resolution, while a special proxy directs the proxy holder to vote in a particular way.

A creditor will sometimes appoint the external administrator as a proxy to vote on the creditor's behalf. An external administrator, their partners or staff must not use a general proxy to vote on approval of their fees; they must hold a special proxy in order to do this. They must vote all special proxies as directed, even those against approval of their fees.

### Calculation of fees

Fees may be calculated using one of a number of different methods, such as:

- on the basis of *time spent* by the external administrator and their staff
- a quoted *fixed fee*, based on an upfront estimate, or
- a *percentage of asset realisations*.

Charging on a time basis is the most common method. External administrators have a scale of hourly rates, with different rates for each category of staff working on the external administration, including the external administrator.

If the external administrator intends to charge on a time basis, you should receive a copy of these hourly rates soon after their appointment and before you are asked to approve the fees.

The external administrator and their staff will record the time taken for the various tasks involved, and a record will be kept of the nature of the work performed.

It is important to note that the hourly rates do not represent an hourly wage for the external administrator and their staff. The external administrator is running a business—an insolvency practice—and the hourly rates will be based on the cost of running the business, including overheads such as rent for business premises, utilities, wages and superannuation for staff

who are not charged out at an hourly rate (such as personal assistants), information technology support, office equipment and supplies, insurances, taxes, and a profit.

External administrators are professionals who are required to have qualifications and experience, be independent and maintain up-to-date skills. Many of the costs of running an insolvency practice are fixed costs that must be paid, even if there are insufficient assets available to pay the external administrator for their services. External administrators compete for work and their rates should reflect this.

These are all matters that committee members or creditors should be aware of when considering the fees presented. However, regardless of these matters, creditors have a right to question the external administrator about the fees and whether the rates are negotiable.

It is up to the external administrator to justify why the method chosen for calculating fees is an appropriate method for the particular external administration. As a creditor, you also have a right to question the external administrator about the calculation method used and how the calculation was made.

## **Report on proposed fees**

When seeking approval of fees, the external administrator must send committee members/creditors a report with the notice of meeting setting out:

- information that will enable the committee members/creditors to make an informed assessment of whether the proposed fees are reasonable
- a summary description of the major tasks performed, or to be performed, and
- the costs associated with each of these tasks.

Committee members/creditors may be asked to approve fees for work already performed or based on an estimate of work yet to be carried out.

If the work is yet to be carried out, it is advisable to set a maximum limit ('cap') on the amount that the external administrator may receive. For example, future fees calculated according to time spent may be approved on the basis of the number of hours worked at the rates charged (as set out in the provided rate scale) up to a cap of \$X. If the work involved then exceeds this figure, the external administrator will have to ask the creditors' committee/creditors to approve a further amount of fees, after accounting for the fees already incurred.

## **Deciding if fees are reasonable**

If asked to approve an amount of fees either as a committee member or by resolution at a creditors' meeting, your task is to decide if that amount of fees is reasonable, given the work carried out in the external administration and the results of that work.

You may find the following list of factors useful in deciding if the fees claimed are reasonable. This list includes those factors that a court takes into account in setting or reviewing fees for external administrators, and not all these factors may be relevant to a particular external administration. Factors to consider include:

- the extent to which the work performed, or likely to be performed, was reasonably necessary
- the period during which the work was, or is or likely to be, performed
- the quality of the work performed, or likely to be performed
- the complexity (or otherwise) of the work performed, or likely to be performed
- the extent (if any) to which the external administrator was, or is likely to be, required to deal with extraordinary issues
- the extent (if any) to which the external administrator was, or is likely to be, required to accept a higher level of risk or responsibility than is usually the case
- the value and nature of any property dealt with, or likely to be dealt with
- whether the external administrator was, or is likely to be, required to deal with other external administrators
- the number, attributes and behaviour, or the likely number, attributes and behaviour, of the company's creditors, and
- if the remuneration is ascertained, in whole or in part, on a time basis:
  - the time properly taken, or likely to be properly taken, in performing the work
  - whether the remuneration is capped, and
- any other relevant matters.

If you need more information about fees than is provided in the external administrator's report, you should let them know before the meeting at which fees will be voted on.

## **What can you do if you think the fees are not reasonable?**

If you do not think the fees being claimed are reasonable, you should raise your concerns with the external administrator. It is your decision whether to vote in favour of, or against, a resolution to approve fees.

Generally, if fees are approved by a creditors' committee/creditors and you wish to challenge this decision, you may apply to the court and ask the court to review the fees. Special rules apply to court liquidations.

You may wish to seek your own legal advice if you are considering applying for a court review of the fees.

## **Reimbursement of out-of-pocket costs**

An external administrator should be very careful incurring costs that must be paid from the external administration—as careful as if they were dealing with their own money. Their report on fees should also include information on the out-of-pocket costs of the external administration.

If you have questions about any of these costs, you should ask the external administrator and, if necessary, bring it up at a creditors' committee/creditors' meeting. If you are still concerned, you have the right to ask the court to review the costs.

## Queries and complaints

You should first raise any queries or complaints with the external administrator. If this fails to resolve your concerns, including any concerns about their conduct, you can lodge a complaint with ASIC at [www.asic.gov.au](http://www.asic.gov.au), or write to:

Manager National Assessment & Action  
ASIC  
GPO Box 9827  
IN YOUR CAPITAL CITY

ASIC will usually not become involved in matters of commercial judgement by an external administrator. Complaints against companies and their officers can also be made to ASIC. For other enquiries, email ASIC through [infoline@asic.gov.au](mailto:infoline@asic.gov.au), or call ASIC's Infoline on 1300 300 630 for the cost of a local call.

### To find out more

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

- Voluntary administration: a guide for creditors
- Voluntary administration: a guide for employees
- Liquidation: a guide for creditors
- Liquidation: a guide for employees
- Receivership: a guide for creditors
- Receivership: a guide for employees
- Insolvency: a guide for shareholders
- Insolvency: a guide for directors
- Independence of external administrators: a guide for creditors

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

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