



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

Statutory 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 Statutory Report to Creditors dated 21 November 2018; 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 previous report to creditors dated 21 November 2018.

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

The realisation of company assets has been completed by the Liquidators, but for a number of small retentions which are subject to ongoing correspondence. Overall, proceeds from asset realisations have exceeded previous estimates provided by the Liquidators.

More recently, the Liquidators focus has transitioned to investigating claims that the company may have against company directors and other third parties. These claims are discussed further in section 3.



2.1 *Estimated assets and liabilities*

The directors completed a Report as to Affairs (**RATA**) setting out Marine & Civil's financial position. A summary of the RATA and the Liquidators' view on estimated realisable values (**ERV**) is summarised below:

Marine & Civil Pty Ltd (In Liquidation) - Summary of financial position				
\$'000	Reference	RATA ERV	Liquidators' ERV	
			High	Low
Assets				
Cash at bank	2.1.1.1	132	132	132
Debtors & loans	2.1.1.2	749	900	900
Retentions	2.1.1.3	409	301	269
Plant and equipment	2.1.1.4	1,600	1,782	1,782
Other assets	2.1.1.5	50	50	-
Total assets		2,941	3,166	3,083
Liabilities				
Secured creditors	2.1.2.1	(598)	(624)	(624)
Retention of title	2.1.2.2	-	(48)	(48)
Priority creditors	2.1.2.3	(1,531)	(1,657)	(1,657)
Unsecured creditors	2.1.2.4	(10,350)	(11,162)	(11,716)
Total liabilities		(12,480)	(13,491)	(14,044)
Estimated deficiency before costs		(9,539)	(10,325)	(10,961)

2.1.1 *Assets*

The RATA reported assets of circa \$2.9 million, comprising cash, debtors (including loans receivable), retentions and plant and equipment. A summary of the Liquidators' realisation of Marine & Civil's assets are set out above and discussed below.

2.1.1.1 *Cash*

Cash at appointment disclosed in the RATA was \$132,480. Cash secured by the Administrators following their appointment totalled \$132,292.

2.1.1.2 *Debtors (including loans receivable)*

The Liquidators collected pre-appointment debtors and loans totalling \$900,260, being circa 20% over the Directors' forecast level of recoverability.

The Liquidators' investigations are continuing into the nature and recoverability of a number of related party loan accounts with a book value of circa \$0.3 million (excluded from the directors' RATAs).

2.1.1.3 *Retentions*

The Liquidators have collected pre-appointment retentions held by head contractors and/or customers totalling \$268,812, which is substantially higher than forecast in our previous report to creditors dated 21 November 2018.

One retention remains outstanding totalling circa \$65,000. The Liquidators have assumed further recoveries in respect of the outstanding retention of nil (low scenario) and \$32,500 (i.e. 50% of book value) (high scenario).



2.1.1.4 *Plant and Equipment*

Marine & Civil's plant and equipment comprised various marine vessels, cranes and other construction assets, piling hammers, industrial generators, trucks, light motor vehicles and workshop equipment. The RATA reported an ERV of plant and equipment of \$1.6 million.

A valuation obtained by the Administrators assigned an auction realisable value (**ARV**) of circa \$1.46m (excluding GST). National Australia Bank Limited (**NAB**) held first ranking security over the assets and undertakings of Marine & Civil by way of a registered GSA. Gross sale proceeds totalled \$1.78 million (excluding GST), exceeding ARV by circa 21%.

2.1.1.5 *Other assets*

Other assets listed in the RATA comprise a term deposit of \$50,000 held with NAB. These funds provide direct "cash backed" security in relation to bank guarantees (of equal value) on issue to Main Roads WA in relation to a partially completed construction project.

The Liquidators are maintaining correspondence with Main Roads WA in relation to the progress of the project, and whether the guarantees will be called upon in the future. It is assumed the guarantee is returned in the high scenario and called on in full in the low scenario.

2.1.2 *Liabilities*

2.1.2.1 *Secured creditors*

NAB held a GSA together with 14 valid and enforceable PPSR registrations over specific items of plant and equipment. Following the realisation of Marine & Civil's assets, NAB's debt of \$623,948 was repaid in full, and its GSA and PPSR's released.

2.1.2.2 *Specific security interests*

At appointment, there were 97 security interests registered against Marine & Civil on the Personal Properties Securities Register (**PPSR**), including:

- 15 in favour of NAB (now discharged);
- One in favour of BOQ, relating to printers disclaimed by the Liquidators due to there being no equity in the assets after dealing with BOQ's debt (request to remove PPSR submitted); and
- One PMSI registration pertaining to a Retention of Title (**ROT**) claim in relation to inventory supplied to Marine & Civil (discussed below).

The remaining registrations relate to trade creditor supplier agreements for equipment hired or goods and services consumed prior to the appointment of the Administrators.

The ROT claim against Marine & Civil was brought by a supplier owed circa \$0.2 million for steel supplied pre-appointment in relation to an unfinished project. Following a legal review of the claim and a period of negotiation with the supplier, the claim was commercially settled by the Liquidators for \$47,500.

2.1.2.3 *Priority creditors*

Following the appointment of Liquidators to Marine & Civil on 21 August 2018, former employees have been facilitated access to the Department of Jobs and Small Business' Fair Entitlements Guarantee (**FEG**) scheme.

The FEG process is complete with the Liquidators having reviewed 21 employee claims paid by FEG totalling circa \$1.1 million. FEG subrogate into the position of employees for the funding provided, and will participate in any dividend declared by the Liquidators.



The Liquidators' current view of total priority employee creditors is set out below:

Marine & Civil - Priority creditors				
\$'000	Ref.	Paid by FEG	Unpaid*	Total Claims
Wages	s556(1)(e)	(86)	(32)	(118)
Superannuation	s556(1)(e)	-	(41)	(41)
Annual leave (including leave loading)	s556(1)(g)	(127)	(85)	(212)
Long service leave	s556(1)(g)	(154)	(136)	(291)
Pay in lieu of notice (including superannuation)	s556(1)(h)	(203)	(88)	(292)
Redundancy	s556(1)(h)	(523)	(181)	(704)
Total		(1,094)	(563)	(1,657)

* note: predominantly comprises amounts exceeding FEG's cap on limits paid

The above table excludes circa \$1.2m of excluded employee claims, comprising entitlements owed to the directors and former director and their direct relatives (after the statutory cap on priority claims of \$2,000 in relation to wages and superannuation, and \$1,500 in relation to leave), which will rank as unsecured claims in the liquidation of Marine & Civil (refer 2.1.2.4 below).

The variance between the level of employee creditor claims in the RATA and the Liquidators' estimate is largely driven by no consideration being given to PILN or redundancy entitlements in the RATA.

2.1.2.4 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 \$11.2 million and \$11.7 million, categorised as follows:

Marine & Civil - Unsecured creditors		
\$'000	High	Low
Trade creditors	(2,653)	(2,786)
Statutory creditors	(7,191)	(7,550)
Excluded employees	(1,227)	(1,288)
Related party creditors	(92)	(92)
Total	(11,162)	(11,716)

The Liquidators have not adjudicated proofs of debt received from creditors at this stage.



3 Investigations

The Liquidators' previous report to creditors dated 21 November 2018 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 the creditors.

Since our last report, the Liquidators have progressed their investigations in relation to potential claims against two directors, a former director and other third parties on behalf of the Company and its creditors. This has included:

- 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 reviewed and considered the documents produced;
- Preparing for and conducting public examinations of two directors, a former director and an external 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 overall legal strategy relative to those claims;
- Formulating and quantifying claims against two directors, a former director and the External Advisor; and
- Prepared and issued letters of demand to two directors, a former director and the External Advisor in relation to damages suffered by the Company.

Following the above work, the Liquidators have identified the following claims:

Summary of Estimated Liquidators' Claims

Claim	\$ million
Insolvent trading claims	4.0 to 6.4
Damages claim against the External Advisor	6.4
Voidable transactions (seven parties)	1.0

Whilst the Liquidators have formed a firm view in relation to the strength of the above claims, and obtained legal advice in relation to the same, the recoverability of these claims may be limited by the capacity of the relevant parties to satisfy any successful claim (discussed below).

3.1 Insolvent trading

As previously outlined to creditors on a preliminary basis, the Liquidators have formed the view that Marine & Civil was insolvent from at least 1 July 2016, and remained insolvent up to the Administrators' appointment on 10 July 2018.

Pursuant to s588J of the Act, in circumstances where insolvent trading is proven, and proceedings pursued, a director of an insolvent company is liable to compensate the company for debts incurred whilst insolvent and during their tenure as director of the company.

Based on this date of insolvency, the quantum of an insolvent trading claim against the two directors and former director, range from circa \$4.0 million to circa \$6.4 million (based on period of tenure).

The Liquidators have investigated the personal asset position of the two directors and former director, including under private Court examination, and note all three own real property and hold corporate shareholdings in trading and/or ASIC registered companies. Notwithstanding, based on these investigations the Liquidators' preliminary view is that it is unlikely the individuals have the capacity to meet the above claims in full.

The Liquidators have recently 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.



Further consideration regarding the Liquidators' legal and recovery strategy in relation to the insolvent trading claims will follow after the receipt of any responses from each party.

There are various defences available to a director to an insolvent trading claim. In summary they are:

- the director had reasonable grounds to suspect that the company was solvent;
- the director had reasonable grounds to believe and did believe that a competent reliable person was responsible for providing adequate information on the company's solvency and that person fulfilled that responsibility and the director believed that at the time the debt was incurred, and considering the other debts existing at that time, the company was solvent and would remain solvent;
- the director was ill (and therefore did not take part in management) at the time the debt was incurred; and
- the director took all reasonable steps to prevent the debt being incurred.

It remains the Liquidators' opinion that the two directors and former director would have difficulty in establishing any of the above defences in the period from 1 July 2016 to the date of the appointment of Administrators on 10 July 2018.

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 Amber Andre on (08) 6363 7665 to obtain a copy.

3.2 *Damages claim against company advisor*

Since our last report to creditors dated 21 November 2018, the Liquidators have investigated the role of the 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**).

The Liquidators' investigations have included (i) publicly examining the directors, former director and the External Advisor, (ii) preparing and issuing correspondence and document production orders to various entities and individuals purportedly party to and/or facilitating the Transaction (both domestic and international), and (iii) reviewing correspondence and documentation obtained from third parties and company records.

Having considered the content of the public examinations and all available documents recovered from company records and relevant third parties, the Liquidators have (i) issued a letter of demand to the External Advisor in relation to a claim for damages quantified at circa \$6.3 million, (ii) sought a financial offer of settlement in relation to the claim, and (iii) requested the External Advisor notify its relevant insurers of a pending claim.

Due to the commercial and legal sensitivities of a claim of this nature, the Liquidators are not at liberty to provide creditors with any further details at this time. The Liquidators' legal and recovery strategy in relation to the claim will be further considered following the receipt of a response to the Liquidators' demand and/or settlement invitation.

3.3 *Voidable transactions*

Preliminary investigations have identified seven creditors that may have received preferential payments during the period leading up to the appointment of the Administrators.

Pursuant to section 588FA and 588FE of the Act, an unfair preference is a voidable transaction if:

- Marine & Civil and the creditor are parties to the transaction;
- the transaction results in the creditor receiving from Marine & Civil, in respect of an unsecured debt, more than the creditor would receive if the transaction were set aside and the creditor were to prove for the debt in a winding up;
- the payment was made within six months prior to the winding up application being lodged for Marine & Civil (**Relation Back Period**), being 30 November 2017; and



- the transaction is an insolvent transaction, having occurred at a time when Marine & Civil was insolvent or caused Marine & Civil to become insolvent.

As noted above, the period in which Marine & Civil is believed to have been insolvent is from at least 1 July 2016. As a result, the Liquidators have reviewed the full Relation Back Period to determine whether any potentially preferential transactions may be recoverable.

The seven potential unfair preference claims total circa \$1 million during the Relation Back Period. The circumstances of the payments, communications surrounding the payments, and fundamentals of the debtor/creditor relationship between Marine & Civil and each of the potential preferred parties are currently under review in order to determine the strength of these claims.

Subject to the outcome of the current review of these potential claims, the Liquidators propose to (if warranted) issue any relevant letters of demand prior to calendar year end.

The Liquidators have also further investigated a related company loan account that may be deemed an uncommercial and/or unreasonable director related transaction pursuant to the Act. The loan account totals circa \$0.25 million, the majority of which was paid directly to a director of the company.

The Liquidators have issued a letter of demand to the director involved in relation to the outstanding liability.



4 Receipts

Receipts and payments for the Administration/Liquidation of Marine & Civil from 10 July 2018 to 27 September 2019 are shown in the table below.

Marine & Civil - Receipts and Payments as at 27 September 2019	
(\$) Including GST	Total
Receipts	
Cash at bank	132,292
Pre-appointment debtors	654,791
Interest	14,324
Loan recovery	245,469
Plant & equipment	1,959,685
Retentions	268,812
Administrators' sales	290,809
Insurance refunds	57,045
Total receipts	3,623,226
Payments	
Advertising	(9,754)
Distribution to NAB	(623,948)
Legal fees	(336,318)
Petitioning creditor costs	(9,847)
Property costs	(81,359)
Plant & equipment realisation costs	(142,807)
Trading costs (including GST)	(507,039)
Voluntary Administrators' fees	(354,596)
Voluntary Administrators' disbursements	(3,226)
Liquidators' fees	(309,407)
GST Paid	(108,196)
ROT Settlement	(47,500)
Other costs	(5,451)
Total payments	(2,539,449)
Cash at bank	1,083,778

The liquidation of Marine & Civil is currently holding cash on hand of circa \$1.1 million, before professional fees sought by the Liquidators, which is subject of the enclosed remuneration report (refer below). The Liquidators have also declared an interim dividend to priority (employee) creditors.

5 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 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.

The Liquidators are not currently in a position to provide a detailed estimated return to creditors for the liquidation of Marine & Civil due to the uncertainty of the (i) outcome (net of costs) of the potential liquidator recovery actions summarised in section 3 of this report, and (ii) willingness and ability of the potential defendants to enter into commercial settlement discussions.

The Liquidators have declared an interim distribution from funds currently on hand to extinguish priority creditor claims pursuant to s556(1)(e) of the Act. This interim dividend will be paid to relevant priority (employee) creditors within the statutory timeframe, on or around 22 November 2019. A further distribution(s) to priority (employee) creditors is likely, the quantum of which being subject to the settlement and/or recovery of Liquidators' claims.

A dividend to unsecured creditors with admitted claims in the liquidation remains unknown at this stage, but is unlikely absent material recoveries from the Liquidator recovery actions summarised in section 3.

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 Marine & Civil.

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 each resolution is enclosed.

In accordance with our enclosed Remuneration Report, the Liquidators are seeking approval of their remuneration totalling \$194,188 (excluding GST) for the period from 1 April 2019 to 31 March 2020, comprising (i) retrospective (actual) remuneration for the period from 1 April 2019 to 27 September 2019 totalling \$113,124, and (ii) prospective remuneration for the period from 28 September 2019 to 31 March 2020 totalling \$80,000.

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 31 March 2020:

- progressing identified liquidator claims to settlement with the directors, former director and External Advisor without the commencement of substantive Court proceedings;
- detailed investigation of identified voidable transactions and pursuit of recovery of these claims on a commercial basis, again without commencement of substantive Court proceedings;
- finalisation and issue the Liquidators' report to ASIC pursuant to section 533 of the Act; and
- payment of an interim distribution to priority creditors of Marine & Civil, and pending the outcome of liquidator claims prior to 31 March 2020, a second distribution.

Should Court proceedings be required to resolve the identified Liquidator claims, it is likely these claims will take longer to resolve and at further cost. The progress of the Liquidator claims will be communicated further with creditors in due course.



7 What happens next?

We will proceed with the liquidation, which will include:

- investigating and recovering any remaining property;
- completing an interim dividend to priority employee creditors;
- completing our statutory investigations into Marine & Civil's affairs pursuant to the Act;
- pursuing liquidator claims identified in section 3 of this report, for the benefit of creditors; and
- completing our reporting to the corporate insolvency regulator, the Australian Securities and Investments Commission (**ASIC**).

The timing of the completion of the liquidation will be dependent on several factors, including the time that may be required to carry out our investigations and 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.
- ASIC at www.asic.gov.au (search for "insolvency information sheets").

If you have any queries, please contact Amber Andre on (08) 6363 7655.

Dated: 8 October 2019

Rob Kirman
Liquidator

Enclosures:

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