



McGrathNicol

26 October 2018

Community Work Pty Ltd
Formerly traded as Guardian Youth Care
ACN 098 501 752 (In Liquidation)

First Annual Report to Creditors

McGrathNicol
Partnership

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1 Introduction

As creditors are aware, Peter Krejci of BRI Ferrier was originally appointed as Voluntary Administrator of CW on 23 June 2017, and was subsequently appointed liquidator of CW on 28 July 2017. Peter Krejci remained in that role until the creditors' meeting held on 4 October 2018. At this meeting, CW's creditors resolved to appoint Kathy Sozou and I as Joint and Several Liquidators of CW (**the Liquidators**).

1.1 Purpose of Report

The purpose of this report is to provide creditors with an update on the liquidation of CW pursuant to sections 508 and 1603 of the Corporations Act 2001 (**the Act**) for the period from 28 July 2017 to 27 July 2018 (**the Period**) and to provide details of the upcoming annual meeting of creditors.

I note that Peter Krejci was the Liquidator of CW for the Period and this report largely details the progress of the liquidation during his appointment.

The report will also provide a description of the acts and dealings that remain to be carried out by the Liquidators in order to complete the winding up of CW, and an estimated timing for completion.

2 Meeting of Creditors

An annual meeting of creditors will be held at the offices of **McGrathNicol, Level 12, 20 Martin Place, Sydney NSW 2000** on **Thursday, 15 November 2018** at **10:30 AM** pursuant to section 508(1) of the Act. A notice of meeting is included at Annexure A.

The purpose of this meeting is:

- to provide creditors with a general update;
- seek a replacement member for the Committee of Inspection (**COI**); and
- any other business

For the purpose of the meeting, I attach:

- A statutory notice convening the meeting (Annexure A)
- Proxy Form (Annexure B), including instructions; and
- Formal Proof of Debt or Claim Form (Annexure C), including instructions; and
- General information on creditor meetings (Annexure D).

Creditors wishing to attend the meeting should provide a completed Proof of Debt and proxy form to our office by no later than 4:00 PM on Wednesday, 14 November 2018.

Creditors who are unable to attend the meeting and wish to be represented should ensure that a proxy form, power of attorney or evidence of appointment of a company representative is completed. Should a

In association
with



Proxy Form be submitted on behalf of a company, it must be executed in accordance with the company's constitution. A blank proxy form is included at Annexure B.

Creditors who intend to vote at the meeting are required to lodge a formal proof of debt. A blank proof of debt form is included at Annexure C. If you have already submitted a proof of debt form to the former liquidator, it is not necessary for you to complete a new one.

Creditors may exercise their right to vote by voting at the meeting in person or by appointing a proxy. The proxy forms lodged by creditors for prior meetings cannot be used for this meeting, and a new proxy form should be completed.

If creditors cannot attend the meeting, teleconference details will be made available upon request.

3 Liquidator's acts and dealings during the Period

We have been advised by the former Liquidator that the primary tasks undertaken by his office during the Period included:

- Entering into a funding agreement with the NSW Department of Family and Community Services (**FACS**);
- Arranging for public examinations of key individuals involved with CW in order to explore the use of funding from FACS (discussed further below);
- Lodging a claim against the Deputy Commissioner of Taxation (**ATO**) for unfair preference payments (discussed further below);
- Undertaking investigations into the assets of CW;
- Finalising employee claims under the Fair Entitlements Guarantee scheme (**FEG**);
- Reporting to the Australian Securities and Investments Commission (**ASIC**) on CW's affairs; and
- Attending to other statutory matters.

3.1 Funding agreement

On 13 December 2017, the former Liquidator entered into a funding agreement with FACS in order to undertake investigations into CW's affairs. The funding agreement was approved by the Federal Court on 11 April 2018.

Since our appointment, we have negotiated a new funding agreement with FACS which we will put before the Committee of Inspection (**COI**) for their approval. An updated Declaration of Independence, Relevant Relationships and Indemnities will be executed after the funding agreement is finalised.

3.2 Public Examinations

Once the funding agreement had been approved, the former Liquidator applied for public examinations in the Federal Court of a number of key individuals involved with CW and its related entities, including:

- Mr Paul Clarke;
- Mr Kevin Casey;
- Mr Glen Ella;
- Ms Samantha Madigan;
- Mr Roy Bijkerk; and
- Mr Dylan Bijkerk.

After we replaced the former Liquidator, we added the following individuals to the list of examinees:

- Mr Michael Blair; and
- Mr Dylan Copeland.

The public examinations will take place from 23 October 2018 to 8 November 2018.

3.3 Asset realisations

The former Liquidator has advised that the only known assets of CW are alleged debtor claims against FACS and loans owing from Alpha Support Services Pty Ltd (**Alpha**). FACS has disputed the debtor claim against it and lodged a claim for c\$19.6 million, and Alpha has disputed the loan. These potential claims were not recovered during the Period and are subject to further investigation by the Liquidators.

3.4 Recoveries

The former Liquidator advised there may be an unfair preference claim against the Deputy Commissioner of Taxation for c.\$359,000. This potential claim was not recovered during the Period and is therefore subject to further investigation by the Liquidators.

4 Report to ASIC

The Liquidators have certain obligations under section 533 of the Act to report to ASIC if in the course of the winding up, they become aware that certain individuals may be guilty of an offence, or if a company is unable to pay a dividend to its unsecured creditors of more than 50 cents in the dollar.

The former liquidator has filed a report with ASIC in this regard, and ASIC has requested a supplementary report which will be prepared by the Liquidators in due course.

5 Return to Creditors/Dividend likelihood

The former Liquidator has advised that, assuming claims for voidable transactions are successfully recovered in full, priority creditors would receive a return of 100 cents in the dollar whilst unsecured creditors may receive a return of up to 77 cents in the dollar.

As we have only recently been appointed to CW, it is difficult for us to comment on the likely dividends payable. Once we have been able to undertake our own investigations, we will update creditors.

6 Priority creditors

The former Liquidator has advised that the majority of former employee claims (other than superannuation) have been paid by the Department of Jobs & Small Business (**DOJSB**) through the FEG scheme. DOJSB now has a subrogated priority claim in the liquidation.

Should there be sufficient funds to pay a dividend to the priority creditors, payment will be made directly to DOJSB. Any outstanding superannuation will be paid to the Australian Taxation Office (**ATO**) for onward distribution to CW's former employees.

7 Committee of Inspection (COI)

A COI meeting was held on 7 March 2018. There have not been any further reports to or meetings of the COI since then.

We consider a COI to be beneficial in the Liquidation of CW due to the large number of creditors in this Liquidation and the time-costs involved with arranging creditor meetings.

Upon establishment, the COI comprised of FACS, the ATO and two employees. As the employees have been paid by DOJSB, they are no longer eligible to be members of the COI. We are therefore seeking a replacement for those employees on the COI.

8 Outstanding tasks in the Liquidation

The Liquidators anticipate the following tasks will need to be undertaken prior to finalisation of the Liquidation:

- Conduct public examinations;
- Investigate the affairs of CW and its related entities in further detail;
- Consider potential recovery actions in further detail;
- Prepare a statutory report to creditors;
- Report to ASIC;
- Distribute dividends to creditors (if applicable); and
- Other statutory tasks.

9 Estimated completion date

The expected completion date is contingent upon the outcome of the public examinations and our continuing investigations. At this stage, we anticipate the liquidation will not be finalised for at least 18 months.

10 Receipts and Payments

Please find attached a summary of the former Liquidator's receipts and payments.

Should you have any queries in relation to the Liquidation or the upcoming meeting of creditors, please contact Ali Abdo of this office on +61 2 9248 9937 or by email (aabdo@mcgrathnicol.com).

Yours faithfully

Community Work Pty Ltd (In Liquidation)



Barry Kogan

Liquidator

Enclosures:

Annexure A – Notice of Meeting

Annexure B – Proxy form (Form 532) and instructions

Annexure C – Proof of Debt Form (Form 535) and instructions

Annexure D – Information for attending and voting at a meeting of creditors

Annexure E – Receipts and Payments for the Period



Annexure A

Notice of Meeting

**Community Work Pty Limited (In Liquidation)
ACN 098 501 752 (CW)**

NOTICE OF ANNUAL MEETING OF CREDITORS OF COMPANY UNDER EXTERNAL ADMINISTRATION

1. Notice is now given that a meeting of the creditors of CW will be held at the offices of **McGrathNicol, Level 12, 20 Martin Place, Sydney NSW 2000** on **15 November 2018** at **10:30 AM**.
2. The purpose of the meeting is to:
 - (a) provide an update to creditors; and
 - (b) consider the appointment of new member(s) to the committee of inspection
3. The effect of Insolvency Practice Rules (Corporations) section 75-85 (entitlement to vote as creditor at meetings of creditors) is:
 - (1) A person other than a creditor (or the creditor's proxy or attorney) is not entitled to vote at a meeting of creditors.
 - (2) Subject to subsections (3), (4) and (5), each creditor is entitled to vote and has one vote.
 - (3) A person is not entitled to vote as a creditor at a meeting of creditors unless:
 - (a) his or her debt or claim has been admitted wholly or in part by the external administrator; or
 - (b) he or she has lodged, with the person presiding at the meeting, or with the person named in the notice convening the meeting as the person who may receive particulars of the debt or claim:
 - (i) those particulars; or
 - (ii) if required—a formal proof of the debt or claim.
 - (4) A creditor must not vote in respect of:
 - (a) an unliquidated debt; or
 - (b) a contingent debt; or
 - (c) an unliquidated or a contingent claim; or
 - (d) a debt the value of which is not established;unless a just estimate of its value has been made.
 - (5) A creditor must not vote in respect of a debt or a claim on or secured by a bill of exchange, a promissory note or any other negotiable instrument or security held by the creditor unless he or she is willing to do the following:
 - (a) treat the liability to him or her on the instrument or security of a person covered by subsection (6) as a security in his or her hands;
 - (b) estimate its value;
 - (c) for the purposes of voting (but not for the purposes of dividend), to deduct it from his or her debt or claim.



(6) A person is covered by this subsection if:

(a) the person's liability is a debt or a claim on, or secured by, a bill of exchange, a promissory note or any other negotiable instrument or security held by the creditor; and

(b) the person is either liable to the company directly, or may be liable to the company on the default of another person with respect to the liability; and

(c) the person is not an insolvent under administration or a person against whom a winding up order is in force.

4. Proofs of debt and proxies must be submitted by **4:00 PM on 14 November 2018**.
5. Should a person, or the proxy or attorney of a person, wish to participate in the meeting using electronic facilities, please contact Ali Abdo on (02) 9248 9937 to obtain the details and give to the convenor, not later than **4:00 PM on 14 November 2018**, a written statement setting out:
 - the name of the person and of the proxy or attorney (if any);
 - an address to which notices to the person, proxy or attorney may be sent; and
 - a method by which the person, proxy or attorney may be contacted for the purposes of the meeting.

Dated: 25 October 2018

Barry Kogan
Liquidator

McGrathNicol
GPO Box 9986
Sydney NSW 2001
Australia
+61 2 9338 2600

PROXY FORM

Annexure B

**Community Work Pty Limited (In Liquidation)
ACN 098 501 752**

APPOINTMENT OF PROXY

I/We (1) _____ of

_____ (address)

a creditor of **Community Work Pty Limited (In Liquidation)** appoint

(2) _____ or in his or her absence

(3) _____ as my/our general/special proxy to vote at the meeting to be held on **15 November 2018** at **10:30 AM** or at any adjournment of that meeting.

DATED this _____ day of _____ 2018

Signature _____ (4)

Notes:

- (1) If a firm, strike out "I" and set out the full name of the firm.
- (2) Insert name, address and description of the person appointed.
- (4) If the creditor is a sole trader, the proprietor must sign the proxy form.
If the creditor is a partnership, a partner of the partnership must sign the proxy form.
If the creditor is a company, a director or an authorised representative must sign the proxy form.

Proxy forms should be completed and returned by no later than 4:00 PM on 14 November 2018.

RETURN TO: ihome@mgrathnicol.com
of care of McGrathNicol
Address: GPO Box 9986, Sydney NSW 2001, Australia
Phone: +61 2 9338 2600
Fax: +61 2 9338 2699



Proxy

Notes for your Guidance

- Insert full name and address of creditor, contributory or member on the top line.
- On the second line, insert the name of the person you appoint as your proxy. You may insert "the Chairperson of the meeting" if you wish.
- On the next line insert the organisation the proxy holder represents or works for (not required if the Chairperson is your proxy).
- You may appoint an alternate proxy on the fourth line who may act if your first appointed proxy cannot attend the meeting. You may insert "the Chairperson of the meeting" if you wish.
- If the proxy is a general proxy the form requires no addition.
- If the proxy is a special proxy the form must include instructions regarding the use of the proxy (i.e. details of the resolution and whether the proxy holder is to cast a vote in favour or against the resolution or abstain from voting).

- Date and sign the Proxy form using one of the following various forms of execution:

– Sole Trader - Sign the proxy yourself.

– Partnership - e.g. sign – "Smith & Associates
Per John Smith - Partner"

– Company - (i) By a director or secretary, e.g. "J Smith – Director".
(ii) By a person duly authorised to sign on behalf of the company,
e.g.

"Smith & Sons Pty Ltd. ACN: _____

Per: J Smith

A person duly authorised to sign on the company's behalf".

OR

"Smith & Sons Pty Ltd. ACN: _____

By its duly constituted attorney J Smith".

NB: If signing on behalf of a company the following example is not sufficient:

"Smith & Sons Pty Ltd. ACN: _____

Per: J Smith"

- "Certificate of Witness" is only to be used where the Proxy is being completed on behalf of a person who is blind or incapable of writing. In all other cases a witness to the signature of the person appointing the Proxy is not required and you may ignore the section headed "Certificate of Witness".

FORM 535

FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

Annexure C

Community Work Pty Limited (In Liquidation)

ACN 098 501 752

(the Company)

To the Liquidator/Administrator of the Company

1. This is to state that the Company was on 28 July 2017, and still is, justly and truly indebted to:

_____ (name of creditor)

of _____ (address of creditor)

for \$ _____ and _____ cents (GST inclusive) GST amount _____

Date	Consideration (state how the Debt arose)	Amount \$ c	Remarks (include details of voucher substantiating payment)

2. To my knowledge or belief the creditor has not, nor has any person by the creditor's order, had or received any satisfaction or security for the sum or any part of it except for the following: *(insert particulars of all securities held. If the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, show them in a schedule in the following form).*

Date	Drawer	Acceptor	Amount \$c	Due Date

3. Select which of the below applies (choose one):

- The creditor is a company and I am signing as a director of the company
- The creditor is a partnership and I am signing as a partner of the partnership
- The creditor is a company and I am signing as an authorised representative/duly constituted attorney of the company
- I am signing in my personal capacity as a member or contributory of Community Work Pty Limited (In Liquidation)
- I am an individual and I am signing in my personal capacity (which includes employees)
- Other: _____
- The creditor is a sole trader and I am signing as the proprietor

4. If you are a related party, state your relationship _____

I nominate to receive electronic notifications of documents in accordance with Section 600G of the Corporations Act at the following email address

Email: _____

The debt was incurred for the consideration stated and the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.

Signature Dated

Name: _____

Address: _____



- Notice of Demand served on the guarantor; and
- Calculation of the amount outstanding under the guarantee.

Judgment Debt

- Copy of the judgment; and
- Documents/details to support the underlying debt as per other categories.

Deficiencies on Secured Debt

- Security Documents (eg. mortgage);
- Independent valuation of the secured portion of the debt (if not yet realised) or the basis of the creditor's estimated value of the security;
- Calculation of the deficiency on the security; and
- Details of income earned and expenses incurred by the secured creditor in respect of the secured asset since the date of appointment.

Loans (Bank and Personal)

- Executed loan agreement; and
- Loan statements showing payments made, interest accruing and the amount outstanding as at the date of appointment.

Tax Debts

- Documentation that shows the assessment of debts, whether it is an actual debt or an estimate, and separate amounts for the primary debt and any penalties.

Employee Debts

- Basis of calculation of the debt;
- Type of Claim (eg. wages, holiday pay, etc);
- Correspondence relating to the debt being claimed; and
- Contract of Employment (if any).

Leases

- Copy of the lease; and
- Statement showing amounts outstanding under the lease, differentiating between amounts outstanding at the date of the appointment and any future monies.



Annexure D

**Community Work Pty Limited (In Liquidation)
ACN 098 501 752 (CW)**

General Information for Attending and Voting at Meetings of Creditors

Time and Place of Meeting

Pursuant to *Insolvency Practice Rules (Corporations) (IPR) 75-30*, a meeting of creditors must be convened at the time and place the Chairperson believes are convenient for the majority of creditors entitled to receive notice of the meeting.

Quorum

- Pursuant to IPR 75-105, unless a quorum is present, a meeting must not act for any purpose other than:
 - the election of a chairperson; and
 - the proving of debts; and
 - the adjournment of the meeting.
- A quorum is present if two (2) or more persons are entitled to vote and at least two (2) persons are present at the meeting in person, by proxy or by power of attorney.
- A quorum is present if only one (1) person is entitled to vote and that person is present at the meeting in person, by proxy or by power of attorney.
- A person who participates in the meeting using electronic facilities is taken to be present in person at the meeting.
- A meeting is sufficiently constituted if only one (1) person is present in person, if the person represents personally or by proxy or otherwise a number of persons sufficient to constitute a quorum.

Chairperson

Pursuant to IPR 75-50, the external administrator is appointed Chairperson of the meeting. Alternatively, pursuant to IPR 75-50 and IPR 75-152 the external administrator may appoint someone else to act as chairperson of the meeting and authorise that person to use any proxies held by the external administrator on the external administrator's behalf.

For the second meeting of creditors in a Voluntary Administration, the Administrator must chair the meeting pursuant to IPR 75-50.

Voting

- Pursuant to IPR 75-85, creditors will not be eligible to vote at the meeting unless they have lodged particulars of their debt or claim prior to or at the meeting.
- Accordingly, creditors who intend to vote at the meeting should ensure that they lodge a formal proof of debt with the external administrator prior to or at the meeting.
- Pursuant to IPR 75-110, a resolution put to the meeting is to be decided on the voices or by a poll, if one is requested.
- A poll may be requested by:
 - the chairperson; or
 - a person participating and entitled to vote at the meeting.



- Pursuant to IPR 75-115, should a poll be requested:
 - a resolution is passed if a majority in number and a majority in value vote in favour of the resolution; and
 - a resolution is not passed if a majority in number and a majority in value vote against the proposed resolution.

In the event of a deadlock, the chairperson may exercise a casting vote. In such situations, the minutes of the meeting must specify the chairperson's reasons for exercising, or not exercising, their casting vote.

Proxies

- Pursuant to IPR 75-150, a person entitled to vote at a meeting may, in writing, appoint an individual as their proxy to attend and vote at the meeting on their behalf.
- Accordingly, creditors who are unable to attend the meeting but who wish to be represented should ensure that a validly executed proxy form is lodged with the external administrator prior to the meeting.

Corporate Creditors

Corporate creditors who wish to attend the meeting should note that an individual may only represent them if the corporation validly grants that person a proxy or power of attorney.

Alternatively, section 250D of the *Corporations Act* provides that a corporation may, by resolution of its board, provide a standing authority for a specified person to represent the corporation at a specified meeting of creditors. A copy of any such resolution should be provided to the external administrator prior to attending the meeting.

Committee of Inspection

Pursuant to IPR 80-5, a person may only serve as a member of a Committee of Inspection if the person is:

- a creditor of the company personally; or
- the attorney of a creditor under a general power of attorney; or
- authorised in writing by a creditor; or
- a representative of the Commonwealth if a FEG claim has been, or the Commonwealth considers a claim is likely to be, made in relation to unpaid employee entitlements.

Corporate creditors who are members of a Committee of Inspection may be represented by an individual authorised in writing by the member to represent the member on the committee.

**Community Work Pty Limited
(In Liquidation)****Liquidator's Summary of Receipts and Payments
To 04 October 2018**

RECEIPTS	Total (AUD)
Cash at Bank	239,036.18
Transfer of Client Records	10,000.00
FEG Services Fee	17,395.00
Indemnity Funds	241,966.60
Post-appt Superannuation Liability	231.78
GST Payable	2,739.50
GST Clearing Account	32,955.30
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	544,324.36
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PAYMENTS	
Superannuation	8,186.59
Wages & Salaries	2,749.88
Bank Charges	18.20
Legal Fees (1)	172,960.27
Legal Fees (No GST)	5,615.00
Counsel Fees	10,370.84
Liquidators Remuneration	96,709.50
Liquidators Expenses	9,598.93
IT Maintenance	1,575.00
Administrators' Remuneration	188,837.61
GST Receivable	48,005.21
Withholding Tax (PAYG)	(602.67)
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	544,024.36
Balances in Hand	300.00
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	544,324.36
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