



**Villanex Pty Ltd (In Liquidation) as trustee for the Villanex Trust trading as Aveley Liquor
ACN 142 594 358
(Villanex)**

Statutory Report to Creditors

We refer to our initial information for creditors dated 4 May 2021 in which we advised you of our appointment as liquidator 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 will also be requesting that you consider our detailed remuneration approval report and consider a resolution to approve our remuneration.

1. Update on the progress of the liquidation

1.1 Background and trading history

Villanex was incorporated on 15 March 2010, with its principle place of business at 77 Swanleigh Parade, Aveley WA 6009, being the Aveley Liquor Store. According to the Company's records, Villanex was the corporate trustee for the Villanex Trust.

In its capacity as trustee of Villanex Trust the Company commenced trading as Aveley Liquor during FY13. The business operated under the Celebrations banner.

At the time of the Liquidators' appointment, Mr Christopher Gomes was the sole director and shareholder of Villanex (**Director**), taking over from the former directors and shareholders, Mr Reinaldo Nunes (**Mr Nunes**) and his son Mr Brandon Nunes in February 2019. We understand the Director is Mr Nunes' nephew.

Villanex operated the Aveley Liquor store located next door to the Vale IGA in Aveley WA, which was operated by a related entity. The business was part of a larger corporate Group, holding ownership of family interests in IGA supermarkets in Perth.

Related entities (in addition to Villanex) are listed below and are all currently in external administration:

- SKB Australia Pty Ltd atf KBS Family Trust and t/as Darch SUPA IGA (**SKB**);
- Mainteam Holdings Pty Ltd atf Redside Trust and t/as Ellenbrook IGA (**Mainteam**);
- Evermaze Pty Ltd atf Evermaze Trust t/as Vale IGA (**Evermaze**); and
- Family Fresh Growers Market Pty Ltd atf Family Fresh Growers Market Trust (**Family Fresh**).

Villanex traded at a loss from FY19 and was generally the beneficiary of financial support from related entities, including SKB and family members.

Prior to the appointment of the Liquidators, Villanex experienced substantial periods of working capital deficiency, cash flow pressure, and accumulating liabilities with key creditors. This was coupled with SKB's reduced capacity to provide financial assistance.

During March 2020 a Notice of Default was served on Villanex by IGA Distribution (WA) Pty Ltd (a wholly owned subsidiary of Metcash Trading Limited (**Metcash**), the head-lessor of the Aveley Liquor premises) in relation to overdue and unpaid rent and outgoings. As a result of Villanex's inability to remedy the position in relation to rent and outgoings, the landlord took possession of the premises on 9 April 2021.

Subsequently, on 19 April 2021, the Director passed a resolution to appoint Rob Kirman and Rob Brauer as Liquidators of Villanex.



1.2 Report on Company Activities and Property / Books and Records

In a liquidation, directors are required to submit a Report on Company Affairs and Property (**ROCAP**), setting out a detailed assessment of the company's asset and liability position to the liquidators.

Immediately on appointment, the Liquidators requested the Director to provide (i) a completed ROCAP, (ii) a completed questionnaire outlining the causes of failure of Villanex, and (iii) any other books and records on hand.

The Director submitted a ROCAP on 20 May 2021. The ROCAP was generally complete, however the secured creditor debts and some classes of employee entitlements were omitted. The Director failed to complete the ROCAP Questionnaire.

The Liquidators have obtained Company records, including MYOB management accounts (**MYOB**) and physical books and records.

2 Estimated assets and liabilities

Based on MYOB management accounts and the Director's ROCAP, set out below is a summary of Villanex's asset and liability position, as well as the Liquidators' view on Estimated Realisable Values (**ERV**):

Summary of financial position					
\$	Notes	Director's ROCAP	MYOB	Liquidators' ERV	
				Low	High
Assets					
Cash	2.1	-	1,564	-	-
Stock	2.2	40,000	200,520	8,000	8,000
Accounts receivable	2.3	23,413	23,413	-	-
Plant and equipment	2.4	20,157	18,582	50,000	50,000
Director loan receivable	2.5	-	294,967	-	-
Other assets	2.6	-	20,542	-	-
Total assets		83,570	559,589	58,000	58,000
Liabilities					
Priority employee creditors	2.7	(25,996)	(29,001)	(42,611)	(42,611)
Secured creditors	2.8	(131,339)	(134,362)	(217,993)	(217,993)
Intercompany accounts payable	2.9	(315,181)	(172,283)	(315,181)	(172,283)
Related party creditors	2.10	(90,804)	(111,485)	(111,485)	(90,804)
Unsecured creditors	2.11	(199,539)	(199,539)	(1,485,481)	(1,350,437)
Statutory liabilities	2.12	-	(21,720)	(21,720)	(16,739)
Total liabilities		(762,859)	(668,390)	(2,194,471)	(1,890,867)
Net assets / liabilities		(679,289)	(108,802)	(2,136,471)	(1,832,867)

2.1 Cash

Villanex maintained bank accounts with St George Bank Limited (**St George**) which were in overdraft upon appointment, and therefore no cash was available to be recovered by the Liquidators.

Whilst MYOB management accounts disclose \$1,564 in cash assets, no cash was recovered from the store on entry by Metcash when possession was taken on 9 April 2021.

2.2 Stock

As detailed in section 1.1 above, prior to the appointment of the Liquidators, Villanex's head-lessor, Metcash, formally entered into possession of the Aveyly Liquor premises on account of unpaid rent and outgoings. In



addition to entering into possession of Villanex's trading premises, Metcash also took possession of all stock on hand, most of which was the subject of Metcash's security.

After negotiation, the additional stock not supplied by Metcash was sold to Progressive Trading Pty Ltd (**Progressive Trading**) for \$8,000 (exc. GST). The Liquidators also entered into a separate Asset Sale Agreement with Progressive Trading for the sale of the plant and equipment of Villanex (refer section 2.4) and related entity Evermaze (**Vale IGA**).

Metcash is required to mitigate its losses in accounting for the stock repossessed in submitting its final proof of debt in the liquidation.

2.3 *Accounts receivable*

MYOB and the Director's ROCAP reported accounts receivable of \$23,845, comprising amounts owed by related entities Mainteam and Evermaze.

Noting these companies are in liquidation, it is unlikely that a return to unsecured creditors will be achieved in either liquidation.

2.4 *Plant and equipment*

Prior to the appointment of the Liquidators, Metcash, on account of unpaid rent and outgoings (circa \$27,000) formally entered into possession of the Villanex premises and took control of its plant and equipment, broadly comprising:

- refrigerated display units and cool-room;
- shelving units, stands and counters; and
- point of sales systems and associated equipment.

The Directors' ROCAP reported an ERV for the plant and equipment of \$20,157. A valuation of the plant and equipment procured by the Director in the months prior to the appointment of the Liquidators assigned a Fair Market Value In Continued Use of \$76,340 and an Orderly Liquidation Value (**OLV**) of \$4,940.

Despite Metcash taking possession of the Aveley Liquor premises, Westpac held a first ranking security over the assets and undertakings of Evermaze (including plant and equipment) by way of a registered GSA.

Shortly after their appointment, the Liquidators commenced negotiations with Metcash in relation to a sale of the plant and equipment to an incoming lessor of the premises.

Following negotiation, the Liquidators entered into an Asset Sale Agreement with Progressive Trading for the sale of the plant and equipment of Villanex in-situ for \$50,000 (excluding GST).

Overall, the Liquidators consider this a positive outcome on the basis that (i) the assets are not in the possession of the Liquidators and subject of enforcement by Metcash, (ii) the sale provides for a favourable return in relation to the pre-appointment OLV procured by the Director, and (iii) it provides a material return to the secured creditor.

Net proceeds of \$36,500 (after liquidator and legal costs of \$13,500) from the sale of the plant and equipment has been distributed to Westpac, as first ranking secured creditor of the company.

2.5 *Director loan receivable*

The MYOB management accounts report the former director, Mr Nunes owing \$294,967 to Villanex. This was omitted in the Director's ROCAP. Mr Nunes declared bankruptcy in early July 2021 and therefore any recoveries from this loan are unlikely, though the Liquidators will lodge a claim with Mr Nunes' bankruptcy trustee.

2.6 *Other assets*

A number of other assets were reported in the MYOB (but not in the ROCAP), such as prepaid rent and a receivable on account of JobKeeper.

The Liquidators note the following:

- on the Liquidators' appointment rent owed to Metcash was in arrears; and



- the company had received all of its eligible amounts under the JobKeeper regime prior to trading ceasing on 9 April 2021.

No recoveries are expected in relation to Other assets disclosed in MYOB management accounts.

2.7 Priority Creditors

In accordance with section 556(1)(e) of the Corporations Act 2001 (**Act**), employee entitlements such as wages, leave of absence, retrenchment, payment in lieu of notice and superannuation receive a priority ahead of unsecured creditors.

The Liquidators' calculation of priority creditors is set out in the table below:

Priority creditors				
\$	Director's ROCAP		Liquidators' ERV	
			MYOB	Low
Entitlements afforded priority by FEG				
Wages	-	(6,420)	(912)	(912)
Annual leave	(3,415)		(3,415)	(3,415)
PILN	-	-	(3,648)	(3,648)
Redundancy	-	-	(12,055)	(12,055)
Subtotal	(3,415)	(6,420)	(20,029)	(20,029)
SGC superannuation liability	(22,581)	(22,581)	(22,581)	(22,581)
Total	(25,996)	(29,001)	(42,611)	(42,611)

Based on the books and records of Villanex, and the Director's ROCAP, the Liquidators have verified employee entitlements on behalf of the Fair Entitlements Guarantee (**FEG**) Scheme.

Some of the limitations in the books and records is that unpaid wages and unpaid annual leave were accrued together in the management accounts. The amount provisioned in management accounts for employee liabilities in general total of \$6,420 as at the date of appointment.

The Liquidators understand Villanex did not pay employee wages for the week prior to the Aveley Liquor business ceasing to trade. Based on statements obtained from former employees, these unpaid wages are estimated to total \$912.

Unpaid PILN and redundancy were not included in the Director's ROCAP and were calculated by the Liquidators (based on employee start dates and award rates) and have been verified to FEG.

FEG is currently assessing the eligibility and quantum of all claims and therefore the above figures are subject to change. 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. In effect, this means any amounts owing to an employee will become due to FEG if and when FEG make a distribution to that employee.

Subject to eligibility employees have 12 months from the date of my appointment (i.e. until 19 April 2022) to lodge their claims with FEG, however employees are encouraged to commence lodging their claims with FEG as soon as possible.

Online lodgement of claims is the preferred method to make your claim. If you are unable to lodge an online form you can submit a paper based form available from the FEG website: <http://www.employment.gov.au/fair-entitlements-guarantee-feg>.

Superannuation is not afforded a priority by FEG, and therefore can only be met by any assets that may be recovered in the liquidation.

The Liquidators are currently liaising with the ATO in relation to unpaid superannuation of \$22,581.



As noted in section 5 following, the Liquidators consider it unlikely there will be sufficient recoveries in the liquidation to satisfy creditor claims.

2.8 Secured creditors

Villanex's secured creditors comprise Westpac, ALM (Metcash) and Bizcap AU Pty Ltd (**Bizcap**), summarised as follows:

Secured creditors				
\$	Director's ROCAP	MYOB	Liquidators' ERV	
			Low	High
Westpac	(85,922)	(92,768)	(92,768)	(92,768)
ALM	(38,390)	(38,390)	(38,252)	(38,252)
Bizcap	(17,574)	(41,594)	(86,974)	(86,973)
Total	(141,886)	(172,752)	(217,993)	(217,992)

2.8.1 Westpac

As at the date of appointment, Westpac held an ALLPAP registration supported by a first ranking GSA of all or substantially all of the assets of Villanex.

As at the date of appointment, Westpac's direct secured debt totalled \$92,768, comprising a trading overdraft facility and loan facility. The Director's ROCAP specified \$85,922 of secured debt.

Following sale of the assets of Villanex (and net proceeds of \$36,500 being paid direct to Westpac), Westpac will suffer a shortfall of circa \$56,000 on its security specific to Villanex.

Across the Nunes corporate group (comprising Evermaze, Mainteam and SKB), Westpac's total outstanding debt exceeds \$6.0 million secured by the assets of Evermaze, Mainteam and SKB, together with specific properties of the Director and other family members.

2.8.2 Australian Liquor Marketing Pty Ltd (ALM)

ALM (a wholly owned subsidiary of Metcash) held two ALLPAP and one Other Goods registered security interests relating to in-store stock on hand at appointment.

The books and records of Villanex and the Director's ROCAP each report ALM's debt as \$38,390. Statements sighted by the Liquidators broadly agree with this amount.

2.8.3 Bizcap

Bizcap held an ALLPAP registered security interest in relation to Villanex supported by a loan agreement dated 21 January 2021.

Per the books and records of Villanex, Bizcap's outstanding liability as at the date of appointment totalled \$41,594. The Director in his ROCAP quantified Bizcap creditor claim against Villanex as \$17,574. On review of available statements, the Liquidators estimate the amount owed from Villanex to Bizcap totals \$86,973.

2.8.4 Other PPSR registrations

At appointment, World Brand Importers Pty Ltd (**World Brand**) held a PPSR registration in relation to Villanex. After the Liquidators wrote to World Brand, the relevant PPSR registration was discharged.

2.9 Intercompany loans

The Director's ROCAP and Villanex's MYOB management accounts reported intercompany loans payable as set out in the table below:



Intercompany loans payable

\$	Director's ROCAP	MYOB	Liquidators' ERV	
			Low	High
SKB Australia Pty Ltd	(26,921)	(7,450)	(26,921)	(7,450)
Evermaze Pty Ltd (In Liquidation)	(288,260)	(164,833)	(288,260)	(164,833)
Total	(315,181)	(172,283)	(315,181)	(172,283)

The Liquidators note that the intercompany loans payable disclosed by the Director in the ROCAP are substantially higher than that reported in Villanex's MYOB management accounts. The Liquidators have not verified the intercompany loans, but have assumed the position of the Director's ROCAP in the low scenario and MYOB management accounts in the high scenario for the purposes of this report.

2.10 *Related party creditors*

The books and records of Villanex record the following related party creditors:

Related party creditors				
\$	Director's ROCAP	MYOB	Liquidators' ERV	
			Low	High
Director loan	(2,528)	(2,658)	(2,658)	(2,528)
Nunes Group Family Members	(88,276)	(108,827)	(108,827)	(88,276)
Total	(90,804)	(111,485)	(111,485)	(90,804)

Similar to section 2.9, the Liquidators have not verified the above related party loans, and have assumed the position of the Director's ROCAP in the high scenario and MYOB management accounts in the low scenario for the purposes of this report.

2.11 *Unsecured creditors*

The Director's ROCAP discloses outstanding unsecured creditors totalling \$199,539 which is consistent with the company's MYOB Management accounts.

The Liquidators have reviewed various source documents and identified:

- a number of duplicate entries within the Director's ROCAP that are also disclosed as secured creditors or intercompany loans; and
- the Director's ROCAP does not account for c.\$1.2 million owed to the landlord of Mainteam, which is guaranteed by Villanex (and a number of other related parties).

Having regard to the above, the Liquidators currently estimate unsecured creditors (including the Mainteam landlord guarantee) to be \$1.35 million and \$1.48 million. The Liquidators have not sought proofs of debts from creditors to date, nor have they adjudicated any claims received.

2.12 *Statutory liabilities*

The books and records of the company report statutory liabilities of \$21,720, which was omitted in the Director's ROCAP.

While the Liquidators are yet to receive a POD from the ATO, outstanding statutory liabilities are estimated to be between \$16,739 (Villanex's ATO running balance account statement) and \$21,720 (MYOB management accounts).

3 **Investigations**

The Liquidators have obtained books and records in relation to the affairs of Villanex, which includes historical financial statements, bank statements and various trading records. The Liquidators have obtained documents available via public register information and the Freedom of Information Act.



The Liquidators have carried out a high-level review of the above documents and conducted preliminary investigations in relation to potential Liquidator recoveries, including:

- insolvent trading;
- uncommercial transactions; and
- unfair preference payments.

To date the Liquidators have identified (i) a potential material insolvent trading claim against the Director, and (ii) no unfair preferences or uncommercial transactions that are likely to result in material recoveries for the benefit of creditors.

On review of Villanex's available financial statements and books and records, the Company:

- incurred losses of \$109,270 in FY19 and \$97,291 in FY20;
- reported a net liability position since FY19; and
- was likely insolvent for a number of months prior to the Liquidators' appointment.

In relation to unfair preferences, a preliminary review of bank statements and company records has been undertaken to identify potential material payments that may appear to have been made to creditors in the six-month period prior to the Liquidators' appointment (**Relation Back Period**).

Whilst there is evidence of indicia to support the presence of potential unfair preference claims, these do not comprise significant quantum and the Liquidators will need to consider the cost/benefit proposition of pursuing any such claims. The Liquidators will continue to investigate and pursue where commercial to do so.

It should be noted that the Liquidators are yet to complete their investigations, and a further update to creditors will be provided should any information come to attention that alters the current view.

As part of their statutory obligations, the Liquidators of Villanex are also required to lodge an investigative report with ASIC pursuant to section 533 of the Act in relation to the affairs of Villanex, and the conduct of the Director. This report will be prepared and lodged on completion of the Liquidators' investigations.

4 **Receipts and payment to date**

Enclosed are details of all receipts and payments in the liquidation to date.

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 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.

As noted previously, Villanex's available assets as at appointment were predominately limited to plant and equipment. Westpac as first ranking secured creditor has received a distribution of net sale proceeds from the Liquidators of \$36,500 and will incur a shortfall of circa \$56,000 in respect of its direct debt with Villanex.

Noting the shortfall to Westpac as secured creditor and there being minimal other assets available, based on information available to us at this time, and absent any unforeseen issues, we consider it unlikely that a dividend may be payable to creditors.

Should this position change, the Liquidators will contact you to lodge a proof of debt, which formalises the record of your claim in the liquidation and is used to determine all claims against Villanex.



6 **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 6 August 2021. 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.

7 **What happens next?**

We will proceed with the liquidation, which will include:

- realising the remaining assets;
- recovering any further available property;
- completing our investigations into Villanex's affairs;
- if identified, pursuing any viable claims for statutory recovery actions;
- 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.

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

Dated: 19 July 2021

Rob Kirman
Liquidator



Enclosures:

1. Remuneration Approval Report
2. ARITA Information Sheet – Approving remuneration of an external administrator (if required)
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