



**Marine & Civil Pty Ltd (In Liquidation)**  
**ACN 147 854 635**  
**(Marine & Civil)**

**Report to Creditors**

We refer to:

- our previous correspondence regarding our appointment as administrators of Marine & Civil on 10 July 2018 (**Administrators**), and our subsequent appointment as liquidators on 21 August 2018 (**Liquidators**);
- our prior reports to creditors dated 21 November 2018, 8 October 2019 and 20 April 2020 (**Prior Reports**); and
- your rights as a creditor in the liquidation.

The purpose of this report is to:

- provide you with an update in relation to the progress of the liquidation and the ongoing conduct of the Liquidators;
- advise you of the likelihood of a dividend being paid in the liquidation; and
- seek approval of the Liquidators' remuneration.

This report should be read in conjunction with our Prior Reports.

## **1 Liquidators' DIRRI**

In accordance with section 506A of the Corporations Act 2001 (**the Act**) and ARITA Code, a Declaration of Independence, Relevant Relationships and Indemnities (**DIRRI**) was enclosed with our circular to creditors dated 12 July 2018.

The DIRRI was also tabled and discussed at Marine & Civil's first meeting of creditors on 20 July 2018.

We have not previously considered that our prior involvement gave rise to any potential conflict of interest issues. Since our appointment as Liquidators, we have continued to assess whether our prior involvement had caused any potential conflict of interest issues to develop.

At the date of this report, our opinion has not changed and there is no change to the information contained in the DIRRI. We remain of the view that our prior involvement does not give rise to any potential conflicts of interest.

## **2 Update on the progress of the liquidation**

Since the Liquidators' last update to creditors, further assets comprising four bank guarantees held by Main Roads WA on account of work completed by Marine & Civil have been recovered. Following the release of the associated term deposit funds, the Liquidators have now completed realising the company's known assets.

The Liquidators' recent focus has been investigating and progressing claims that the company may have against company directors and other third parties (discussed further at section 3), and preparing for and paying a further interim dividend to priority employee creditors.



## 2.1 *Estimated assets and liabilities*

A summary of the Liquidators' realisation of assets and estimated value of Marine & Civil's liabilities as against the director's analysis of Marine & Civil's financial position included in their completed a Report as to Affairs (**RATA**) is summarised below:

<b>Marine &amp; Civil Pty Ltd (In Liquidation) - Summary of financial position</b>				
<b>\$'000</b>	<b>Reference</b>	<b>RATA</b>	<b>High</b>	<b>Low</b>
<b>Assets</b>	<b>2.1.1</b>			
Cash at bank		132	132	132
Debtors & loans		749	900	900
Retentions		409	341	341
Plant and equipment		1,600	1,782	1,782
Other assets		50	50	50
<b>Total assets</b>		<b>2,941</b>	<b>3,205</b>	<b>3,205</b>
<b>Liabilities</b>	<b>2.1.2</b>			
Secured creditors		(598)	(624)	(624)
Retention of title		-	(48)	(48)
Priority creditors		(1,531)	(1,484)	(1,484)
Unsecured creditors		(10,350)	(11,441)	(11,933)
<b>Total liabilities</b>		<b>(12,480)</b>	<b>(13,596)</b>	<b>(14,088)</b>
<b>Estimated deficiency before costs</b>		<b>(9,539)</b>	<b>(10,391)</b>	<b>(10,883)</b>

*Note: excludes the Liquidators' claims outlined in section 3*

The Liquidators' view on estimated realisable values (**ERV**) from our last report dated 20 April 2020 remains largely unchanged, save for minor increases in assets available and a decrease in priority creditors, each of which are discussed below.

### 2.1.1 *Assets*

In summary, the Liquidators have realised circa \$3.2 million in assets (comprising cash, debtors, loans receivable, retentions and plant and equipment), which is circa 10% higher than the assets reported in the RATA.

The only update to asset realisations since our last report to creditors is the recovery of four bank guarantees totalling \$50k from Main Roads WA, on account of work completed by Marine & Civil. Recovery of the bank guarantees has allowed for the release of a security deposit of \$50k held by nab, further increasing assets available to creditors.

No further asset realisations are anticipated. Further recoveries for the benefit of creditors are limited to the claims discussed in section 3.

### 2.1.2 *Liabilities*

#### *Priority creditors*

In November 2019, the Liquidators paid an interim dividend of circa \$159k from funds on hand to satisfy priority employee creditor claims pursuant to s556(1)(e) of the Act.

A further dividend to priority employee creditors under s556(1)(g) of the Act was declared in late August 2020 and paid on 21 September 2020. The Liquidators distributed circa \$305,000 (including PAYG which will be paid to the ATO in October 2020) to priority creditors (**Second Priority Dividend**), which equated to circa 75 cents in the dollar in respect of former employees' annual leave and long service leave claims.



The quantum and timing of any future dividends to priority employee creditors pursuant to s556(1) of the Act is subject to the settlement and/or recovery of the claims referred to in section 3.

After liaising with FEG and priority employee creditors during the respective dividend processes, we have revised a number of individual employee claims and refined the assessment of total priority employee claims under section 556(1)(g) (from circa \$503k to \$406k) and 556(1)(h) (from circa \$996k to \$917k). The decrease predominately relates to one former employee who was transferred to a related entity prior to the Liquidators' appointment, which also provided for the transfer of a portion of that employee's annual and long service leave entitlements.

The Liquidators' current assessment of priority creditor claims is set out below for reference:

<b>Marine &amp; Civil - Priority creditors</b>				
<b>\$'000</b>	<b>Ref.</b>	<b>Total claims</b>	<b>Interim Dividend</b>	<b>Unpaid</b>
Wages	s556(1)(e)	(118)	118	-
Superannuation	s556(1)(e)	(41)	41	-
		(159)	159	-
Annual leave (including leave loading)*	s556(1)(g)	(192)	144	(48)
Long service leave*	s556(1)(g)	(214)	161	(54)
		(406)	305	(102)
Pay in lieu of notice (incl. superannuation)	s556(1)(h)	(271)	-	(271)
Redundancy	s556(1)(h)	(646)	-	(646)
		(917)	-	(917)
<b>Total</b>		<b>(1,482)</b>	<b>464</b>	<b>(1,019)</b>

*\*Interim dividend of 75c/\$ paid on 21 September 2020. PAYG component of \$31k will be paid to ATO in October 2020*

The above table excludes circa \$1.0m of excluded employee claims, comprising entitlements owed to the two directors and their direct relatives (after the statutory cap for excluded employee claims), which will rank as unsecured claims in the liquidation of Marine & Civil (refer below).

Unpaid employee entitlements of a former director of Marine & Civil have been withdrawn as part of a recent settlement with the former director in relation to an insolvent trading claim brought by the Liquidators (refer section 3.1).

#### *Unsecured creditors*

Based on Marine & Civil's management accounts and correspondence with creditors to date, the Liquidators estimate unsecured creditor claims (including statutory creditors) total between circa \$11.4 million and \$11.9 million, categorised as follows:

<b>Marine &amp; Civil - Unsecured creditors</b>		
<b>\$'000</b>	<b>High</b>	<b>Low</b>
Trade creditors	(2,666)	(2,799)
Statutory creditors	(7,711)	(8,070)
Excluded employees	(972)	(972)
Related party creditors	(92)	(92)
<b>Total</b>	<b>(11,441)</b>	<b>(11,933)</b>



Since our last update to creditors, our estimate of:

- Trade creditors and Statutory creditors has increased by circa \$25k and \$520k respectively on account of preferential payments recovered by the Liquidators from three creditors (discussed further at section 3.5); and
- excluded employee claims have decreased by circa \$315k due to the former director withdrawing his claim as part of the recent settlement of an insolvent trading claim brought by the Liquidators (refer section 3.1).

The Liquidators have not adjudicated proofs of debt received from unsecured creditors at this stage, so the estimates above remain subject to change.



### 3 Investigations

The Liquidators' Prior Reports detailed the:

- preliminary investigations undertaken in order to (i) understand the events leading to their appointment, and (ii) identify potential Liquidator recovery actions which may increase the funds available to creditors; and
- ongoing investigations in relation to potential Liquidator claims against two directors, a former director and other third parties totalling between \$12.3m and \$14.7m (**Claims**), including:
  - Ongoing review of company books and records, including emails, financial accounts and information, director communications and management reporting;
  - Preparing and issuing document production orders to company directors and various third parties, and review and consideration of the documents produced;
  - Preparing for and conducting public examinations of two directors, a former director and an external corporate advisor to the company (**External Advisor**);
  - Liaising with legal representatives and counsel in relation to the merits of potential claims against two directors, a former director and third parties, and the overall legal strategy relative to those claims;
  - Formulating and quantifying the Claims; and
  - Preparation and issuing of letters of demand and a draft writ of summons to the relevant parties subject to the Claims.

Since our last report, the Liquidators have progressed their investigations in relation to the Claims, secured litigation funding and commenced direct dialogue with relevant parties, with the latest position discussed in detail in the sections below.

#### 3.1 *Litigation funding*

In recent months the Liquidators have corresponded with FEG in relation to their proposed legal strategy to pursue and recover the claims.

Following a detailed submission process, FEG have agreed to fund the respective actions against the directors and External Advisor in respect of the Liquidators' costs and that of their legal advisors. A formal funding agreement has been recently negotiated and executed between the Liquidators and FEG to pursue the claims. The ability of the Liquidators to enter into the funding agreement, pursuant to section 477(2B) of the Act, gained Court approval on 21 August 2020.

Under the agreement with FEG:

- funding has been provided for legal proceedings to be issued against the External Advisor and two directors (discussed below); and
- FEG will receive a priority over any recoveries, equal to the amount of any legal and Liquidator costs they will have funded. Notably, FEG's funding is not subject of a funding premium or any interest rate that would otherwise be the case with a commercial litigation funder.

In summary, the agreement with FEG is a positive step and provides the Liquidators substantial backing to pursue the claims against the two directors and External Advisor for the benefit of Marine & Civil's creditors.

#### 3.2 *Insolvent trading*

As previously outlined to creditors, the Liquidators have:

- formed the view that (i) Marine & Civil was insolvent from at least 1 July 2016, and remained insolvent up to the Administrators' appointment on 10 July 2018, (ii) the quantum of an insolvent trading claim based on this date against the two directors and former director, range from circa \$4.0 million to circa \$6.4 million (based on



period of tenure), and (iii) determined that the two directors and former director would have difficulty in establishing any defences against the Claims;

- investigated the personal asset position of the two directors and former director, including under private public examination, and preliminarily determined that it is unlikely the individuals have the capacity to meet the above claims in full; and
- issued letters of demand to the two directors and former director in relation to the insolvent trading claims, and have sought from them (i) a financial offer of settlement, and (ii) written details of their asset and liability position to support the merits of any settlement offer.

Since our last update to creditors, the Liquidators have received and negotiated a financial offer of settlement from the former director of Marine & Civil.

The offer from the former director was received after a series of negotiations with the Liquidators, and was supported by a detailed summary of the former director's asset and liability position and a statutory declaration with relevant source documentation.

The Liquidators considered the offer and information presented and determined that the offer represents a commercial and beneficial outcome for creditors, noting it:

- was reasonable having regard to the director's asset and liability position;
- eliminated the need for any further legal action and costs, the progression of which would not guarantee a superior outcome (and in fact could negatively impact the former director's capacity to maintain the offer); and
- as noted at section 2.1.2, also results in the reduction of unsecured claims by circa \$315k in the liquidation, via the withdrawal of the former director's claims for unpaid employee entitlements.

Accordingly, the Liquidators have accepted the offer from the former director and entered into a deed of settlement to finalise the claim. Payment of the settlement sum is due in mid-October 2020.

Despite the significant work, including public examinations and issue of detailed demand letters, with insolvency and claim analysis, no reasonable offer of settlement has been received from the two directors of Marine & Civil.

The Liquidators therefore will shortly commence proceedings against the two directors for insolvent trading.

### 3.3 *Damages claim against External Advisor*

As previously outlined to creditors, the Liquidators have:

- further investigated the role of Marine & Civil's External Advisor in relation to the purported \$8 million cash injection and the underlying source of the proposed funds, which was pending settlement of a separate international transaction (or transactions) that a director of Marine & Civil, and subsequently Marine & Civil itself was purportedly party to (**Transaction**);
- issued a letter of demand and draft settlement of the claim to the External Advisor in relation to a damages claim on account of breach of contract, negligence and/or misleading or deceptive conduct arising from matters related to the Transaction;
- together with their lawyers, corresponded with the External Advisor's lawyers and responded to a number of information requests in relation to the claim, including in relation to the External Advisor's professional indemnity insurance policy; and
- offered a number of opportunities to commence discussions with regard to a reasonable settlement of the claim without commencing Court proceedings.

As with the claims against the two directors, the Liquidators and legal advisors consider the claim against the External advisor:

- remains strong, material in value and with good prospects of recovery;



- having regard to the strength and prospects of the claim, is commercial to continue pursuing for the benefit of Marine & Civil's creditors; and
- is likely to be only progressed and resolved by way of legal proceedings.

As such, more recently the Liquidators have developed a robust legal recovery strategy, which will be commenced shortly (in parallel to the proceedings against the two directors) and carried out in a staged approach that maximises potential recoveries, whilst minimising costs.

#### 3.4 *Voidable transactions*

As advised in our Prior Reports, preliminary investigations identified five creditors that may have received preferential payments totalling circa \$1.8 million during the period six months prior to a winding up application being served on Marine & Civil (**Relation Back Period**), being 30 November 2017.

After carrying out further investigations and considering the circumstances of the payments, communications surrounding the payments, and fundamentals of the debtor/creditor relationship between various trade creditors and Marine & Civil, the Liquidators issued demand letters and progressed unfair preference claims against seven creditors.

In respect of the seven claims, the Liquidators have:

- settled a claim for \$0.52 million with the ATO regarding a preferential payment it received from Marine & Civil during the Relation Back Period. The settlement represents circa 93% of the value of the initial claim. In reaching the settlement, the Liquidators carried out detailed analysis, collated substantial documents to support the claim and engaged in final settlement negotiations with the ATO;
- obtained legal advice and engaged legal advisors to correspond with six trade creditors regarding potential preferential payments they received from Marine & Civil during the Relation Back Period;
- settled two claims for circa \$25k. The settlements were entered into (via legal representatives) on the basis they were a commercial outcome for creditors for Marine & Civil, having regard to the quantum and strength of the claims and estimated costs required to further litigate the claims; and
- continue to correspond (via legal representatives) with four remaining creditors that have received preferential payments during the Relation Back Period totalling circa \$1.4m.

#### 3.5 *Uncommercial and/or unreasonable director related transaction*

As previously outlined to creditors, the Liquidators have investigated and issued a letter of demand to the relevant director regarding a related company loan account totalling \$0.25 million, which is deemed to be an uncommercial and/or unreasonable director related transaction pursuant to the Act. After considering the relevant director's capacity to repay the loan and the merits in further pursuing the claim, the Liquidators propose joining this action with the before mentioned insolvent trading claim against the relevant director.

ARITA has issued an "Offences, Recoverable transactions and Insolvent trading" information sheet providing general information for creditors about insolvent trading and voidable transactions. This information sheet is available from the ARITA website (<http://www.arita.com.au>). If you are unable to access this website, please contact Antoine Cleuet on (08) 6363 7635 to obtain a copy.



#### 4 Receipts & payments

Receipts and payments for the liquidation of Marine & Civil from 15 April 2020 (since our last report) to 25 September 2020 are set out in the table below.

##### Marine & Civil - Receipts and Payments as at 25 September 2020

<b>(\$) Including GST</b>	<b>Total</b>
Cash at bank (including term deposits)	812,031
<b>Receipts</b>	
Liquidators' recoveries	542,500
Release of bank guarantee term deposit	50,000
GST received	17,396
Interest	3,268
Other banking receipts	12
<b>Total receipts</b>	<b>613,175</b>
<b>Payments</b>	
Liquidators' fees	(143,647)
Liquidators' disbursements	(3,765)
Legal fees	(51,182)
Distribution to priority creditors*	(272,307)
Bank charges	(558)
Other costs	(1,373)
<b>Total payments</b>	<b>(472,833)</b>
<b>Cash at bank</b>	<b>952,374</b>

*\*Excludes circa \$32k in PAYG which will be paid to the ATO in October 2020*

#### 5 Likelihood of a dividend

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

- the size and complexity of the liquidation;
- the amount of assets realisable and the costs of realising those assets;
- the outcome of detailed investigations and recovery proceedings, together with ability of defendants to satisfy any liquidator recovery claims;
- the statutory priority of certain claims and costs;
- the value of various classes of claims including priority and unsecured creditor claims, and
- the volume of enquiries by creditors and other stakeholders.

A further distribution(s) to priority (employee) creditors is in our opinion likely, the quantum and timing of which however is subject to recoveries made from the Liquidator claims discussed in section 3.

The Liquidators are not in a position to provide a detailed estimated return to creditors for the liquidation of Marine & Civil at this time due to the uncertainty of (i) the outcome (net of costs) of the potential liquidator recovery actions summarised in section 3 of this report, (ii) the willingness and ability of the potential defendants to engage in commercial settlement discussions, and (iii) potential defendant's ability to satisfy the claims against them.

The prospect of a dividend to unsecured creditors with admitted claims in the liquidation remains unknown at this stage, and is dependent on material recoveries from the Liquidator claims.



If a dividend is 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.

## **6 Cost of the liquidation**

We enclose a detailed report on the Liquidators' remuneration, called a Remuneration Report.

We propose to have our remuneration approved by a proposal and without a meeting. Information about passing resolutions without holding a creditors meeting, and voting forms with regard to each resolution is enclosed.

In accordance with our enclosed Remuneration Report, the Liquidators are seeking approval of their remuneration totalling \$209,297 (excluding GST) for the period from 29 July 2020 to 28 February 2021, comprising (i) retrospective (actual) remuneration for the period from 29 July 2020 to 25 September 2020 totalling \$59,297 (excluding GST), and (ii) prospective remuneration for the period from 26 September 2020 to 28 February 2021 totalling \$150,000.

The key tasks comprising the Liquidators' remuneration request is set out in detail in the enclosed Remuneration Report. The Liquidators' prospective remuneration is based on undertaking the following key tasks prior to 28 February 2021:

- progressing identified liquidator claims against the directors and External Advisor via commencement of substantive Court proceedings;
- pursue recovery of the four remaining identified voidable transactions claims on a commercial basis, and consider commencement of Court proceedings as necessary; and
- review and consider the ability to pay a further distribution in respect of priority claims (including liaising with creditors where necessary).

## **7 What happens next?**

We will proceed with the liquidation, which will include:

- pursuing liquidator claims identified in section 3 of this report, for the benefit of creditors;
- reporting to FEG on the progress of the claims against the two Directors and External Advisor; and
- attending to our continuing reporting obligations to the corporate insolvency regulator, the Australian Securities and Investments Commission (**ASIC**), as necessary.

The timing of the completion of the liquidation will be dependent on several factors, including the time that may be required to pursue the identified Liquidator claims.



## **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](http://www.arita.com.au/creditors).
- ASIC at [www.asic.gov.au](http://www.asic.gov.au) (search for "insolvency information sheets").

If you have any queries, please contact Antoine Cleuet on (08) 6363 7635.

Dated: 1 October 2020

Rob Kirman  
*Liquidator*

Enclosures:

- 1 Proof of Debt (Form 535)
- 2 Proof of Debt Guidance Notes
- 3 Remuneration Report
- 4 Notice of Proposal – Retrospective fees
- 5 Notice of Proposal – Prospective fees
- 6 ARITA Information Sheet – Offences, Recoverable Transactions & Insolvent Trading
- 7 ARITA Information Sheet – Approving remuneration of an external administrator
- 8 ARITA Information Sheet – Proposals without meetings