



**F&M Australasia Pty Ltd (In Liquidation) trading as AK Mechanical & Tyres
ACN 613 807 999
(F&M) or (Company)**

Statutory Report to Creditors

We refer to our initial information for creditors dated 2 February 2022 in which we advised you of our appointment as Liquidators of F&M and your rights as a creditor in the liquidation.

The purpose of this report is to:

- provide you with an update on the progress of the liquidation; and
- advise you of the likelihood of a dividend being paid in the liquidation.

We also request that you consider our detailed remuneration approval report and consider a resolution to approve our remuneration.

1 Liquidators' Declaration of Independence and Relevant Relationships (DIRRI)

In accordance with the Corporations Act 2001 (**the Act**) and Australia Restructuring and Turnaround Association (**ARITA**) Code, a DIRRI was enclosed with our circular to creditors dated 2 February 2022.

We remain of the view that there are no real or perceived threats to the Liquidators' independence nor any reason that would preclude us from continuing in our role as the Liquidators of F&M. The Liquidators will continue to monitor independence and will advise creditors should this view change.

2 Update on the progress of the liquidation

2.1 Background

F&M was incorporated on 21 July 2016 and operated an automobile repair business offering mechanical repairs, vehicle body repairs, wheel alignment and tyre replacements services. In addition, the Liquidators understand F&M bought and sold a small number of second-hand cars. Mr Frank Esber has been the sole director, secretary and shareholder (**Director**) since its incorporation in July 2016. F&M operated the business from a leased premises at 53 Champion Drive, Armadale WA 6112 (**Premises**).

F&M ceased trading on 14 November 2021 after the earlier incarceration of the Director. The Liquidators understand the business was managed by the Director's brother and wife following his incarceration however it was determined the business was insolvent and operations ceased in November 2021 with the Liquidators appointed in January 2022 when the Director was in a position to sign the necessary appointment documents.

A former employee of F&M has since commenced a new mechanical workshop business from the Premises called AK Mechanical Pty Ltd (**AK Mechanical**).

2.2 Books and records

In a liquidation, the Director is required to complete a Report on Company Affairs and Property (**ROCAP**) setting out a detailed assessment of the company's asset and liability position and causes of failure. The Liquidators received a completed ROCAP on 19 January 2022.

The Liquidators have also secured all available books and records from F&M's accountant (**Accountant**). The books and records include a copy of F&M's MYOB accounting software file (**MYOB**), a copy of the FY20 financial report and miscellaneous trade creditor receipts.

Based on MYOB and the Director's ROCAP, set out below is a summary of F&M's asset and liability position, as well as our view on realisable values.



3 Estimated assets and liabilities

Set out below is a summary of the known assets and liabilities of F&M identified by the Liquidators to date. The Liquidators have not carried out an audit, not verified the information in preparation of the summary set out in this report. Accordingly, no warranty of accuracy or reliability is provided by the Liquidators in respect of the financial information.

3.1 *Assets*

Set out below is a summary of the assets of F&M which have been identified by the Liquidators to date:

F&M - Estimated asset position					
\$	Ref.	MYOB	ROCAP	Liquidators' ERV	
				High	Low
Bank account balance	3.1.1	84,696	17,415	17,415	17,415
Aged receivables	3.1.2	1,433	620	-	-
Loan repayable	3.1.3	-	-	78,250	-
Motor vehicles	3.1.4	60,906	-	Unknown	-
Plant and equipment	3.1.5	64,228	-	Unknown	-
Total		211,264	18,035	Unknown	17,415

3.1.1 *Bank account balance*

Prior to the business ceasing to trade, F&M maintained a bank account with Westpac. The bank account was closed on 23 July 2021 when Westpac issued a bank cheque payable to F&M in the amount of \$17,415 which represented the closing balance of the bank account. F&M's MYOB file was not reconciled as at the date of the Liquidators' appointment and all bank transactions had not been recorded. Accordingly, the realisable value of F&M's cash at bank is \$17,415.

The Liquidators secured possession of the bank cheque and have lodged this to the Liquidators bank account.

In addition, the Liquidators wrote to 73 financial institutions seeking details of accounts held by F&M. With the exception of the Westpac accounts, no financial institution identified a bank account with a positive balance in the name of F&M.

3.1.2 *Aged receivables*

The Liquidators review of F&M's MYOB identified accounts receivable of \$1,433 due from six debtors. The Directors' ROCAP confirmed an accounts receivable balance of \$620.

The Liquidators wrote to all potential debtors of F&M based on the MYOB records and the information provided by the Director. Each debtor has either provided confirmation of payment prior to the Liquidators appointment, or demonstrated the invoice was not due.

Accordingly, the Liquidators consider there will be no recoveries from debtors.

3.1.3 *Loan repayable*

Although neither the MYOB file or the Directors' ROCAP disclose the existence of a loan repayable to F&M, the Liquidators have been provided with evidence of funds transferred to a family member of the Director. The Liquidators have been provided with deposit slips confirming circa \$48,250 of customer receipts were lodged to the family members bank account between 11 May 2021 and 10 September 2021.

In addition to the funds deposited, the Liquidators review of F&M's bank statements identified further transactions with the family member. The bank statements have identified two amounts of \$10,000 being transferred to F&M in addition to a transfer back to the family member of \$50,000.



Based on our investigations to date, the Liquidators consider the balance due to F&M from the family member totals \$78,250 however the family member disputes the balance and has asserted the \$48,250 remitted to their bank account does not relate to proceeds of F&M.

The Liquidators investigation into the recoverability of these funds is ongoing however at the date of this report, the Liquidators considers the balance of \$78,250 to be repayable to F&M.

3.1.4 Motor vehicles

The Liquidators undertook a review of the motor vehicles registered to F&M. The Liquidators investigated the motor vehicles registered in the financial statements of F&M and recorded in F&M's MYOB file as at the date of our appointment. In addition, the Liquidators wrote to the Department of Transport (**DoT**) seeking details of all motor vehicles registered to F&M in the previous four years.

A schedule of the motor vehicles registered to F&M with the DOT and their treatment in the books and records of F&M is detailed below:

F&M Australasia Pty Ltd (In Liquidation) - Motor Vehicles

Motor Vehicle	Recorded in MYOB	Recorded in FY20 statements	DoT Status	Sale proceeds identified
1999 Ford Ka	✓	✓	Sold	x
2007 Holden Rodeo	✓	✓	Sold	x
2015 Toyota Kluger	✓	✓	Sold	x
2005 Mazda 3A	✓	✓	Sold	x
2015 Toyota Hilux	✓	x	Delicensed	x
2015 Mitsubishi Triton	✓	x	Delicensed	x
Daihatsu Charade	✓	x	N/A	x
2008 Toyota Hilux	✓	x	N/A	x
2005 Toyota Hiace	x	x	Delicensed	x
2006 Holden Vectra	x	x	Delicensed	x
2012 Nissan Navara	x	x	Delicensed	x
2012 Nissan Navara	x	x	Delicensed	x
2005 Hyundai Santa Fe	x	x	Delicensed	x
2008 Holden Commodore	x	x	Delicensed	x
2014 Toyota Camry	x	x	Delicensed	x
2012 Toyota Camry	x	x	Delicensed	x
2007 Nissan Navara	x	x	Sold	x
2013 Jeep Grand Cherokee	x	x	Sold	x
2009 Nissan Navara	x	x	Sold	x
2006 Nissan Navara	x	x	Sold	x
2001 Hyundai	x	x	Sold	x
2004 Hyundai Getz	x	x	Sold	x
2004 Holden Rodeo	x	x	Sold	x
2006 Nissan Navara	x	x	Sold	x
2007 Nissan Navara	x	x	Owned	x
2012 Coromal	x	x	Owned	x

The Liquidators note:

- The Director did not disclose any motor vehicles in the ROCAP.



- The Liquidators wrote to various family members of the Director as well as former employees of F&M requesting information regarding the 2007 Nissan Navara and 2012 Coromal Caravan that are still registered to F&M. The Director's wife has advised the caravan was sold in January 2021 and the Nissan Navara was sold in May 2021. The Liquidators have not identified any receipts to F&M for the sale of these vehicles and no further details have been provided. Our investigations in respect of these vehicles are ongoing and in circumstances where no further information, the Liquidators may be required to report the vehicles stolen noting they remain registered to F&M.
- The Liquidators wrote to the parties who purchased the remaining vehicles to establish details of the sale transaction including how the vehicles was paid for and who the funds were paid to. The Liquidators' investigations in respect of these vehicles are ongoing.

3.1.5 Plant and equipment

The Directors' ROCAP did not disclose any plant and equipment however the MYOB file records plant and equipment (including car ramps, a fridge, phone equipment and various workshop tools) of with a net book value of \$64,228.

The Liquidators have investigated the ownership of the workshop equipment. The landlord has asserted that the P&E purchased by F&M was purchased in lieu of rent. The landlord has confirmed that no rent was charged for the Premises however in exchange for charging no rent, the landlord asserts that all P&E purchased by F&M was purchased for the benefit of the landlord.

The Liquidators investigations into these claims are ongoing.

3.2 Liabilities

Set out below is a summary of the liabilities of F&M identified by the Liquidators to date:

F&M - Estimated liability position					
\$	Ref.	MYOB	ROCAP	Liquidators' ERV	
				High	Low
Priority employee creditors	3.2.1	16,387	-	35,979	35,979
Unsecured creditors	3.2.2	-	102,152	105,586	105,586
Statutory liabilities	3.2.3	28,136	-	23,318	23,318
Total		44,523	102,152	164,883	164,883

3.2.1 Priority employee creditors

In accordance with section 556(1)(e) of the Corporations Act, employee entitlements such as wages, leave of absence, retrenchment, payment in lieu of notice and superannuation enjoy a priority ahead of unsecured creditors.

Following our appointment, the Liquidators wrote to each employee for the purposes of assessing their employee entitlements claim in respect of F&M. A summary of the claims presented by employees is set out below:

Priority employee creditors	
Entitlement	\$
Superannuation	5,934
Annual leave	11,327
Long service leave	10,585
Pay in lieu of notice (incl. superannuation)	8,133
Total	35,979

When writing to employees, the Liquidators requested confirmation from employees who commenced employment with AK Mechanical if their entitlements were honoured by AK Mechanical and if their employment contract had



effectively transferred to the new entity. The employees confirmed their employee entitlements did not transfer to AK Mechanical however the Liquidators investigations into employee claims is ongoing.

At this stage, it is uncertain if there will be sufficient recoveries in the liquidation of F&M to pay a distribution to priority creditors. For this reason, the Liquidators encourage all employees who believe they have unpaid employee entitlements to submit their claim to the Fair Entitlement Guarantee (**FEG**) scheme. FEG will then assess the eligibility of the claimants and make payments to eligible recipients.

FEG will be entitled to subrogate into the position of employees to whom they make any distributions, and rank as a priority creditor in the liquidation of F&M. In effect, this means any amounts owing to an employee will become due to FEG if and when FEG make a distribution to the employee.

Further information regarding FEG can be found at <https://www.jobs.gov.au/fair-entitlements-guarantee-feg>.

3.2.2 Unsecured creditors

The Directors' ROCAP did not confirm the balance due to unsecured creditors, however a separate listing of creditors was provided by the Director when providing the ROCAP. This included copies of all outstanding trade creditor invoices.

The outstanding trade creditor invoices, as well as proof of debts (**POD**) received from trade creditors total \$105,586 to date.

The Liquidators have not yet adjudicated on creditor claims and will only do so where the Liquidators are required to for the purposes of declaring a dividend.

3.2.3 Statutory liabilities

The ATO submitted a POD for \$23,318 in respect of GST. The ATO's POD may increase pending completion (where relevant) of outstanding tax lodgements.

4 Investigations

The Liquidators have obtained access to certain books and records of F&M and their investigations are ongoing. Based on our review of the records to date, the Liquidators are of the view F&M did not maintain its accounting records on a regular basis and the MYOB file was not reconciled prior to the Liquidators appointment. This, together with the incarceration of the Director has made it challenging for the Liquidators to obtain the required information to complete their investigations.

As detailed in section 3.1.4 above, the Liquidators wrote to the DoT to assist the Liquidators investigation of motor vehicles registered to F&M which were sold or transferred prior to the Liquidators appointment.

Records obtained from the DoT confirm 13 vehicles were transferred from F&M to 12 different parties in the four years prior to the Liquidators' appointment. The Liquidators wrote to each of these parties to confirm (i) payment details, (ii) background of sale, and (iii) any relationship with F&M or related parties.

The Liquidators' investigations into these transactions are ongoing, and further action may be taken should it be determined that any transfers are capable of being set aside. Based on initial responses received from purchasers, it appears the vehicles were sold in arm's length transactions and may not be voidable. The Liquidators further investigations have been unable to identify the sale proceeds from these vehicles being deposited to F&M's bank account. This will require further investigation.

In addition to investigating the transfer of motor vehicles, the Liquidators investigations include:

- The potential existence of a shadow director and the role undertaken; and
- The potential misappropriation of F&M funds.

5 Receipts and payment to date

The only receipt in the liquidation to date is \$17,415 relating to the closing balance in the Westpac account prior to its closure.



6 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 amount of assets realisable and the costs of realising those assets;
- the statutory priority of certain claims and costs;
- the value of various classes of claims including secured, priority and unsecured creditor claims, and
- the volume of enquiries by creditors and other stakeholders.

Based on information available to us at this time, we consider it unlikely 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 F&M.

7 Cost of the liquidation

We enclose a detailed report on our remuneration, called a Remuneration Approval Report.

We propose to have our remuneration approved by a proposal without a meeting.

To vote on the proposal, you must return the enclosed voting form to our office by post, fax or email by 10 May 2022. You must also include a completed proof of debt and information to substantiate your claim. A proof of debt form is enclosed, together with guidance notes to assist you when you complete it.

We also enclose an Australian Restructuring Insolvency and Turnaround (**ARITA**) information sheet on passing resolutions without a meeting.

8 What happens next?

We will proceed with the liquidation, which will include:

- realising the remaining assets to the extent any are recovered;
- recovering any further available property;
- completing our investigations into F&M's affairs;
- if identified, pursuing any viable claims for statutory recovery actions; and
- completing our reporting to the corporate insolvency regulator, the Australian Securities and Investments Commission (**ASIC**); and

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

We expect to have completed this liquidation within 12 months.

9 Where can you get more information?

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

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



If you have any queries, please contact Phoebe Donaldson on 08 6363 7619. For further information about this engagement, please refer to the website www.mcgrathnicol.com/creditors.

Dated: 14 April 2022

Rob Kirman
Liquidator

Enclosures:

1. Remuneration Approval Report
2. ARITA Information Sheet – Approving remuneration of an external administrator
3. Notice of Proposal to Creditors
4. ARITA Information Sheet – Proposals without meeting
5. Proof of Debt (Form 535)
6. Proof of Debt Guidance Notes
7. ARITA Information Sheet – Offences, Recoverable Transactions & Insolvent Trading