



Eureka Co-operative Housing Society Number 2 Limited (In Liquidation)
ABN 35 310 127 010
(Eureka)

Statutory Report to Creditors

Jamie Harris and I were appointed Liquidators of Eureka on 1 November 2018. The references to the Corporations Act 2001 (**the Corporations Act**) below are applicable pursuant to section 97C of the *Financial Intermediaries Act 1996* (**the FIA**).

We enclose our Declaration of Independence, Relevant Relationships and Indemnities (**DIRRI**). Our independent status and who appointed us is outlined in our DIRRI.

The purpose of this report is to:

- provide you with information about your rights as a creditor and set out who may be a creditor of Eureka;
- provide you with some background and an update on the progress of the liquidation;
- set out the next steps in the liquidation.

1 What are your rights as a creditor?

I enclose a copy of the information sheet "Creditor Rights in Liquidations" issued by the Australian Restructuring Insolvency & Turnaround Association (**ARITA**). It includes information on your rights to:

- make reasonable requests for a meeting;
- make reasonable requests for information;
- give directions to the Liquidators;
- appoint a reviewing liquidator; and
- replace us as Liquidators.

If we receive a request for a meeting in writing from at least 5% of known creditors, unrelated to Eureka, we are required to hold a meeting, as long as the request is reasonable. Details of the considerations that are relevant to determine whether a request is reasonable are set out in the ARITA information sheet "Creditor Rights in Liquidations".

2 Background

2.1 Eureka's business

Eureka, as a co-operative housing society, issued loans to members, and was thereby entitled to collect the principal and interest from members for their respective loans. As at 6 March 2018, Eureka had 14 remaining members.

2.2 Related entities

As at the date of our appointment, Mr David McGrath was a director of the following entities:

- Eureka;
- Express MGT Pty Ltd (**Express**). Express was also engaged as Eureka's manager; and
- McGrath Financial Services Australia Pty Ltd (**MFSA**).

Express and MFSA are therefore classified as related entities of Eureka.

2.3 Transfer of members' loans

Mr David McGrath has advised that MFSA became entitled to collect the principal and interest on Eureka's 14 remaining member loans by way of the following transaction completed on 6 March 2018 (**the Transaction**):



- MFSA paid \$187,099.61 to Eureka and those funds were used to repay the final balance of Eureka's source loan from the National Australia Bank Ltd (**nab**).
- MFSA became entitled to receive the remaining balance (plus interest over time) of Eureka's 14 remaining member loans with a face value of \$1,001,806.72.

I understand the members of Eureka were issued with the following documentation in relation to the Transaction:

- 'Notice of Special General Meeting 25 July 2017' provided on 22 June 2017;
- 'Financial Information in Relation to Motion to Refinance Loans' attachment provided on 22 June 2017; and
- 'Refinance to McGrath Financial Services Australia' letter provided on 13 March 2018.

2.4 *Liquidators' comments on the transfer of members' loans*

I am concerned that the Transaction was with a related party and may not have properly dealt with Eureka's member's rights.

Eureka's rules state it must distribute its surplus to members. My investigations indicate Eureka's surplus available to members was approximately \$830,031 in total as at 6 March 2018. If the surplus was appropriately distributed to members, the 14 members' loans would have been discounted by up to \$830,031 in total. This would have resulted in each member's loan balance reducing by as much as 80%.

Based on my review of the books and records provided to me, Eureka's members may not have been properly advised of their entitlement to the surplus at the time they were informed of the proposed Transaction.

As each of the 14 former members were borrowers of Eureka and Eureka did not distribute its' surplus to reduce the balance of those members' loans, those former members may now have a claim against Eureka as unsecured creditors.

3 **Update on the progress of the liquidation**

The key achievements of the liquidation to date include:

- completion of statutory notifications following the appointment;
- requested, received and reviewed certain books and records. This included detailed correspondence with David McGrath and his legal advisors;
- commenced investigations into Eureka's affairs, including a detailed review of the facts and circumstances surrounding the Transaction; and
- reporting to Queensland Treasury Corporation (**QTC**) as the regulator of cooperative housing societies.

Further details on the progress of the liquidation are set out below.

4 **Estimated asset realisations**

Set out below is a summary of Eureka's estimated assets based on the Report as to Affairs (**RATA**) submitted by each director compared to the Liquidators' realisations to date and estimates of total realisations.

Estimated asset realisations				
Description	Note	Realised to date (\$)	Liquidators' estimate (\$)	RATAs (\$)
Cash at bank	4.1	7,441	8,411	7,441
Recovery actions	4.2	-	830,031	-
Total assets		7,441	838,442	7,441

Source: RATAs, liquidation cash receipts, Liquidators' analysis

All amounts AUD



4.1 Cash at bank

At the date of this report, I have recovered \$7,441.22 from Eureka’s bank account. I anticipate I will recover an additional \$970.00 from Eureka’s bank account.

4.2 Recovery actions

As detailed at sections 2.4 and 6 of this report, I intend to take steps to recover Eureka’s surplus of approximately \$830,031.01 so it can be distributed to Eureka’s creditors, including its former members.

5 Estimated liabilities

Set out below is a summary of Eureka’s estimated liabilities based on the RATA received from each of the directors.

Estimated liabilities						
Category	Note	Proofs of Debt		Liquidators' estimate		RATAs (\$)
		Value (\$)	No.	Value (\$)	No.	
Unsecured creditor - MFSA	5.2	-	-	1	1	3,830 / 3,850
Unsecured creditors - members	5.3	-	-	830,031	14	-
Total		-	-	830,032	15	3,830 / 3,850

Source: RATAs, Liquidators’ analysis

All amounts AUD

5.1 Summary of affairs and listing of creditors

I enclose the following:

- a summary of Eureka’s affairs from the information provided in the RATAs;
- a list of creditors, including their addresses, the estimated amounts of their claims that are shown in Eureka’s records, and identifying any creditors related to Eureka.

If you do not agree with the estimated amount of your claim, please complete and return the enclosed Proof of Debt Form (Form 535) to provide details and evidence of your claim. Enclosed are instructions to assist in completing the Proof of Debt Form. Alternatively, please contact Jacinta Camac of my office on (07) 3333 9836 or jcamac@mcgrathnicol.com.

5.2 MFSA

My investigations into MFSA’s unsecured claim are ongoing, therefore, I have temporarily estimated its claim at \$1.00.

5.3 Members

As detailed at section 2.4 of this report, the 14 former members of Eureka may have unsecured claims against Eureka for the undistributed surplus of \$830,031.01 in total.

6 Investigations undertaken

I have commenced investigations into Eureka’s affairs and summarise the status of these investigations below:

- I have received certain Eureka records from Mr David McGrath, however, MFSA has claimed ownership of certain former member records.
- Investigations with respect to breaches of the Corporations Act, the FIA and the *Property Law Act 1974* are ongoing.
- My preliminary investigations indicate Eureka transferred its member loans to MFSA on 6 March 2018, to the detriment of Eureka and its former 14 members as detailed at section 2.4 of this report.



At this stage in my investigations, I am unable to comment in detail on the nature of the potential recoveries available for the benefit of creditors and/or members of Eureka. However, I do intend to take steps to recover Eureka's surplus that was transferred to MFSA to the detriment of Eureka and Eureka's former members. If the recovery actions are successful, it may allow for Eureka's surplus to be distributed to its members through a dividend process, subject to the factors listed at section 9 of this report.

Upon finalisation of my investigations, I will also report my findings to QTC.

7 Outstanding matters

The following matters remain outstanding in the Liquidation:

- recovery of any remaining books and records of Eureka;
- finalisation of investigations with respect to breaches of the Corporations Act, the FIA and the Property Law Act 1974;
- pursuing any viable recovery actions, including for the return of the surplus that was transferred from Eureka to MFSA pursuant to the Transaction; and
- reporting on the results of my investigations to QTC.

8 Receipts and payment to date

Summarised below are details of all receipts and payments in the Liquidation to date.

Receipts and payments for the period 1 November 2018 to 31 January 2019	
Account	GST inclusive amount (\$)
Receipts	
Pre-appointment bank account	7,441.22
Receipt from former member	970.00
Total receipts	8,441.22
Total payments	-
Net receipts/(payments)	8,441.22

9 Likelihood of a dividend

A number of factors will affect the likelihood of a dividend being paid to creditors, including:

- the size and complexity of the liquidation;
- the value of unsecured creditor claims,
- the volume of enquiries by creditors and other stakeholders;
- the volume of reporting to QTC;
- the timing and costs of pursuing any viable recovery actions; and
- the recovery values of any such actions.

Based on information available at this time, I consider it likely that a dividend may be payable to creditors with admitted claims in the liquidation.

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 Eureka.



10 **Cost of the liquidation**

We get paid out of Eureka's money, including realisations from assets or from money paid to us by others, such as QTC. If there is not enough money in the liquidation, we do not get paid in full.

I enclose our Initial Remuneration Notice, which provides you with information about how we propose to be paid for undertaking the liquidation.

We may write and ask that you approve our remuneration for the work that we do in completing the liquidation. If we do, we will provide you with detailed information about what tasks we have undertaken and the costs of those tasks.

We estimate that our total remuneration for the liquidation will be between \$60,000 and \$100,000 (exclusive of GST and disbursements). The actual amount of our remuneration will depend on the steps I am required to take to recover Eureka's surplus and whether Court action is required. If so, the costs may differ materially from this estimate.

11 **What happens next?**

We will proceed with the liquidation, which will include:

- completing our investigations into Eureka's affairs;
- pursuing any viable recovery actions;
- completing our reporting to QTC; and
- distributing any available funds to creditors.

If we consider it to be in the interests of creditors, we will hold a meeting to communicate with creditors. Further, if we receive a request for a meeting that complies with the guidelines set out in the enclosed ARITA information sheet "Creditor Rights in Liquidations", we will also hold a meeting of creditors.

We may write to you again with further information on the progress of the liquidation or with proposals to approve certain matters in the liquidation. We expect to have completed this liquidation within twelve months, subject to the timing of any viable recovery actions.

12 **Where can you get more information?**

I enclose the following information sheets for your reference:

- ARITA Information Sheet – Offences, Recoverable Transactions & Insolvent Trading; and
- ASIC Information Sheet - Insolvency information for directors, employees, creditors and shareholders.

You can access additional 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").

Please bear in mind that much of the above guidance is prepared on the basis of a company in liquidation. Modifications are required to this information as it applies to cooperative housing societies.



If you have any queries, please contact Jacinta Camac on (07) 3333 9836. For further information about this engagement, please refer to the website www.mcgrathnicol.com/creditors.

Dated: 1 February 2019

Anthony Connelly
Liquidator

Enclosures:

- 1 Declaration of Independence, Relevant Relationships and Indemnities
- 2 ARITA Information Sheet - Creditor Rights in Liquidations
- 3 Summary of affairs (Form 509)
- 4 List of creditors identifying related parties
- 5 Proof of Debt (Form 535)
- 6 Proof of Debt Guidance Notes
- 7 Initial Remuneration Notice
- 8 ARITA Information Sheet – Offences, Recoverable Transactions & Insolvent Trading
- 9 ASIC Information Sheet - Insolvency information for directors, employees, creditors and shareholders



Declaration of Independence, Relevant Relationships and Indemnities (DIRRI)

Eureka Co-operative Housing Society Number 2 Limited (In Liquidation)

ABN 35 310 127 010

(Eureka)

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, Anthony Norman Connelly and William James Harris, of the firm McGrathNicol have undertaken a proper assessment of the risks to our independence prior to accepting the appointment as liquidators of Eureka 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.

B. Declaration of Relationships

(i) *Circumstances of appointment*

This appointment was referred to us by Queensland Treasury Corporation (**QTC**), the Registrar for the *Financial Intermediaries Act 1996*.

On 11 October 2018, Anthony Connelly met with representatives of QTC to discuss the possible appointment as Liquidators of Eureka. On 17 October 2018, we confirmed there was no conflict of interest and provided our consents to act.

Prior to the commencement of the Liquidation, McGrathNicol had been engaged by the Registrar to undertake an inspection of Eureka in May 2015 to December 2015 and in June 2018. We believe this relationship does not result in a conflict of interest or duty because:

- the inspections conducted by McGrathNicol were limited to a high-level inspection of the operations of Eureka on behalf of QTC (taking approximately 3 to 6 months), with limited interaction with Eureka's representatives, focused on obtaining records;



- QTC engaged McGrathNicol and paid the applicable fee; at no point has McGrathNicol been engaged by Eureka; and
- McGrathNicol's previous work will not influence our ability to fully comply with the statutory and fiduciary obligations associated with Eureka's Liquidation in an objective and impartial matter as the nature of the advice provided was such that it would not be subject to review and challenge during the course of the Liquidation.

(ii) *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 Eureka, an associate of Eureka, a former insolvency practitioner appointed to Eureka or any person or entity that has security over the whole or substantially whole of Eureka'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
QTC	Registrar of Eureka. McGrathNicol undertakes advisory work from time-to-time on instructions from QTC.	We believe this relationship does not result in a conflict of interest or duty because: <ul style="list-style-type: none"> ▪ Each professional engagement undertaken for QTC in relation to a particular entity or group of entities is conducted on an entirely separate basis, with any earlier work done having no bearing on these appointments. ▪ The inspection of Eureka was limited to a short-term high level inspection of the operations of Eureka on behalf of QTC. ▪ McGrathNicol has not been engaged by Eureka, nor has McGrathNicol invoiced Eureka for any work undertaken by McGrathNicol within the scope of the inspection. Therefore, there are no potentially recoverable voidable transactions involving McGrathNicol that would require investigation by the Liquidators. ▪ The inspection provided was by way of a factual compliance snapshot and is not of a nature that would be subject to a review in any subsequent insolvency appointment because it provided a factual summary of the current operation and reporting of Eureka. Given these factors and the reasons provided in section B (i) above, our independence in acting as Eureka's Liquidators has not been compromised.

(iii) *Prior professional services to the Insolvent*

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



(iv) 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 Eureka, an associate of Eureka, a former insolvency practitioner appointed to Eureka or any person or entity that has security over the whole or substantially the whole of Eureka's property that should be disclosed.

C. Indemnities and Up-front Payments

We have been provided with the following indemnities for the conduct of this Liquidation:

Name	Relationship with Eureka	Nature of Indemnity or Payment
QTC	Registrar	QTC has been requested to reimburse the liquidators for fees and disbursements incurred in respect of Eureka's Liquidation to a maximum of \$50,000 <u>186,000</u> (GST inclusive <u>exclusive</u>). Any amount paid by QTC would be reduced to the extent that funds are available from the assets of Eureka.

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

Dated: 31 January 2019

Anthony Norman Connelly

William James Harris

Creditor Rights in Liquidations

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



Right to request a meeting

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

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

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

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

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

Right to request information

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

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

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

Requests must be reasonable.

They are not reasonable if:

Both meetings and information:

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

Meeting requests only:

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

Information requests only:

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

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

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

Specific queries about the liquidation should be directed to the liquidator's office.

Right to give directions to liquidator

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

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

An individual creditor cannot provide a direction to a liquidator.

Right to appoint a reviewing liquidator

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

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

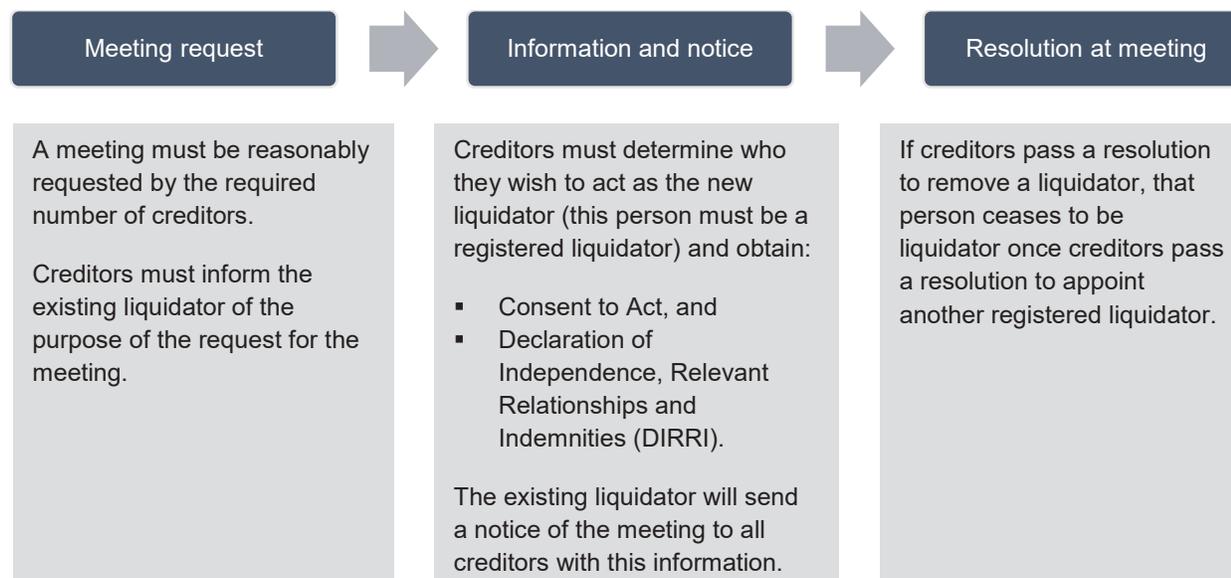
The cost of the reviewing liquidator is paid from the assets of the liquidation, in priority to creditor claims.

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

Right to replace liquidator

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

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



**For more information, go to www.arita.com.au/creditors.
Specific queries about the liquidation should be directed to the liquidator's office.**

ASIC registered agent number: 410893
 lodging party or agent name: McGrathNicol
 Office, level, building name or PO Box: PO Box 9986
 street number and name:
 Suburb/city: Brisbane QLD 4001
 telephone: (07) 3333 9848
 facsimile: (07) 3333 9899
 DX number: suburb/city



ASS REQ-A
 CASH REQ-P
 PROC

Australian Securities & Investments Commission

Form **509**

Corporations Act 2001
 497(2)(b)(i)

Summary of Affairs of a Company

company name: Eureka Co-operative Housings Society Number 2 Limited
 (In Liquidation)
 A.C.N. ABN: 35 310 127 010

Summary of assets and liabilities

date to which summary is made up (d/m/y) 01 / 11 / 18

	Valuation (show whether cost or net book amount)	Estimated Realisable Values
1. assets not specifically charged:		
(a) interest in land	Nil	Nil
(b) sundry debtors	Nil	Nil
(c) cash on hand	Nil	Nil
(d) cash at bank	8,411	8,411
(e) stock as detailed in inventory	Nil	Nil
(f) work in progress as detailed in inventory	Nil	Nil
(g) plant and machinery as detailed in inventory	Nil	Nil
(h) other assets	830,031	Unknown
2. Assets subject to specific charges	Nil	Nil
Less amounts owing	Nil	Nil
TOTAL assets	838,442	Unknown
TOTAL estimated realisable values	838,442	Unknown
3. Less preferential creditors entitled to priority over the holders of debentures under any floating charge	Nil	Nil
4. Less amounts owing and secured by debenture or floating charge over company's assets to:	Nil	Nil
5. Less preferential creditors estimated amount available for unsecured creditors	Nil	Nil
6. creditors (unsecured) amount claimed	830,032	Unknown
7. balances owing to partly secured creditors	Nil	Nil
total claims security held		
8. Contingent assets Estimated to produce	Nil	Nil
9. Contingent liabilities Estimated to rank for	Nil	Nil
Estimated deficiency (subject to costs of liquidation)	8,410 (surplus)	Unknown
Share capital	N/A	N/A
Issued	N/A	N/A
Paid Up	N/A	N/A

Signature

print name Anthony Norman Connelly

Capacity Liquidator

sign here

Date 1 February 2019

Eureka Co-operative Housing Society No. 2 Limited (In Liquidation) - Creditor listing

Creditor name	Eureka member reference	Address line 1	Address line 2	Estimated claim amount (\$)	Creditor is a related party of the society in liquidation (Y/N)
Redacted	8006	301 Finucane Road	Alexandra Hills QLD 4161	1 (see note A)	N
Redacted	8085	8 Dunns Terrace	Scarborough QLD 4020	1 (see note A)	N
Redacted	8091	9 Laurel Street	Trinder Park QLD 4076	1 (see note A)	N
Redacted	8451	1031 Mount Sylvia Road	Tent Hill Lower QLD 4343	1 (see note A)	N
Redacted	8480	46 Paradise Avenue	Thabeban QLD 4670	1 (see note A)	N
Redacted	8505	40 Caleys Court	Lockrose QLD 4342	1 (see note A)	N
Redacted	8513	42 Wagensveldt St	Kingston QLD 4114	1 (see note A)	N
Redacted	8514	Lot 1 Gemava Street	Hay Point QLD 4740	1 (see note A)	N
Redacted	8517	1 Mihi Street	Brassall QLD 4305	1 (see note A)	N
Redacted	8518	9 Amaroo Street	Archerfield QLD 4108	1 (see note A)	N
Redacted	8519	5 Lynch Street	Woodridge QLD 4114	1 (see note A)	N
Redacted	8520	8 Mitre Street	Holmview QLD 4207	1 (see note A)	N
Redacted	8522	7 Elkhorn Street	Bellbird Park QLD 4300	1 (see note A)	N
Redacted	8530	24 Pauline Street	Marsden QLD 4312	1 (see note A)	N
McGrath Financial Services Australia Pty Ltd	n/a	PO Box 5050	Algerter QLD 4115	1 (see note B)	Y

Notes:

A. The estimated claim amount for Eureka's members has been listed as \$1 as the actual claim amount is uncertain. The total claim Eureka's former members may have against Eureka is approximately \$830,000.

B. The estimated claim amount for McGrath Financial Services Australia Pty Ltd has been listed at \$1 as MFSA's claim against Eureka is subject to further investigation.

FORM 535

FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

Eureka Co-operative Housing Society Number 2 Limited (In Liquidation)

ABN 35 310 127 010

"Eureka"

To the Liquidator of Eureka:

1. This is to state that Eureka was on 1 November 2018 , and still is, justly and truly indebted to:

_____ (name of creditor)
of _____ (address of creditor)
for \$ _____ and _____ cents (GST inclusive) GST amount _____

Date	Consideration (state how the Debt arose)	Amount \$ c	Remarks (include details of voucher substantiating payment)

2. To my knowledge or belief the creditor has not, nor has any person by the creditor's order, had or received any satisfaction or security for the sum or any part of it except for the following: *(insert particulars of all securities held. If the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, show them in a schedule in the following form).*

Date	Drawer	Acceptor	Amount \$c	Due Date

3. Select which of the below applies (choose one):

- | | |
|--|---|
| <input type="checkbox"/> The creditor is a company and I am signing as a director of the company | <input type="checkbox"/> The creditor is a partnership and I am signing as a partner of the partnership |
| <input type="checkbox"/> The creditor is a company and I am signing as an authorised representative/duly constituted attorney of the company | <input type="checkbox"/> I am signing in my personal capacity as a member or contributory of Eureka |
| <input type="checkbox"/> I am an individual and I am signing in my personal capacity (which includes employees) | <input checked="" type="checkbox"/> Other: _____ |
| <input type="checkbox"/> The creditor is a sole trader and I am signing as the proprietor | |

4. If you are a related party, state your relationship _____

I nominate to receive electronic notifications of documents in accordance with Section 600G of the Corporations Act at the following email address

Email: _____

5. Is this debt claimed on the basis of an assignment? Yes No

If so, what consideration was paid for the debt? _____

This debt was incurred for the consideration stated and the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.

Signature

Dated

Name: _____

Address: _____



Proof of Debt Guidance Notes

(Please read carefully before filling in Form 535 or Form 536)

It is a creditor's responsibility to prove their claim to our satisfaction.

When lodging claims, creditors must ensure:

- the proof of debt form is properly completed in every particular; and
- evidence, as set out under "Information to support your claim", is attached to the Form 535 or Form 536.

Directions for completion of a Proof of Debt

1. Insert the full name and address of the creditor.
2. Under "Consideration" state how the debt arose, for example "goods sold to Eureka on _____".
3. Under "Remarks" include details of any documents that substantiate the debt (refer to the section "Information to support your claim" below for further information).
4. Where the space provided for a particular purpose is insufficient to contain all the information required for a particular item, please attach additional information.

Information to support your claim

Please note that unless you provide evidence to support the existence of the debt, your debt is not likely to be accepted. Detailed below are some examples of debts creditors may claim and a suggested list of documents that should accompany a proof of debt to substantiate the debt.

Trade Creditors

- Invoice(s) and statement(s) showing the amount of the debt; and
- Advice(s) to pay outstanding invoice(s) (optional).

Guarantees/Indemnities

- Executed guarantee/indemnity;
- Notice of Demand served on the guarantor; and
- Calculation of the amount outstanding under the guarantee.

Judgment Debt

- Copy of the judgment; and
- Documents/details to support the underlying debt as per other categories.

Deficiencies on Secured Debt

- Security Documents (eg. mortgage);
- Independent valuation of the secured portion of the debt (if not yet realised) or the basis of the creditor's estimated value of the security;
- Calculation of the deficiency on the security; and
- Details of income earned and expenses incurred by the secured creditor in respect of the secured asset since the date of appointment.

Loans (Bank and Personal)

- Executed loan agreement; and



- Loan statements showing payments made, interest accruing and the amount outstanding as at the date of appointment.

Tax Debts

- Documentation that shows the assessment of debts, whether it is an actual debt or an estimate, and separate amounts for the primary debt and any penalties.

Employee Debts

- Basis of calculation of the debt;
- Type of Claim (eg. wages, holiday pay, etc);
- Correspondence relating to the debt being claimed; and
- Contract of Employment (if any).

Leases

- Copy of the lease; and
- Statement showing amounts outstanding under the lease, differentiating between amounts outstanding at the date of the appointment and any future monies.



Initial Remuneration Notice

Eureka Co-operative Housing Society Number 2 Limited (In Liquidation)

ABN 35 310 127 010

(Eureka)

The purpose of the Initial Remuneration Notice is to provide you with information about how we propose our remuneration for undertaking the liquidation will be set. The references to the *Corporations Act 2001* (**the Corporations Act**) below are applicable pursuant to section 97C of the *Financial Intermediaries Act 1996*.

1 Remuneration methods

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

- A. 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.
- B. Fixed Fee:** The total fee charged is normally quoted at the commencement of the external administration and is the total cost for the external administration.
- C. Percentage:** The total fee charged is based on a percentage of a particular variable, such as the gross proceeds of asset realisations.
- D. Contingency:** The practitioners' fee is structured to be contingent on a particular outcome being achieved.

2 Method chosen

Given the nature of this external administration, we propose that our remuneration be calculated on a time basis which will be recorded and charged in six minute increments. Details of the hourly rates for different levels of staff are included below. The complexity and demands of the external administration will determine the staff to be utilised for this appointment

We have chosen the time based method because:

- This method is considered to be most suitable for this appointment as it ensures creditors are only charged for work that is performed in the external administration, which can be difficult to accurately estimate at the date of appointment.
- Even later than the date of appointment, it can be difficult to estimate the time that may be required in advance of the substantive work being undertaken. The time based method in this case again ensures that creditors are only charged for work that is actually performed in the external administration.
- The practitioner is required to perform a number of tasks which do not relate to the realisation of assets, for example responding to creditor enquiries, reporting to Queensland Treasury Corporation (QTC) and distributing funds in accordance with the provisions of the Corporations Act.
- The practitioner has a time recording system that can produce a detailed analysis of time spent on each type of task by each individual staff member utilised in the external administration.



- Time based remuneration calculates fees upon a basis of time spent at the level appropriate to the work performed.

3 Explanation of Hourly Rates

The rates for our remuneration calculation are set out in the following table, together with a general guide showing the qualifications and experience of staff engaged in the external administration and the role they take in the external administration. The hourly rates charged encompass the total cost of providing professional services and should not be compared to an hourly wage.

Title	Description	Hourly rate (excl GST)
Appointee/Partner	Registered liquidator, Chartered Accountant or equivalent and generally degree qualified with more than twelve years of experience. Leads assignments with full accountability for strategy and execution.	\$585
Director 1	Generally Chartered Accountant or comparable qualification and degree qualified with more than ten years of experience, including four years of Director or equivalent experience. Autonomously leads complex insolvency appointments reporting to Appointee/Partner.	\$495
Director	Generally Chartered Accountant or comparable relevant qualification and degree qualified with more than nine years of experience. Autonomously leads insolvency appointments reporting to Appointee/Partner.	\$495
Senior Manager	Generally Chartered Accountant or comparable relevant qualification and degree qualified with more than seven years of experience. Self-sufficiently conducts small to medium insolvency appointments and leads major workstreams in larger matters.	\$450
Manager	Generally Chartered Accountant or comparable relevant qualification and degree qualified with more than five years of experience. Self-sufficiently conducts small insolvency appointments and takes a supervisory role on workstreams in larger matters.	\$428
Assistant Manager	Generally Chartered Accountant or comparable relevant qualification and degree qualified with more than three years of experience. Autonomously manages workstream activity within appointments.	\$387
Senior Accountant	Generally degree qualified and undertaking Chartered Accountant's qualification or comparable relevant qualification with more than 16 months of experience. Completes tasks within workstreams and appointments under supervision.	\$338



Title	Description	Hourly rate (excl GST)
Accountant	Generally degree qualified and undertaking or about to undertake Chartered Accountant's qualification or comparable relevant qualification with less than one year of experience. Assists with tasks within workstreams and appointments under supervision.	\$248
Undergraduate/Cadet	Undertaking relevant degree. Assists with tasks within workstreams and appointments under supervision.	\$171
Practice Services Director	National Practice Service leaders, generally degree qualified with more than ten years of experience and reporting directly to partners. Technical experts in their specific areas and have team management responsibilities.	\$495
Senior Treasury staff	Appropriately experienced and undertakes senior Treasury activities such as oversight of the processing of payment of receipts and banking administration. May be responsible for day to day management of projects or operations and may have supervisory responsibility for junior staff.	\$144
Senior Client Administration and Treasury	Appropriately experienced and undertakes senior level administrative support activities or Treasury activities. May be responsible for day to day management of projects or operations and may have supervisory responsibility for junior staff.	\$144
Administration	Appropriately experienced and undertakes support activities such as meeting coordination and preparation of materials where it is efficient and appropriate to do so.	\$144

McGrathNicol reviews its hourly rates on either 31 December or 30 June. Creditors will be advised of any change to the hourly rates for this external administration.

4 **Estimated remuneration**

Subject to the assumptions set out below, we estimate that this external administration may involve remuneration for the practitioners of approximately \$60,000 to \$100,000 (GST exclusive). The following variables may have a significant effect on this estimate:

- the time that may be required to obtain books and records from the parties that hold them;
- the number and value of claims that may be received in the external administration and work that may be required to adjudicate on those claims for voting and/or dividend purposes;
- work that may be required to distribute funds to creditors;
- investigations that may be required to pursue potential legal actions available to the external administrator;
- where viable legal claims are identified, the timeframe to resolution becomes very significantly impacted by the conduct of the defendant and their willingness to resolve the claim by a negotiated settlement, as well as Court timeframes, both of which are difficult to predict; and



- any identified matters that are required to be reported to statutory authorities, such as QTC.

We have requested and received an indemnity from QTC for the estimated costs of the external administration. The current amount of that indemnity is \$186,000 (GST exclusive) including the estimated liquidators' remuneration, legal costs and other costs of the liquidation.

This indemnity has been disclosed in our declaration of relevant relationships and indemnities.

Approved remuneration may exceed the amount of this indemnity and can be paid from the assets of the external administration after approval by creditors or the Court.

5 Disbursements

Disbursements are divided into three types:

- **Externally provided professional services** – these are recovered at cost. An example of an externally provided professional service disbursement is legal fees.
- **Externally provided non-professional costs** – such as travel, accommodation, external printing services and search fees – these are recovered at cost.
- **Internal disbursements** – such as photocopying, printing and postage. These disbursements are generally charged at cost but may include, in the case of disbursements such as data storage and hosting, telephone calls, photocopying and printing, both direct variable and fixed costs. For example the rate per page for printing includes a reasonable and commercial allowance for paper, toner, depreciation, power and maintenance.

We are not required to seek creditor approval for disbursements paid to third parties, but must account to creditors. However, we must be satisfied that these disbursements are appropriate, justified and reasonable.

We are required to obtain creditor's consent for the payment of internal disbursements where there may be a profit or advantage. Creditors will be asked to approve our internal disbursements where there is a profit or advantage prior to these disbursements being paid from the external administration.

Details of the basis of recovering disbursements in this external administration are provided below.

For clarity, it is noted that any time costs of any employee of McGrathNicol or any associated entity will be reported as part of our remuneration, for which approval may be sought.

Basis of disbursement claim

<i>Disbursement type</i>	<i>Rate (Excl GST)</i>
Externally provided professional services	At cost
Externally provided non-professional services	At cost
Internal disbursements	
Advertising	At cost



Courier	At cost
Data hosting – data loading & processing fee	\$50-\$100 per gigabyte (GB)*
Data hosting – monthly hosting fee (for matters where data is required to be hosted online for more than 1 month)	Standard monthly hosting fee of \$2,000 per month (for up to 500GB of information loaded) plus \$2,000 per month for every additional 500GB block over and above 500GB
Printing – black and white	\$0.09 per page
Printing – Colour	\$0.28 per page
Postage	At cost
Stationery and other incidental disbursements	At cost
Staff per diem travel allowance**	\$89.00 per day***
Staff vehicle use	\$0.68 per km***
Telephony – mobile, fixed line and conference calls	At cost

* Depending on volume of data to be hosted

** Payable when partners or staff are required for business purposes to stay away from their usual place of residence overnight

*** These rates are deemed reasonable by the Australian Taxation Office

Further explanation of data hosting disbursements

In the conduct of this external administration, we may use McGrathNicol Technology Advisory to extract, aggregate, electronically process and/or host electronic data, which could be used for the investigations regarding transactions or potential recoveries available to creditors.

If data hosting is required and we choose not to use the services of McGrathNicol Technology Advisory, we will otherwise have to purchase those services from an alternative provider and/or use another method to achieve the same end, which will not be as efficient as using these available internal services.

We note that the data hosting rates above are no more than our standard commercial pricing available for the same services when they are provided to external parties.

1 February 2019

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.



ASIC

Australian Securities & Investments Commission

Insolvency information for directors, employees, creditors and shareholders

This information sheet (INFO 39) lists ASIC's information sheets for directors, employees, creditors and shareholders affected by a company's insolvency.

We have produced these with endorsement from the Australian Restructuring Insolvency & Turnaround Association (ARITA).

The information sheets give a basic understanding of the three most common company insolvency procedures – liquidation, voluntary administration and receivership – as well as the independence requirements for external administrators and approving external administrator remuneration. There is also a glossary of commonly used insolvency terms.

List of information sheets

- [INFO 41](#) Insolvency: A glossary of terms
- [INFO 42](#) Insolvency: A guide for directors
- [INFO 43](#) Insolvency: A guide for shareholders
- [INFO 45](#) Liquidation: A guide for creditors
- [INFO 46](#) Liquidation: A guide for employees
- [INFO 54](#) Receivership: A guide for creditors
- [INFO 55](#) Receivership: A guide for employees
- [INFO 74](#) Voluntary administration: A guide for creditors
- [INFO 75](#) Voluntary administration: A guide for employees
- [INFO 84](#) Independence of external administrators: A guide for creditors
- [INFO 85](#) Approving fees: A guide for creditors

Where can I get more information?

Further information is available from the [ARITA website](#). The ARITA website also contains the [ARITA Code of Professional Practice for Insolvency Practitioners](#).

This is **Information Sheet 39 (INFO 39)** updated on 1 September 2017. Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.