

**IN THE MATTER OF PRIMESPACE PROPERTY INVESTMENT LTD (IN
LIQUIDATION)**

PROCEEDINGS NO 2016/107316

LIQUIDATORS' SUPPLEMENTARY SUBMISSIONS

1. These submissions address the further evidence of Mr Fraser, his supplementary affidavit having been sworn on 21 September 2016, in the context of proportionality and the various concerns raised by IQIT Nominees about the CFG Proceedings.

Proportionality

2. The following matters support the proposition that there is appropriate proportionality between the cost of the work done by the Liquidators relative to the value of the services provided.
3. Mr. Fraser is a very experienced liquidator whose opinion that the work performed was necessary or appropriate and was properly carried out by professionals with an appropriate level of expertise at reasonable rates carries weight.
4. Specifically, Mr. Fraser considers that the work performed to date in the liquidation and administration of PPIL has been reasonably necessary in the performance of the duties and responsibilities as liquidators (and prior to that administrators) (Fourth Affidavit at [11]). Furthermore, in his view, the work performed to date and the amount charged was appropriate having regard to the value of the assets to be dealt with and realised and the ARITA Code of Professional Practice.
5. The liquidation of PPIL has been complex and challenging (First Affidavit at

[16] to [23] and Fourth Affidavit at [9]). Any considerations peculiar to liquidations involving a relatively small amount of realisations or available assets are not present in the current liquidation (the circumstances of which are fundamentally different to those present in, for example, *Re AAA Financial Intelligence Limited (In Liq)* [2014] NSWSC 1004 or *Re Independent Contractor Servicers (Aust) Pty Limited (In Liq) No. 2* [2016] NSWSC 106). In a complex insolvency such as this the value of time based remuneration is more obvious.

6. The method of time recording in this liquidation accords with the ARITA Guidelines in that regard (see ARITA Code of Professional Practice for Insolvency Practitioners (3rd Edition, 1 January 2014 as amended 18 August 2014), clause 15.1, see attached).
7. Mr. Fraser deposes that, as a general proposition, a significant component of the work undertaken by the Liquidators has manifested in realisations; and that without that work there is a real risk that the assets would not have been realised without significant additional time, complexity and expense being encountered (Fourth Affidavit at [11]).
8. The work performed to date is described in broad terms in paragraph 15 of Mr. Fraser's Second Affidavit; and in the Remuneration Report at Tab 24 of Exhibit SF2 for the liquidation period; and in the Remuneration Report for the administration period at pages 38 to 41 of the section 439A Report at Tab 2(b) of SF1 (Fourth Affidavit at [10]).
9. Mr. Fraser and his staff have prepared a Revised Remuneration Report which summarises the WIP time recorded by staff by "task areas" which reflect the activity codes in the ARITA Code of Professional Practice (at p. 46 of SF4). Paragraph 13 of Mr Fraser's Fourth Affidavit describes the methodology underlying this revised report.

10. The rationale/outcome column in the Revised Remuneration Report is an explanation of why the tasks summarised were undertaken; with a view to providing the Court with comfort with respect to proportionality.
11. The Liquidators have also prepared a diagrammatical representation of the work performed by time period (p.72 of SF4) which captures the issues with which the Liquidators have been engaged by reference to approximate time periods.
12. The administrators advised creditors upon their appointment and at the first meeting of creditors that they proposed to charge on a time costing basis; and also advised the rates that were proposed (Second Affidavit at [88] and tab 22 of SF2, and see minutes of the first meeting of creditors at p.67 of SF2)
13. At their second meeting, creditors approved remuneration in the following amounts:
 - (a) for the period 23 April 2015 to 15 May 2015 in an amount of \$137,321.20 (exclusive of GST);
 - (b) for the period 16 May 2015 to 28 May 2015 estimated remuneration in an amount of \$123,293.80 (exclusive of GST); and
 - (c) for the liquidation period, future remuneration in an amount of \$154,922.00 (exclusive of GST), on the basis that future fees would need to be approved by creditors, the committee of inspection or the Court.
(See minutes of second meeting of creditors at p.95-96 of SF2 (tab 3).)
14. Ultimately the \$154,922 (plus GST) future remuneration approved by creditors for the liquidation period (which was in respect of work estimated to 30 June 2015) covered work performed up to 7 September 2015 (Fourth Affidavit at [49(b)]).
15. Mr. Fraser deposes that there is a relatively small team in place for the

conduct of this liquidation; and he explains the relative seniority and role of each staff member (at [18]). Furthermore, administrative staff are utilised as required [19] and from time to time additional staff members are required and used [20]. At p. 74 to 86 of SF4 are tables which provide a breakdown of work performed by employee and task area in respect of individual trusts for each of the administration and liquidation periods (at [17]).

16. Mr. Fraser's evidence is that tasks are allocated to each staff member depending on the complexity and significance of each task ([119] of Second Affidavit and [18] of Fourth Affidavit). At paragraphs 22 to 27 of his Fourth Affidavit, Mr. Fraser outlines how this allocation is practically implemented.
17. Mr. Fraser's evidence is that he monitors and assesses which issues are worked on, by whom and for what amount of time during the course of the liquidation (Fourth Affidavit at [28]). He does so with the interests of the creditors in mind; including by reference to the cost of the work performed, fulfilling his statutory obligations and allocating resources to work that has to be performed with a view to expeditiously winding up the affairs of the company and maximising return to creditors. He also revises allocation decisions.
18. Mr. Fraser discusses the process by which his team and he review the WIP recorded to ensure that all items that should be are written off at [30] to [35] of his Fourth Affidavit. As set out in paragraph 121 of Mr. Fraser's Second Affidavit the amount of time written off to date was in the order of \$30,000 (Fourth Affidavit at [30]).
19. The time for the work performed has been allocated between the various entities for which PPIL acts as trustee or RE as described in paragraphs 90 to 98 of Mr. Fraser's Second Affidavit [38]. Some time is directly allocated to specific entities as appropriate. Other time classified as PPIL Time is recorded

in the manner set out at paragraph 38 (a) and (b) of the Fourth Affidavit.

20. The practical difficulty of allocating PPIL Time to particular trusts is in relation to the administration period which the liquidators propose to allocate to each entity in accordance with either the Liquidation Time Based Allocation (as defined in paragraph 112 of Mr. Fraser's Second Affidavit) or the Administration time Based and Lump Sum Allocation (as defined in paragraph 114 of Mr. Fraser's Second Affidavit). This issue is discussed at [88] to [116] of Mr Fraser's Second Affidavit).
21. At p. 90 of SF4 is a table which seeks to collate and simplify the position in relation to the proposed remuneration allocation between the various entities.
22. IQIT Nominees, at paragraph 9 of the IQIT Submissions, raise a concern about the Liquidators' involvement in the IQ Smart Apartment sales. Mr. Fraser addresses the Liquidators' role and the remuneration claimed in that regard at paragraphs 41 to 47 of Mr. Fraser's Fourth Affidavit. Mr. Fraser deposes that whilst addressing issues that arose in relation to the IQ Smart Apartments he was conscious of the creditors' and beneficiaries' interests. Furthermore, his focus has been on the distributions that will ultimately be made and resolving issues whilst minimising costs to creditors (including IQIT). Mr. Fraser deposes that he is comfortable that the work performed was necessary and carried out by the appropriate people at an appropriate cost.
23. At paragraphs 12 to 15 of the IQIT Submissions, IQIT Nominees' raises issues with the Liquidator's estimated return to creditors.
24. At paragraphs 48 to 50 of his Fourth Affidavit, Mr. Fraser explains the difference between the estimate contained in the s. 439A Report and in his Second Affidavit (being the inclusion of remuneration and legal costs incurred since the appointment as liquidators, the interest that has accrued to IQIT and

the \$1.7 million loan alleged to be due from PSNT to PAPP). A table comparing the two estimates appears at p. 94 of SF4.

25. IQIT Nominees has also raised concerns about the Liquidators' view that other creditors will rank ahead of IQIT. The basis for the Liquidators' position is articulated at paragraphs 53 to 61 of Mr Fraser's Fourth Affidavit. This issue is not directly raised for the Court's determination in this application.
26. IQIT Nominees has expressed a concern that the disbursements included in the Liquidators' evidence to date is not current. At p. 96 and 97 of SF4 are tables setting out all disbursements paid in the liquidation to 14 September 2016.
27. Furthermore, IQIT Nominees raises a concern (at paragraph 46 of its submissions) that the Liquidators have not exhibited their lawyers' invoices; and that this is relevant to proportionality if the retainer of lawyers resulted in a transfer of risk and responsibility away from the Liquidators.
28. The use of lawyers by the Liquidators is addressed at paragraphs 64 to 70 of Mr. Fraser's Fourth Affidavit. The main issues on which legal advice has been sought are summarised at paragraph 67 of that affidavit. Mr. Fraser also deposes that he:
 - (a) had regard to JWS' hourly rates, capability and experience relative to other firms in the market (at [66]);
 - (b) considered whether or not McGrathNichol was equipped to undertake any of that work (at [67]);
 - (c) does not consider that risk or responsibility has been transferred to JWS such that the legal fees incurred should impact on the claim for remuneration (at [64]);
 - (d) formed the view that neither Mr. McGrath nor he, or their staff, were

qualified to undertake the complex legal work that has been required (at [65]);

- (e) reviews the invoices provided by JWS and considers whether the costs were appropriate and whether the work reflects the importance of that issue to the liquidation (at [69]);
- (f) is of the view that the legal costs incurred to date have been appropriate, having regard to work undertaken (at [70]);
- (g) has sought estimates of the likely cost of engaging JWS to carry out specific work and has reviewed these estimates and considers that they are reasonable (at [70]);
- (h) does not consider that there has been significant duplication of work done between JWS and McGrathNichol (at [70]).

29. An analysis of the legal fees that have been paid in the liquidation as at 19 September 2016 appears at paragraph 100 of the Fourth Affidavit.

30. Mr. Fraser summarises the remaining work required in liquidation at [92] of his Fourth Affidavit.

31. The Liquidators have conducted a sensitivity analysis of the amounts claimed for remuneration by reference to the high and low estimates for total asset realisations forecast – being set out in the table at paragraph 98 of the Submissions. In the table at paragraph 99 this analysis includes total legal fees as at 19 June 2016.

The CFG Proceedings

32. IQIT Nominees raise a number of concerns about the Liquidators investigating and potentially defending the CFG Proceedings (see paragraphs 17 to 24 of the IQIT Submissions). Mr. Fraser raises the following additional points in this respect (references are to his Fourth Affidavit):

- (a) The Liquidators cannot disregard the interests of PSNT's beneficiary, the ordinary unit holder POPF (in which PAPF holds a 100% interest) (at [73(a) and (b)]).
 - (b) The Liquidators have formed the views at paragraph 58 of the Second Affidavit as to potential breaches of duty such that it may not be appropriate for the Liquidators not to contest the CFG Proceedings and have judgment entered against it (at [73(c)]).
 - (c) Even if CFG did not commence proceedings, the Liquidators would not have accepted its proof of debt without undertaking investigations and any refusal of the proof of debt may have resulted in proceedings about the dispute the subject of the CFG Proceedings in any event (at [73(d)]).
 - (d) It is not correct that IQIT and the other creditors of PSNT would get paid in full in the immediate future if the CFG Proceedings were not defended as all of the assets of PSNT have not yet been realised; and the creditors will not be paid their final distributions until all of the IQ Smart Apartments have been sold [73(e)].
 - (e) The Liquidators are taking steps to make an interim distribution to creditors of PSNT after the decision of Justice Black on 28 June 2016 (at [83]).
33. The Liquidators have prepared a table of potential outcomes for IQIT and the other creditors of PSNT depending on whether the CFG Proceedings are successfully defended which is at p. 98 of SF4 (at [74]).
34. Which of these outcomes is most likely depends primarily upon the legal prospects of any successful defence. The Liquidators wish to conduct the

investigations that are the subject of the interlocutory application so that they are in a better position to determine the prospects and risks involved in defending the CFG Proceedings (Fourth Affidavit at [75]).

35. Mr Fraser has received an estimate from JWS that if the proceedings are contested, and other parties are joined and a trial is held, the legal costs could be in an amount of up to \$500,000 and that the cost of obtaining counsel's opinion following investigations will be in the order of \$10,000 to \$20,000 (Fourth Affidavit at [77] and [78]). The Liquidators' estimated remuneration in relation to these proceedings is between \$100,000 and \$200,000 (Fourth Affidavit at [79]).
36. Legal costs incurred to date in relation to the CFG dispute total \$49,876.75 (inclusive of GST) and the Liquidators' remuneration as recorded in the Revised Remuneration Report is in the sum of \$1,740.00 for the administration period and \$35,376.50 for the liquidation period (at [80] and [81]).
37. At paragraphs 85 to 91 of his Fourth Affidavit, Mr. Fraser explains his view that the Liquidators could not have feasibly proceeded with public examinations prior to making this application.

Dated: 22 September 2015

Vanessa Whittaker

Counsel

Eleven Wentworth

(02) 9221 8833

vwhittaker@elevenwentworth.com

15 Meaningful disclosure in Remuneration claims

Principle 11: A claim by a Practitioner for Remuneration must provide sufficient, meaningful, open and clear disclosure to the Approving body so as to allow that body to make an informed decision as to whether the proposed Remuneration is reasonable.

A Remuneration claim requires information to be conveyed to the Approving body (creditors, committee of creditors, committee of inspection, or the court). That information encompasses a number of elements:

- a system of recording that information (refer section 15.1);
- a basis for calculating Remuneration (refer section 15.2);
- sufficient detail to justify the amount of Remuneration (refer section 15.3); and
- relevant timing of the information being provided (refer section 15.3).

15.1 Recording of Work Done

Regardless of the Remuneration method to be applied, the Practitioner must maintain a proper record of work that was done on an Administration in order to:

- claim Remuneration; and
- report to creditors on the progress of the Administration.

The Practitioner should maintain a system that requires staff to record:

- the period of time spent;
- the categories of the work performed (see Remuneration Report Template);
- details of the work being performed; and
- contemporaneously at the time the work is done in order to maximise accuracy.

Time recording provides good practice management information, even though time data will not be required for reporting to creditors in claims for fixed fee or percentage based Remuneration.

ARITA's Remuneration Report Template provides a description of some common work categories that should be used (refer section 23.2.2).

15.2 Bases of calculation

There are several bases by which Remuneration can be calculated (refer sections 15.2.1, 15.2.2, 15.2.3, 15.2.4 and 15.2.5). ARITA has no preference as to the method of calculating fees. Practitioners must be transparent and fully explain to creditors the main bases by which Remuneration can be calculated, the method proposed to be used in the Administration and the reasons for selecting that particular basis (refer to section 15.3.2).

The terms of that Remuneration are a matter for the Approving Body, upon full disclosure of the arrangement being explained to them by the Practitioner.

Period <i>[Suggestion only – delete or add details as appropriate]</i>	Report Reference	Amount (ex GST)
<i>Liquidation (if applicable)</i>		
Resolution [#]: Commencement of liquidation to <i>[completion/milestone/date]*</i>	<i>[X]</i>	<i>[\$amount]</i>
* Approval for the future remuneration sought is based on an estimate of the work necessary to the completion of the administration. Should additional work be necessary beyond what is contemplated, further approval may be sought from creditors.		

Remuneration sought in relation to groups should be separately identified in summary table, in a format similar to the below.

Period	Report Reference	Group Entity 1 Amount (ex GST)	Group Entity 2 Amount (ex GST)	Group Total Amount (ex GST)
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Please refer to report section references detailed in the above table for full details of the calculation and composition of the remuneration approval sought.

This is consistent with the estimate of costs provided in the Initial Advice to Creditors dated *[date]*, which estimated a cost to *[completion/milestone]* of the administration of *[\$amount]* (excluding GST). OR This differs to the estimate of costs provided in the Initial Advice to Creditors dated *[date]*, which estimated a cost to *[completion/milestone]* of the administration of *[\$amount]* (excluding GST), for the following reasons:

- *[detail reasons]*

Part 3: Description of work completed / to be completed

Resolution [#] from [date] to [date][Note: A separate description of work completed / to be completed (ie. table below) must be provided for each resolution sought and this should be consistent with the executive summary. A separate remuneration report is NOT required for each resolution sought.]

Task Area	General Description	Includes [Suggestion Only - delete or add details as appropriate to the work done]
Assets [hours] [\$ x]	Sale of Business as a Going Concern	Preparing an information memorandum Liaising with purchasers Internal meetings to discuss/review offers received
	Plant and Equipment	Liaising with valuers, auctioneers and interested parties Reviewing asset listings

Task Area	General Description	Includes [Suggestion Only - delete or add details as appropriate to the work done]
	Sale of Real Property	Liaising with valuers, agents, and strata agent Attendance at auction
	Assets subject to specific charges	All tasks associated with realising a charged asset
	Debtors	Correspondence with debtors Reviewing and assessing debtors ledgers Liaising with debt collectors and solicitors
	Stock	Conducting stock takes Reviewing stock values Liaising with purchasers
	Other Assets	Tasks associated with realising other assets
	Leasing	Reviewing leasing documents Liaising with owners/lessors Tasks associated with disclaiming leases
Creditors [hours] [\$x]	Creditor Enquiries	Receive and follow up creditor enquiries via telephone Maintaining creditor enquiry register Review and prepare correspondence to creditors and their representatives via facsimile, email and post Correspondence with committee of creditors members
	Retention of Title Claims	Search to the PPSR register Notify PMSI creditors identified from PPSR register Receive initial notification of creditor's intention to claim Provision of retention of title claim form to creditor Receive completed retention of title claim form Maintain retention of title file Meeting claimant on site to identify goods Adjudicate retention of title claim Forward correspondence to claimant notifying outcome of adjudication Preparation of payment vouchers to satisfy valid claim Preparation of correspondence to claimant to accompany payment of claim (if valid)
	Secured creditor reporting	Notifying PPSR registered creditors of appointment Preparing reports to secured creditor Responding to secured creditor's queries
	Creditor reports	Preparing section 439A report, investigation, meeting and general reports to creditors
	Dealing with proofs of debt	Receipting and filing POD when not related to a dividend Corresponding with OSR and ATO regarding POD when not related to a dividend
	Meeting of Creditors	Preparation of meeting notices, proxies and advertisements

Task Area	General Description	Includes [Suggestion Only - delete or add details as appropriate to the work done]
		Forward notice of meeting to all known creditors 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. Preparation and lodgement of minutes of meetings with ASIC Responding to stakeholder queries and questions immediately following meeting
	Shareholder enquiries	Initial day one letters ITAA Section 104-145(1) declarations Responding to any shareholder legal action
Employees [hours] [\$x]	Employees enquiries	Receive and follow up employee enquiries via telephone Maintain employee enquiry register Review and prepare correspondence to creditors and their representatives via facsimile, email and post Preparation of letters to employees advising of their entitlements and options available Receive and prepare correspondence in response to employees objections to leave entitlements
	FEG/GEERS	Correspondence with FEG/GEERS Preparing notification spreadsheet Preparing FEG/GEERS quotations Preparing FEG/GEERS distributions
	Calculation of entitlements	Calculating employee entitlements Reviewing employee files and company's books and records Reconciling superannuation accounts Reviewing awards Liaising with solicitors regarding entitlements
	Employee dividend	Correspondence with employees regarding dividend Correspondence with ATO regarding SGC proof of debt Calculating dividend rate Preparing dividend file Advertising dividend notice Preparing distribution Receiving POD Adjudicating POD Ensuring PAYG is remitted to ATO
	Workers compensation claims	Review insurance policies Receipt of claim Liaising with claimant Liaising with insurers and solicitors regarding claims Identification of potential issues requiring attention

Task Area	General Description	Includes [Suggestion Only - delete or add details as appropriate to the work done]
		of insurance specialists Correspondence with insurer regarding initial and ongoing workers compensation insurance requirements Correspondence with previous brokers
	Other employee issues	Correspondence with Child Support Correspondence with Centrelink
Trade On [hours] [\$x]	Trade On Management	Liaising with suppliers Liaising with management and staff Attendance on site Authorising purchase orders Maintaining purchase order registry Preparing and authorising receipt vouchers Preparing and authorising payment vouchers Liaising with superannuation funds regarding contributions, termination of employees employment Liaising with OSR regarding payroll tax issues
	Processing receipts and payments	Entering receipts and payments into accounting system
	Budgeting and financial reporting	Reviewing company's budgets and financial statements Preparing budgets Preparing weekly financial reports Finalising trading profit or loss Meetings to discuss trading position
Investigation [hours] [\$x]	Conducting investigation	Collection of company books and records Correspondence with ASIC to receive assistance in obtaining reconstruction of financial statements, company's books and records and Report as to Affairs Reviewing company's books and records Review and preparation of company nature and history Conducting and summarising statutory searches Preparation of comparative financial statements Preparation of deficiency statement Review of specific transactions and liaising with directors regarding certain transactions Liaising with directors regarding certain transactions Preparation of investigation file Lodgement of investigation with the ASIC Preparation and lodgement of supplementary report if required
	Examinations	Preparing brief to solicitor Liaising with solicitor(s) regarding examinations Attendance at examination

Task Area	General Description	Includes [Suggestion Only - delete or add details as appropriate to the work done]
		Reviewing examination transcripts Liaising with solicitor(s) regarding outcome of examinations and further actions available
	Litigation / Recoveries	Internal meetings to discuss status of litigation Preparing brief to solicitors Liaising with solicitors regarding recovery actions Attending to negotiations Attending to settlement matters
	ASIC reporting	Preparing statutory investigation reports Preparing affidavits seeking non lodgements assistance Liaising with ASIC
Dividend [hours] [\$x]	Processing proofs of debt	Preparation of correspondence to potential creditors inviting lodgement of POD Receipt of POD Maintain POD register Adjudicating POD Request further information from claimants regarding POD Preparation of correspondence to claimant advising outcome of adjudication
	Dividend procedures	Preparation of correspondence to creditors advising of intention to declare dividend Advertisement of intention to declare dividend Obtain clearance from ATO to allow distribution of company's assets Preparation of dividend calculation Preparation of correspondence to creditors announcing declaration of dividend Advertise announcement of dividend Preparation of distribution Preparation of dividend file Preparation of payment vouchers to pay dividend Preparation of correspondence to creditors enclosing payment of dividend
Administration [hours] [\$x]	Correspondence	
	Document maintenance/file review/checklist	First month, then six monthly administration review Filing of documents File reviews Updating checklists
	Insurance	Identification of potential issues requiring attention of insurance specialists Correspondence with insurer regarding initial and ongoing insurance requirements Reviewing insurance policies Correspondence with previous brokers

Task Area	General Description	Includes [Suggestion Only - delete or add details as appropriate to the work done]
	Bank account administration	Preparing correspondence opening and closing accounts Requesting bank statements Bank account reconciliations Correspondence with bank regarding specific transfers
	ASIC Form 524 and other forms	Preparing and lodging ASIC forms including 505, 524, 911 etc Correspondence with ASIC regarding statutory forms
	ATO and other statutory reporting	Notification of appointment Preparing BAS Completing group certificates
	Finalisation	Notifying ATO of finalisation Cancelling ABN / GST / PAYG registration Completing checklists Finalising WIP
	Planning / Review	Discussions regarding status of administration
	Books and records / storage	Dealing with records in storage Sending job files to storage
Other professional services provided by the Firm	[Insert description of services undertaken]	[insert details of included tasks eg tax, general accounting etc]

Additional matters particular to Personal Insolvency Administrations may include:

Task Area	General Description	Includes [Suggestion Only - delete or add details as appropriate to the work done]
Assets [hours] [\$ x]	Income assessments	Liaising with the Bankrupt during each contribution assessment period in relation to particulars of income derived during the period, including as to number of dependants and circumstances etc Assessing the Bankrupt in accordance with the Bankruptcy Act and serving assessment Monitoring the income of the Bankrupt during the course of the bankruptcy, including as to any change in circumstances Recepting income contributions.
	Non-divisible property	Assessing personal property of the Bankrupt Assessing value of car, tools of trade and realising excess
	Family issues	Assessing value of family home and contributions to its purchase etc. Determine security over home and current equity,