



McGrathNicol

Community Work Pty Limited (In Liquidation)
ACN 098 501 752
(CW)

Statutory Report to Creditors

McGrathNicol
Partnership

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We refer to our first annual report to creditors dated 26 October 2018 (**Annual Report**) in which we provided creditors an update on the liquidation of CW and details of the Annual Meeting of Creditors. We recommend you read the Annual Report in conjunction with this report.

The purpose of this report is to:

- provide you with an update on the progress of the liquidation;
- provide you with an updated version of the Declaration of Independence, Relevant Relationships and Indemnities (**DIRRI**); and
- advise you of the likelihood of a dividend being paid in the liquidation.

1. Update on the progress of the liquidation

As creditors are aware, Peter Krejci of BRI Ferrier was originally appointed as Voluntary Administrator of CW on 23 June 2017, and subsequently liquidator on 28 July 2017. Mr Krejci remained in that role until the creditors' meeting held on 4 October 2018, when CW's creditors resolved to appoint Kathy Sozou and I as Joint and Several Liquidators of CW (**the Liquidators**).

1.1 Background

CW traded as a not-for-profit, residential out of home care provider for children and young people. We have been advised that in order to relocate CW's residents to other youth care facilities, BRI Ferrier continued to trade CW between 23 June 2017 and 30 June 2017. However once all residents were relocated, CW ceased to trade permanently.

1.2 Assets

Please note there are no tangible assets to recover in the Liquidation, therefore any recoveries are contingent on voidable transactions and litigation.

The following table summarises the assets disclosed in the Report as to affairs (**RATA**) submitted by the Directors to the former liquidator.

Community Work Pty Limited (In Liquidation) - Assets			
Asset	Book Value as at 30/06/2017	RATA (\$)	Liquidator's ERV (\$)
Cash and Cash Equivalents	338,573	228,573	300
<i>Sundry Debtors</i>			
Alpha Support Services Loan	686,539	686,539	Unknown
FACS	1,754,828	2,507,403	Unknown
Other Assets	233	-	-
Total Assets	2,780,173	3,422,515	300

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As indicated above, the RATA recorded a related party loan, whereby Alpha Support Services (**Alpha**) owed \$686,539 to CW. We are aware that the previous liquidator issued Alpha a letter of demand, and that the directors of Alpha disputed that the debt was owing, advising that it was an accounting error. To date, the directors' of Alpha have not produced any evidence to support this dispute and therefore this matter requires further investigation.

Family and Community Services (**FACS**) is recorded as a debtor of CW in the financials for c. \$1.75 million, and in the RATA for c. \$2.5 million. We note that whilst the previous liquidator was able to recover \$239,036 in respect of unpaid "Exception Invoices", as FACS has submitted a proof of debt in the amount of c. \$19.6 million set off may apply in respect of any remaining recoveries. Further investigations into this amount and the claim is required.

The investigations into CW's assets are ongoing and subject to the outcomes of the public examinations. Therefore it is difficult for us to estimate the value of the asset realisations at this stage.

1.3 Liabilities

Please see the below table outlining CW's liabilities:

Community Work Pty Limited (In Liquidation) - Liabilities

Creditor Name	RATA Amount (\$)	POD Amount (\$)
Priority creditors		
Department of Jobs and Small Business	220,128	276,923.87
Superannuation	61,700	65,762
Other priority creditors		3,620
Total priority creditors	281,828	346,305
Unsecured creditors		
Australian Taxation Office	263,859	197,022
FACS	-	19,627,861
Real Estate Agents	26,866	-
Related Party Creditors	1,567,008	1,815,795
Trade Creditors	40,972	224,302
Other	15,967	-
Total unsecured creditors	1,914,671	21,864,980
Total estimated creditors	2,196,499	22,211,285

1.3.1 Priority creditors

The former liquidator has advised that the majority of former employee claims (other than superannuation) have been paid by the Department of Jobs and Small Business (**DoJSB**) through the FEG scheme. DoJSB now has a subrogated priority claim in the liquidation.

Should there be sufficient funds to pay a dividend to the priority creditors, payment will be made directly to DoJSB for those creditors who have been paid by the DoJSB. Those former employees who have priority claims against CW, but have not been paid by DoJSB, after going through an adjudication process, may be paid directly.



Any outstanding superannuation will be paid to the Australian Taxation Office (**ATO**) for onward distribution to CW's former employees.

1.3.2 Unsecured creditors

To date we have received claims totalling approximately \$21.9m including the \$19.6m claim by FACS. The former liquidator advised that the directors of CW have disputed the FACS claim.

Please note that we have not adjudicated on any unsecured claims, and do not intend to, until it becomes clear that there are funds to pay a dividend to unsecured creditors, therefore the above numbers are subject to change.

1.4 Liquidator's investigations

As set out in the previous liquidator's statutory report dated 27 October 2017, there are a number of possible claims available to the liquidator by way of voidable transactions or other causes of actions (i.e. breach of duty, insolvent trading, amongst others).

In order to progress the investigations of these possible causes of action we undertook public examinations of a number of key individuals related to CW.

1.4.1 Public examinations

The public examinations were held in the Federal Court from 23 October 2018 to 8 November 2018 and examined a number of key individuals involved with CW and its related entities, including:

- Mr Michael Blair;
- Mr Glen Ella;
- Mr Dylan Copeland;
- Mr Kevin Casey;
- Mr Dylan Bijkerk;
- Ms Samantha Madigan;
- Mr Paul Clarke; and
- Mr Roy Bijkerk.

The public examinations for each of the examinees have been stood over, and we have been provided the liberty to restore the examinations until 23 May 2019.

The outcomes of the public examinations have aided our ongoing investigations into potential claims against the directors and other parties, but due to confidentiality we are unable to disclose specific details at this time.

1.4.2 Other voidable transactions

The former liquidator advised there may be an unfair preference claim against the Deputy Commissioner of Taxation for approximately \$359,000. We note that this potential claim was dismissed in the first instance by the Deputy Commissioner of Taxation and requires further investigation.

1.4.3 Reports to Australian Securities and Investment Commission (ASIC)

We have certain obligations under section 533 of the Act to report to ASIC if in the course of the winding up, they become aware that certain individuals may be guilty of an offence, or if a company is unable to pay a dividend to its unsecured creditors of more than 50 cents in the dollar.



The former liquidator has filed a report with ASIC in this regard, and ASIC has requested a supplementary report which we will prepare in due course.

2. Receipts and payments to date

There was \$155,921.79 in the previous liquidator's account which has been transferred to our control, however, we note that the amount received from FACS has been received in error and will have to be repaid.

Community Work Pty Ltd (In Liquidation)		
Receipts and payments account for period 4 October 2018 to 13 December 2018		
Account	\$	\$
Receipts		
Cash at bank	300.00	
FACS funding (payment error)	155,621.79	
Total receipts		155,921.79
Payments		
Total payments		-
Balance in hand		155,921.79

3. DIRRI

Since the date of our appointment we have negotiated and entered into a funding agreement with FACS which was approved by the Committee of Inspection on 5 November 2018. Our updated DIRRI was tabled at the Annual Meeting of creditors on 15 November 2018.

I now attach that amended DIRRI at appendix 1, and note that should further funding agreements be put in place, a further updated DIRRI will be provided to creditors.

4. Likelihood of a dividend

Due to the complex nature of the claims, it is difficult for us to comment on the likely dividends payable. Once we have been able to progress our investigations, we will update creditors.

If a dividend is going to be paid, you will be contacted before that happens and, if you have not already done so, you will be asked to lodge a proof of debt. This formalises the record of your claim in the liquidation and is used to determine all claims against CW.

5. Committee of Inspection (COI)

At the Annual Meeting of Creditors held on 5 November 2018 we sought replacement for the employees who were no longer eligible to be committee members. I confirm that the DoJSB was appointed to the Committee, therefore the COI now has three members being the ATO, FACS and DoJSB.

6. Cost of the liquidation

As set out above, the liquidators have entered into a funding agreement with FACS in respect to fees incurred in regard to the preparation for and undertaking the public examinations.

Amongst other things, the funding agreement includes:

- Funding for the Liquidator's remuneration, legal fees and disbursement costs to an initial capped amount totalling \$1,211,000 (excl. GST).



- That the costs FACS have funded under the funding agreement will be reimbursed (without any interest charges) to FACS subject to recoveries made from claims initiated as a result of information obtained or further developed through public examinations. These reimbursements will be treated as priority payments under section 556(1)(a) of the Corporations Act.
- Various indemnities for the Liquidators, including in relation to adverse costs.

Any remuneration of the liquidators will be approved in accordance with the requirements of the Corporations Act prior to payment.

Whilst the above funding agreement only related to preparing for and undertaking the public examinations, FACS have also agreed in principle to fund statutory compliance and administrative matters which relate to the conduct of the liquidation.

We expect that funding will be negotiated in the near future for the continued investigation into possible claims.

7. Outstanding tasks in the liquidation

We anticipate the following tasks will need to be undertaken prior to finalisation of the Liquidation:

- Investigate the affairs of CW and its related entities in further detail;
- Consider potential recovery actions in further detail;
- Prepare a statutory report to creditors;
- Report to ASIC;
- Distribute dividends to creditors (if applicable); and
- Other statutory tasks.

If we receive a request for a meeting that complies with the guidelines set out in the initial information provided to you, we will hold a meeting of creditors.

We may write to you again with further information on the progress of the liquidation.

The expected completion date is contingent upon the outcome of the public examinations and our continuing investigations. At this stage, we anticipate the liquidation will not be finalised for at least 18 months.

8. Where can you get more information?

You can access information which may assist you on the following websites:

- ARITA at www.arita.com.au/creditors.
- ASIC at www.asic.gov.au (search for "insolvency information sheets").

If you have any queries, please contact Isabella Horne of my office on via email ihorne@mcgrathnicol.com or phone on (02) 9338 2674. For further information about this engagement, please refer to the website <http://www.mcgrathnicol.com/creditors/community-work-pty-limited/>.



Dated: 21 December 2018

A handwritten signature in black ink, appearing to read 'Barry Kogan'.

Barry Kogan
Liquidator

Enclosures:

- 1 Declaration of Independence, Relevant Relationships and Indemnities
- 2 ARITA Information Sheet – Offences, Recoverable Transactions & Insolvent Trading



Declaration of Independence, Relevant Relationships and Indemnities (DIRRI) – Version 3

Community Work Pty Limited (In Liquidation)
Trading as Guardian Youth Care
ACN 098 501 752
(Community Work)

The *Corporations Act* and professional standards require the Practitioners appointed to an insolvent entity to make a declaration as to:

- A. their independence generally;
- B. relationships, including
 - a) the circumstances of the appointment;
 - b) any relationships with the company and others within the previous 24 months;
 - c) any prior professional services for the company within the previous 24 months;
 - d) that there are no other relationships to declare; and
- C. any indemnities given, or up-front payments made, to the Practitioner.

This declaration is made in respect of ourselves, our partners, the firm McGrathNicol, which for the purpose of this declaration includes the McGrathNicol Partnership, the McGrathNicol Advisory Partnership and McGrathNicol Services Pty Ltd.

A. Independence

We, Barry Kogan and Katherine Sozou, of the firm McGrathNicol have undertaken a proper assessment of the risks to our independence prior to accepting the nomination as proposed replacement liquidators of Community Work in accordance with the law and applicable professional standards. This assessment identified no real or potential risks to our independence. We are not aware of any reasons that would prevent us from accepting this appointment, if made.

B. Declaration of Relationships

(i) Circumstances of appointment

This potential (now actual) appointment was referred to us by Norton Rose, lawyers for the Department of Family and Community Services (**the Department**), the majority creditor of Community Work.

We believe this referral does not result in a conflict of interest or duty because:

- from time to time we are referred work from and refer legal work to Norton Rose, but we have not previously been referred work in relation to Community Work;
- we have not previously been referred work by the Department in reference to Community Work;
- the referral is unconditional; and
- referrals between professional advisors are common place.

On 1 August, 2018, Barry Kogan was contacted by a partner at Norton Rose about a potential role regarding the replacement of an incumbent liquidator and requested that a competitive pitch was put together.



Following the delivery of the successful pitch by McGrathNicol to Norton Rose and representatives of the Department on 6 August 2018, we received a further communication from Norton Rose on 24 August 2018, asking that we consider a different potential role. This changed role was to potentially provide assistance to the incumbent liquidators with their investigations and preparation for upcoming public examinations of directors and other parties related to Community Work.

A meeting to discuss how this may proceed was held on 28 August 2018 between the Department, representatives of Norton Rose acting for the Department, Peter Krejci and John Keenan, of BRI Ferrier (the incumbent liquidator), representatives of Colin Biggers Paisley (the liquidators' lawyers) and Barry Kogan, Matt Fehon and Louise Mann of McGrathNicol. Draft engagement terms were circulated between the parties after this meeting but the terms were not agreed and this pathway was ultimately not pursued.

On 6 September 2018, the Department requested that Barry Kogan provide a consent to act and a draft Declaration of Independence and Relevant Relationships, pending the proposed replacement of the current liquidators.

We have received no fees to date for our attendance at the meetings and to the communications referred to above.

We have had no meetings or other communications with any of the directors of Community Work.

In our opinion, the meetings and communications referred to above do not affect our independence for the following reasons:

- The discussions were of a preliminary nature, for planning purposes;
- No formal advice has been provided and the comments made in discussions were not of a nature that would require review in any subsequent appointment;
- There is no prior professional relationship with Community Work or its directors; and
- We have particularised why our (limited) relationship with the Department does not present a conflict of interest in section B(ii) below.

We have provided no information or advice to Community Work or its directors.

On 10 September 2018, the Department issued a letter of instruction to McGrathNicol requesting that they undertake a forensic role to assist with preparation for the upcoming public examinations which are scheduled for late October 2018. This was requested because of the urgent need to capture electronic records to allow the Department, as an eligible applicant to the examination proceedings, to undertake the necessary preparation. In accordance with this request, the Department provided McGrathNicol with certain company documentation in electronic form that they have gained access to in their capacity as eligible applicant and creditor of Community Work.

In our opinion, this engagement does not affect our independence for the following reasons:

- it is a very short term engagement focussed on urgently securing electronic records of Community Work which the Department is entitled to access;
- the engagement is with the Department, not the company and the fees incurred will be payable by the Department however, the Department has agreed the output of the forensic work can be used for the benefit of the liquidation;
- this urgent work is only required because of the scheduled public examinations in late October to ensure that records needed for this purpose are located and protected to preserve their utility in potential litigation of claims that may be available to the company; and



- the engagement will not involve opinion or advice that would be the subject of potential review in the subsequent liquidation.

On 4 October 2018, Barry Kogan and Katherine Sozou replaced Peter Krejci of BRI Ferrier as liquidators of Community Work at a meeting of creditors.

Relevant Relationships (excluding professional services to the Insolvent)

Neither we, nor our firm, have, or have had, within the preceding 24 months, any relationships with Community Work, an associate of Community Work, a former insolvency practitioner appointed to Community Work or any person or entity that has security over the whole or substantially whole of Community Work’s property.

We or a member of our firm, have or have had within the preceding 24 months, a relationship with:

Name	Nature of relationship	Reasons
<p>Department of Family and Community Services (the Department)</p>	<p>The Department provided significant amounts of funding to Community Work to undertake its pre appointment operations by way of funding grants and is the major creditor of Community Work.</p> <p>As detailed in section B above, the Department, in its capacity as a creditor of Community Work, have proposed to nominate McGrathNicol partners to replace the incumbent liquidator.</p> <p>The Department has instructed McGrathNicol to undertake forensic analysis of data in preparation for public examinations.</p>	<p>We believe this relationship does not result in a conflict of interest or duty because:</p> <ul style="list-style-type: none"> • The Department instructed McGrathNicol to undertake a forensic role to examine data provided by the Department regarding Community Work in order to assist with the preparation for the public examinations. • The investigatory work the Department wishes to progress relate to actions taken by the directors of Community Work prior to its winding up and in doing so will be for the benefit of all creditors, whose interest are aligned with those of the Department as beneficiaries of any potential recovery actions. <p>We understand that the Department has funded some work done in the liquidation to date and intends to continue to fund work necessary to progress the investigations into potential causes of action. This funding is required as we understand the liquidation is otherwise without assets.</p> <p>We understand that:</p> <ul style="list-style-type: none"> ▪ the Department is the major unsecured and indemnifying creditor whose interests are aligned with all other creditors; and ▪ the Department wishes to appoint us to act as replacement liquidators because of McGrathNicol’s experience and skills, particularly in the area of Forensic investigation.



		Given these factors, we are of the view that our independence to act as potential replacement liquidators has not been affected.
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(ii) *Prior professional services to the Insolvent*

Neither we, nor our firm, have provided any professional services to Community Work, in the previous 24 months.

(iii) *No other relevant relationships to disclose*

There are no other known relevant relationships, including personal, business and professional relationships, from the previous 24 months with Community Work, an associate of Community Work, a former insolvency practitioner appointed to Community Work or any person or entity that has security over the whole or substantially the whole of Community Work's property that should be disclosed.

C. *Indemnities and Up-front Payments*

We have not been provided with any indemnities or upfront payments for remuneration for the conduct of this potential appointment as liquidators.

This does not include statutory indemnities. We have not received any other indemnities or up-front payments that should be disclosed.

~~We do anticipate that if appointed, we will be indemnified by the Department for our costs and expenses and fees. If we are appointed and that indemnity is agreed we will update this DIRRI accordingly.~~

Since our appointment, we have been negotiating a new funding agreement with FACS in respect of the public examinations held in October and November 2018 (**Public Examinations**).

Amongst other things, the funding agreement includes:

- Funding for the Liquidators' remuneration, legal fees and disbursement costs to an initial capped amount totalling \$1,211,000 (excl. GST).
- That the costs FACS have funded under the funding agreement will be reimbursed (without any interest charges) to FACS subject to recoveries made from claims initiated as a result of information obtained or further developed through the Public Examinations. These reimbursements will be treated as priority payments under section 556(1)(a) of the Corporations Act.
- Various indemnities for the Liquidators, including in relation to adverse costs.

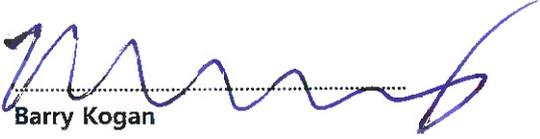
The Funding Agreement was approved unanimously by the Committee of Inspection (**COI**) at a meeting held on 5 November 2018.

Any remuneration of the liquidators will be approved in accordance with the requirements of the Corporations Act prior to payment.

Whilst the above funding agreement only relates to undertaking the Public Examinations, FACS have also agreed in principle to fund statutory compliance and administrative matters which relate to the conduct of the liquidation. If that further funding is provided a further update will be made to this DIRRI in due course.



Dated: 5 November 2018


Barry Kogan


Katherine Sozou

Note:

- 1 If the circumstances change or new information is identified, we are required under the Corporations Act 2001 and the ARITA Code of Professional Practice to update this Declaration and provide a copy to creditors with our next communication, as well as table a copy of any replacement Declaration at the next meeting of the insolvent's creditors.
- 2 Any relationships, indemnities or up-front payments disclosed in the DIRRI must not be such that the Practitioner is no longer independent. The purpose of components B and C of the DIRRI is to disclose relationships that, while they do not result in the Practitioner having a conflict of interest or duty, ensure that creditors are aware of those relationships and understand why the Practitioner nevertheless remains independent.

Please note that the presentation of the above information is in accordance with the standard format suggested by ARITA.

Creditor Information Sheet

Offences, Recoverable Transactions and Insolvent Trading



Offences

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

180	Failure by company officers to exercise a reasonable degree of care and diligence in the exercise of their powers and the discharge of their duties.
181	Failure to act in good faith.
182	Making improper use of their position as an officer or employee, to gain, directly or indirectly, an advantage.
183	Making improper use of information acquired by virtue of the officer's position.
184	Reckless or intentional dishonesty in failing to exercise duties in good faith for a proper purpose. Use of position or information dishonestly to gain advantage or cause detriment. This can be a criminal offence.
198G	Performing or exercising a function or power as an officer while a company is under administration.
206A	Contravening a court order against taking part in the management of a corporation.
206A, B	Taking part in the management of corporation while being an insolvent, for example, while bankrupt.
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 an auditor.
314-7	Failure to comply with requirements for the preparation of financial statements.
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 the 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.

Recoverable Transactions

Preferences

A preference is a transaction, such as a payment by the company to a creditor, in which the creditor receiving the payment is preferred over the general body of creditors. The relevant period for the payment commences six months before the commencement of the liquidation. The company must have been insolvent at the time of the transaction, or become insolvent because of the transaction.

Where a creditor receives a preference, 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 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 period is four years and if the intention of the transaction is to defeat creditors, the period is ten years.

The company must have been insolvent at the time of the transaction, or become insolvent because 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 must be entered into before 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 payments made to or on behalf of a director or close associate of a director. 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 over company property are voidable by a liquidator:

- circulating security interest created within six months of the liquidation, unless it secures a subsequent advance;
- unregistered security interests;
- security interests in favour of related parties who attempt to enforce the security within six 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 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.